

NO: R053

COUNCIL DATE: March 11, 2024

REGULAR COUNCIL

TO: **Mayor & Council** DATE: **March 7, 2024**

FROM: **General Manager, Planning & Development** FILE: **3900-30**
6440-02

SUBJECT: **Proposed Amendments to Environmental (Streamside Protection and Development Permits) Development Application Review Processes**

RECOMMENDATION

The Planning & Development Department recommends that Council:

1. Receive this report for information;
2. Approve Option A, to:
 - a) Direct staff to make the proposed changes to Part 7A (Streamside Protection) of *Surrey Zoning By-law, 1993, No. 12000* to reduce Class A/O roadside ditches, from 10-metres to five-metres; and Class B ditches, from seven-metres to two-metres as described in this report; and
 - b) Direct staff to bring forward a bylaw to amend *Surrey Zoning By-law, 1993, No. 12000* for readings, consistent with Appendix "I";

OR

Option B, to:

- a) Direct staff to bring forward a bylaw to amend Part 7A (Streamside Protection) of *Surrey Zoning By-law, 1993, No. 12000* to require all watercourse setbacks to meet Provincially and Federally legislated requirements.
3. Approve the proposed changes to *Surrey Official Community Plan Bylaw, 2013, No. 18020* Sensitive Ecosystems Development Permit requirements and guidelines as described in this report; and
4. Direct staff to bring forward the necessary amendments to *Surrey Official Community Plan Bylaw, 2013, No. 18020* for readings, consistent with Appendix "II."

INTENT

The intent of this report is to seek Council's endorsement of changes to streamside setbacks set out in *Surrey Zoning By-law, 1993, No. 12000*, specifically those for Class A/O and B roadside ditches, and changes to the Sensitive Ecosystems Development Permit requirements to streamline development application review timelines without compromising environmental protection of watercourses.

BACKGROUND

The protection of environmental and fisheries values associated with watercourses and riparian areas is multi-layered in Surrey, with Federal Department of Fisheries and Oceans ("DFO"), Provincial *Water Sustainability Act* ("WSA"), and Riparian Areas Protection Regulation ("RAPR") regulations and City regulations all playing a part. In essence, these regulations have the goal of preventing both direct disturbance and indirect impact on streams that support fish and fish habitat from development.

Prior to 2016, the City organized a multi-jurisdictional working group called the Environmental Review Committee ("ERC") made up of staff representatives from DFO, the relevant Provincial Ministries, and City departments. The ERC met regularly to review development applications that sought variances to the prevailing Riparian Areas Regulation ("RAR") setbacks of 30-metres for fish-bearing streams and 15-metres for non-fish-bearing streams. The ERC was an effective and efficient body for determining setbacks on development sites that met the requirements of legislation while providing flexibility where warranted.

Through the period of the early 2010s, senior government representatives progressively withdrew from participating in the ERC. At that time, the Provincial government also amended its regulations around watercourses by introducing the RAPR process. This process depends upon a detailed assessment of riparian areas by a Qualified Environment Professional ("QEP") to establish setbacks that are intended to protect only the fisheries values of the watercourse. The established RAPR setback areas prohibit public access and disturbance, and on development sites are typically fenced to delineate the "no disturbance" area.

In response to the changes in riparian regulations and the withdrawal of Federal (DFO) and Provincial representation on the City's ERC in 2016, the City developed a set of "made in Surrey" streamside setbacks. These were intended to provide clear and consistent guidance and are defined in Part 7A of *Surrey Zoning By-law, 1993, No. 12000* ("the Zoning By-law"), with different setbacks applied to various types of streams (see Appendix "I"). These setbacks "meet or beat" Provincial RAPR setbacks in most cases, which allows the City to approve developments that impact riparian areas without applicants having to seek separate Provincial approvals, which can be time consuming to attain.

The setbacks defined in Part 7A of the Zoning By-law distinguish between various types and classifications of stream consistent with definitions in the *Water Sustainability Act* and RAPR. Class A streams are defined as those (whether natural or channelized) that are inhabited by fish, while Class B streams provide significant food and nutrients to downstream fish habitat but are not inhabited by fish. A third classification of streams, Class A/O, denotes streams (often agricultural or floodplain ditches) that are used by salmonid fish during the rainy season, but not usually year-round.

