

BRITISH COLUMBIA REAL ESTATE DEVELOPMENT¹

March 2001 - Issue 1



FRASER MILNER CASGRAIN LLP

This Update incorporates materials dated to March 1, 2001

Streamside Protection Around the Bend...

The British Columbia Streamside Protection Regulation (the “Regulation”) came into force January 19, 2001. Over the next five years the Regulation will impact all future commercial, industrial or residential development around streams in British Columbia.

Under the Regulation, local governments must amend their zoning by-laws in order to comply with the Regulation’s new protection policy, or establish new by-laws that create equal or greater “streamside protection and enhancement areas” than set out in the Regulation. Local governments have up to five years to achieve this objective which could include set backs of up to 50 meters.

What is the Intended Purpose?

The Ministry of Environment, Lands and Parks (“MELP”), who will administer the Regulation, indicates that the purpose of the legislation is to protect fish-bearing streams and the adjacent ecosystems from harm by commercial, industrial and residential development. The protection extends to existing vegetation and vegetation that does not currently exist but has the ability to grow back. It should be noted that

the Regulation applies to streams that do not themselves directly support fish. If a stream located on the property provides water to other fish-bearing streams located downstream from the property, the Regulation could potentially apply to restrict development.

Who is Affected?

The Regulation applies to all new commercial, industrial and residential developments on property that contains a stream. “Development” includes more than just construction – it also includes activities that disrupt the vegetation or soil. “Stream” is broadly defined to include “a watercourse or water supply, whether usually containing water or not, a pond, lake, creek, brook, ditch and a spring or wetland that is integral to a stream and provides fish habitat”. It may also apply to a watercourse that is dry during certain times of the year. The Regulation does not apply to forestry, agriculture or mining related land uses.

What is the Effect?

The new zoning by-laws to be enacted by local governments must establish “streamside protection and enhancement areas” within individual municipalities and provide for their protection. The Regulation sets out a number of technical

¹ Written by Angela Nelson, Articled Student of Fraser Milner Casgrain LLP, Vancouver, BC

requirements depending on the nature of the stream, the topography and the surrounding ecosystem to determine the extent of the streamside protection and enhancement area in any particular instance. Protection areas will therefore vary from 5-50 meters from the top of the bank or top of the ravine bank.

How is it Enacted?

The MELP has indicated its intent to initially bring the Regulation into effect in the Lower Mainland, the East side of Vancouver Island, and the Southern Interior regions of the Province. An implementation committee has been formed but has not held any meetings to date. Existing developments will not be affected. Reconstruction or repairs to existing developments are not required to comply with the Regulation.

Purchasers of land in the affected areas would be well advised to thoroughly research the properties they are interested in buying to determine whether any streams or bodies of water are present at any time of the year.

For more information on this Regulation, or general Real Estate related matters contact any member of our Real Estate department.

The following lawyers are members of the Real Estate group at Fraser Milner Casgrain LLP:



JOHN G.R. THIRD
(604) 443-7103
john.third@fmc-law.com



COLIN J. MCIVER
(604) 443-7128
colin.mciver@fmc-law.com



ROBERT G. NIKELSKI
(604) 443-7125
robert.nikelski@fmc-law.com



ARNONA DACHNER
(604) 443-7145
arnon.dachner@fmc-law.com



JANELLE L. DWYER
(604) 622-5163
janelle.dwyer@fmc-law.com