It is important to note that the setbacks defined in Part 7A are intended to protect for City interests that go beyond the narrower “fish only” protections of RAPR. These include providing access for maintenance, as most streams in Surrey also function as drainage corridors; protecting adjacent homes and properties from bank sloughing or localized flooding; and providing an opportunity for recreational trails to be located outside of the “no disturbance” area defined by a RAPR assessment.

The Part 7A streamside setbacks are complemented by the Sensitive Ecosystems Development Permit (“SEDP”) process that forms part of *Surrey Official Community Plan Bylaw, 2013, No. 18020* (“the OCP”). The SEDP sets out a series of guidelines that ensure that development adjacent to riparian areas is sensitive to the environment and maintains the safe conveyance of stormwater in the City’s natural drainage system.

At its October 30, 2023 Regular Meeting – Public Hearing, Council directed staff to review Part 7A and the SEDP processes to streamline development application approvals while ensuring protection of the City’s interests and environmental protection.

DISCUSSION

In response to the October 30, 2023 Council direction, staff reviewed the streamside setbacks in Part 7A of the Zoning By-law, along with the SEDP guidelines in the OCP, with the goal of reducing unnecessary restrictions on land development and reducing regulatory processes that add time and cost to the development process, while ensuring environmental protection. Staff in several departments, including Engineering, Planning & Development, and Legal Services have reviewed and contributed to the recommendations set out in this report. The changes to the Zoning Bylaw and OCP set out in Appendix “I” and Appendix “II” were presented at the Development Advisory Committee in November 2023 and were supported.

Proposed Part 7A – Zoning By-law Changes

The staff review identified an initial opportunity to reduce setbacks for “Class A/O” and “Class B” roadside ditches. These ditches are common in many parts of Surrey, both in newly developing areas – such as Clayton, Grandview, and Tynehead – but also in many older established single-family neighbourhoods in Surrey and in the Agricultural Land Reserve (“ALR”) areas. These roadside ditches touch upon a high percentage of development applications, including both subdivision/rezoning applications as well as building permits on pre-existing single-family lots. For Class B, the seven-metre setback applied to them in Part 7A exceeds the two-metre setback prescribed in RAPR and is routinely varied through the application process. For roadside ditches, this additional setback is not required for drainage maintenance because the ditch is accessible from the roadway.

Option A:

The staff recommendation is to reduce the Part 7A Streamside Setback in the Zoning By-law for:

- a) Class A/O roadside ditches, from 10-metres to five-metres; and
- b) Class B ditches, from seven-metres to two-metres.

Staff recommend that the other streamside setbacks in Part 7A remain, as they serve important City interests including drainage access, bank erosion/sloughing, and the opportunity to secure land for linear trail systems through development.

In addition, the effect of new Provincial housing legislation that allows more density in most zones will place added pressure on riparian areas to provide tree canopy and natural infiltration. Where developers seek variances to these setbacks, the City is often able to secure agreements to restore the riparian area and, in most cases, achieve conveyance of the riparian area to the City.

Option B:

As an alternative to Option A, staff recommend that all watercourse setbacks, including Class A/O and B watercourses and ditches, be amended to align with existing Provincial and Federal legislation. In this case the City would have less ability to secure additional land to protect against sloughing and linear trails would be prioritized to parks facilities versus outside of the fisheries setback. However, this option provides a better balance of ensuring greater potential for housing and other development opportunities while protecting the environment.

Proposed Sensitive Ecosystem Development Permit Changes

The staff review identified a number of changes to the SEDP process to streamline development reviews. These include reducing the area where a Development Permit (“DP”) is required, increasing the instances where an SEDP waiver is granted, and the creation of an “SEDP Light” process for developments which do not warrant a full SEDP submission.

Currently, the SEDP Area (within which a developer must obtain an DP) is defined as any property where a portion of the property is within 50-metres from the top of bank of a Class A, A/O, or B watercourse. Staff propose to reduce this to 30-metres for Class A, A/O, and B watercourses. This small change will reduce the number of properties that would need to apply for an SEDP by an estimated 25%.

The SEDP Implementation requirements in the OCP allow for a waiver “where information is provided that illustrates that portions of a property falling within the [SEDP] area do not impact its objectives.” This requirement is not definitive, however, and has been inconsistently applied. Staff propose to clarify this waiver clause as shown in Appendix “II” to indicate that no SEDP will be required for applications that:

- Do not include a Class A watercourse; AND
- Do not include a subdivision, rezoning, or Development Permit (DP₁ Form and Character or DP₂ Hazard Lands); AND
- No structures, vegetation removal, or regrading of land are proposed within the streamside setbacks defined in Part 7A of the Zoning By-law, as confirmed by a site survey conducted by a registered BC Land Surveyor.
 - In these cases, where additions, new structures or land disturbances are proposed further or equal distance from the stream setbacks than existing development, such waivers can be granted by staff without verification by a QEP.
 - In these cases, where additions, new structures or land disturbances are proposed closer to the stream setbacks than existing development but remain outside of the setbacks defined in Part 7A, a simple letter from a QEP confirming no adverse impact on the riparian habitat will suffice to apply for an SEDP waiver granted by staff.

Where a development application is within the SEDP Area, where the proposed development includes a subdivision, rezoning, or DP but does not seek a variance to the setbacks defined in Part 7A, staff propose to develop an “SEDP Light” process that will reduce the submission

requirements substantially. If directed by Council, staff will develop this revised process as part of the OCP revision that is underway.

Staff estimate that clarifying the SEDP waivers and implementing an “SEDP Light” process will reduce the number of SEDPs by approximately 50% and save several weeks of staff review on the remaining SEDP applications.

Watercourse Assessment and Mapping Project

Staff is proposing to proactively map and assess watercourse classifications and setbacks in areas of the City where there is a lot of development activity (for example, in Neighbourhood Concept Plan [“NCP”] areas). These watercourse assessments and setbacks would be conducted by a QEP retained by the City, and once established and mapped would eliminate the need for a developer to retain their own QEP, unless they wish to vary the City’s setbacks. This will save significant time and money and add certainty to the development approval process.

LEGAL SERVICES REVIEW

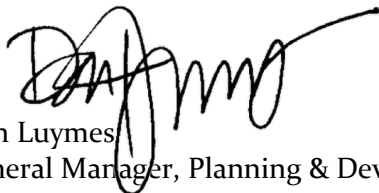
This report has been reviewed by Legal Services.

FINANCE REVIEW

There are no direct financial considerations arising from the recommendations in this report, with the exception of procuring QEP services to proactively assess and map watercourses in advance of development applications. It is expected that this work will be valued at less than \$500,000, contingent on Housing Accelerator Fund (“HAF”) funding being available for this purpose.

CONCLUSION

In response to Council direction, staff have reviewed environmental regulations, policies, and practices applied in the development application review process. These include the streamside setbacks in Part 7A of the Zoning By-law, the requirements for issuing a Sensitive Ecosystems Development Permit, and the practices for applying these regulations in the development process. Staff conclude that the changes proposed in this report and as covered by Option A or B will significantly reduce the number of applications that trigger an SEDP requirement and streamline the processing of applications without compromising important environmental and public interest values.



Don Luymes
General Manager, Planning & Development

Appendix “I” Proposed Amendments to *Surrey Zoning By-law, 1993, No. 12000, Part 7A*

Appendix “II” Proposed Amendments to *Surrey Official Community Plan Bylaw, 2013, No. 18020*
(Sensitive Ecosystems Development Permit)

(BL 18809)

A. General

(BL 20300)

1. All lands within a streamside protection area, which includes the area of land between the *stream* and *top of bank* and the *streamside setback area*, are subject to the regulations set out in this Part, except for those lands and uses permitted in the *Agricultural Land Reserve* that are exempt from the Riparian Area Regulation, B.C. Reg. 376/2004, as amended.
2. For those portions of a streamside protection area that exceed the Riparian Areas Regulation, B.C. Reg. 376/2004, as amended, no disturbance of any land is permitted except for the construction, maintenance or operation of municipal works and services.
3. Any requirements specified in Riparian Areas Regulation, B.C. Reg. 376/2004, as amended, that are greater than those specified in this Part, must be complied with, as well as any other applicable legislation.
4. For the purpose of this Part, a *Qualified Environmental Professional* is a registered professional Biologist, Geoscientist, Engineer, Forester and/or Agrologist registered in British Columbia, with demonstrated education, expertise, accreditation and knowledge relevant to sensitive environments, ecosystems and/or riparian/streamside management.
5. All *streams*, for the purpose of this Part, are classified as follows:
 - (a) Class A: Inhabited by salmonids year-round or are potentially inhabited year-round with access enhancement;
 - (b) Class A/O: Inhabited by salmonids, primarily during the overwintering period, or potentially inhabited with salmonids during the overwintering period with access enhancement and non-salmonid species generally present year-round; or
 - (c) Class B: A significant source of food and nutrient value to downstream fish populations with no documented fish presence and no reasonable potential for fish presence.
6. The entirety of this Part shall not be used to calculate *density* as described in *undevelopable area*.

B. Streamside Setback Areas

(BL 20300)

1. A *streamside setback area* is calculated by a *Qualified Environmental Professional* using the minimum distance from the *top of bank*, as follows:

Minimum Distance From Top of Bank

| STREAM TYPES: | STREAM CLASSIFICATIONS: | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|-----------------------|
| | A or A/O | B |
| All <i>Stream</i> Types (except as shown below) | 30 m ¹ | 20 m ¹ |
| Channelized <i>Stream</i> that has been dyked, diverted or straightened carrying drainage flows from headwaters or significant sources of groundwater, and can include channels that divert irrigation from a <i>stream</i> and send overflow water back to a <i>stream</i> . | 25 m ¹ | 15 m ¹ |
| Ditches <i>Stream</i> that is a constructed drainage channel, carrying water that does not originate from a headwater or significant source of groundwater. | 10 m ² (5 m for Class A/O) | 7 m 2 m |
| Natural <i>Stream</i> predominantly in its natural state that is not significantly altered by human activity. | 30 m ¹ | 15 m ¹ |
| Large Ravines <i>Stream</i> with a narrow, steep-sided valley with a minimum of 60 m between the <i>top of bank</i> from either side of the <i>stream</i> . | 15 m ¹ | 15 m ¹ |

- 1 Provided there is no loss in the total size of an individual *streamside setback area*, the minimum distance from the *top of bank*, may only be reduced by no more than 5 m and increased by no more than 10 within the same *streamside setback area*.
- 2 Provided there is no loss in the total size of an individual *streamside setback area*, the minimum distance from the *top of bank* may only be reduced by no more than 3 m and increased by no more than 10 m within the same *streamside setback area*.

2. Despite Sections B.1 in this Part, for *lots* that existed prior to September 12, 2016, where zoning allows for *single family dwelling* and *duplex* uses, the *streamside setback area* is calculated by using the minimum distance from *top of bank*, as follows:

Minimum Distance from Top of Bank

| STREAM TYPES: | STREAM CLASSIFICATIONS: | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|-----------------------|
| | A or A/O | B |
| All <i>Stream</i> Types (except as shown below) | 15 m | 15 m |
| Ditches <i>Stream</i> that is a constructed drainage channel, carrying water that does not originate from a headwater or significant source of groundwater. | 10 m (5 m for Class A/O) | 7 m 2 m |

3. If those *lots*, identified in Section B.2 of this Part, are further subdivided or rezoned, then Section B.1 of this Part applies

DEVELOPMENT PERMITS (cont.)

DP3: Sensitive Ecosystems

BL 18784
BL 18787

APPLICATION

Local Government Act Section 488, Category (a):

Protection of the Natural Environment, its Ecosystems and Biological Diversity

A Development Permit will be required prior to development activities for any of the following scenarios:

- ⇒ Subdivision of land
- ⇒ Construction, addition or alteration of a building or structure
- ⇒ Construction of roads and trails
- ⇒ Disturbance of soils, land alteration or land clearing
- ⇒ Installing non-structural surfaces with semi-pervious or impervious materials

AREA

Development Permit Area #3, for the protection of sensitive ecosystems, is designated as follows:

- a) all parcels of property where any portion of the property falls within 50 m of the Green Infrastructure Area, as shown in Figure 67; and
- b) all parcels of property where any portion of the property falls within 50 m of the top of bank of either one or both sides of a Class A, A/O or B stream containing fish habitat, as generally shown in Figure 68. Should a stream not illustrated in Figure 68 be identified, it is the responsibility of the applicant to contact the City of Surrey to determine whether or not the area in question falls within this Development Permit Area.

IMPLEMENTATION

Unless otherwise indicated, and in accordance with the Surrey Development Permit Procedures and Delegation Bylaw, as amended, authority to issue a Sensitive Ecosystem Development Permit is delegated to the Planning and Development Department except where the Development Permit application is accompanied by another application requiring City Council approval. Where the content of a Development Permit cannot be agreed upon between the Planning and Development Department and an applicant, authority to issue a Development Permit remains with City Council.

DEVELOPMENT PERMITS (cont.)

BL18784

DP3: Sensitive Ecosystems

JUSTIFICATION

Lands of significant ecological value, including riparian areas, fall within Surrey's boundaries. The use of a Development Permit Area for these areas are justified as follows:

- a) Green Infrastructure Areas: Surrey's *Ecosystem Management Study and Biodiversity Conversation Strategy* (BCS) identify Surrey's sensitive ecosystem areas. These areas provide natural environment and ecosystem protection as well as biological diversity. The hubs, sites and corridors identified in the BCS provide a contiguous area of ecological importance because they function as habitat and movement systems for wildlife and other natural habitat preservation; offer increased biodiversity in urban areas; provide natural water storage and drainage; and act as natural purification systems that work to reduce erosion and sedimentation. The purpose of the Sensitive Ecosystem Development Permit Guidelines for Green Infrastructure is to ensure that the protection of these high quality plant communities and wildlife habitat areas occurs concurrently with development. Retaining large, contiguous sensitive ecosystem areas helps to retain habitat diversity and quality of life and provides for an overall healthy community for Surrey residents.
- b) Streamside Areas: Rivers, streams, lakes and ponds provide fish habitat and aquatic habitat for wildlife. Streamside areas, where in a natural state, have dense and structurally-complex vegetation that:
 - have high biodiversity and support a large number of vegetation and wildlife species;
 - contribute to the ecological health of the adjacent stream and its fish habitat;
 - prevent the loss of riparian land due to bank instability and soil erosion;
 - provide natural habitat;
 - provide natural corridor links between ecosystem hubs and sites throughout Surrey and neighbouring communities.

The purpose of establishing a Sensitive Ecosystem Development Permit Area for Streamside Areas is to:

- support development while ensuring these areas remain in a largely natural and undisturbed state;
- satisfy requirements of local government to ensure development compliance with the Riparian Areas Regulation, B.C. Reg. 376/200; and
- Maintain the safe conveyance of stormwater following the City of Surrey's Natural Drainage Policy.

DEVELOPMENT PERMITS (cont.)

DP3: Sensitive Ecosystems

BL18784

OBJECTIVES

The City of Surrey's objectives for establishing a Sensitive Ecosystem Development Permit Area for Green Infrastructure and Streamside Areas are to:

- a) Green Infrastructure Areas
 - Maintain and enhance ecosystems and critical habitat for at-risk species and generate opportunities that support and enhance biological diversity;
 - Integrate ecological systems and processes into urban areas and assess conservation values and enhancement priorities equally with land development, growth management and infrastructure planning; and
 - Identify and minimize the disturbance of development on the Green Infrastructure Network, as defined in Surrey's *Biodiversity Conservation Strategy*.

- B) Streamside Areas
 - Conserve, protect and enhance aquatic areas and associated riparian habitat;
 - Encourage ecosystem processes and biodiversity and ensure development activity does not encroach upon or alter riparian and aquatic habitats; and
 - Provide for: drainage maintenance access; potential public trails; beaver habitat accommodation; tree health; natural stream dynamics; and slope stability risk minimization.

EXEMPTIONS

The following scenarios shall NOT require a Development Permit:

- i. Emergency actions required to prevent, control or reduce an immediate threat to human life and safety, the natural environment and/or property, as authorized by the General Manager, Engineering Department, or their designate.
- ii. Interior renovations within an existing building footprint not resulting in any change to the external structure of a building or causing any disturbance to a site.
- iii. Ecological restoration and enhancement projects authorized by the General Manager, Engineering Department or of the Parks, Recreation and Culture Department, or their designate.
- iv. Construction, maintenance or operation of municipal or public utility works and services.
- v. Regular and general yard maintenance activities within an existing landscaped area, such as mowing laws, pruning trees and shrubs (in accordance with Surrey Tree Protection Bylaw, as amended), planting vegetation and minor soil disturbances that do not alter the general grade of the land or existing approved landscaped buffers.
- vi. Permitted farm activity within the Agricultural Land Reserve (ALR).
- vii. Where there is an existing agreement with the Federal or Provincial governments and the proposed activities are consistent with those agreements.
- viii. Where a parcel of property within a Development Permit Area #3:
 - Does not include a Class A watercourse setback; AND
 - Does not involve a subdivision, rezoning, or Development Permit (DP1 Form and Character or DP2 Hazard Lands); AND
 - No structures, vegetation removal, or regrading of land are proposed within the streamside setbacks defined in Part 7A of the Zoning By-law, as confirmed by a site survey conducted by a registered BC Land Surveyor.
- ix. Where information is provided, to the satisfaction of the General Manager, Planning and Development Department, that illustrates that portions of a property falling within the Sensitive Ecosystem Development Permit Area do not impact its objectives.