

**Environmental Stewardship in the Municipal Act**

*A Synopsis of Local Governments' Powers*

Prepared for:

Fraser River Action Plan  
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## **FOREWORD**

This review examines the existing legislation that provides tools for local government to take a proactive approach to environmental protection and stream stewardship. This research was undertaken to provide a resource to Department of Fisheries and Oceans staff as partnerships and communication with local government regarding a proactive approach to planning land use for protection of fish habitat increase. The review was initiated by the Fraser River Action Plan, and carried out by a consultant with legal training and experience.

This paper explores how specific provisions of the *Municipal Act*, *Land Title Act* and *Condominium Act* provide municipalities the tools and the authority to create and preserve stream leave strips, prohibit alterations of stream beds, manage water drainage and prohibit the deposit of substances in streams.

This document is a resource for both Department of Fisheries and Oceans staff and for local governments, as well as for other government agencies, community groups, and individuals concerned with protecting both land and water aspects of fish habitat.

“Environmental Stewardship in the Municipal Act: *A Synopsis of Local Government Powers*” (1996) is part of the Fraser River Action Plan urban initiative series which also includes

- The Fisheries Act and Local Government: *Court Judgments (1984-1994) in the Pacific Region* (1996);
- Protection of Aquatic and Riparian Habitat on Private Land: *Evaluating the Effectiveness of Covenants in the City of Surrey, 1995*;
- Protection of Aquatic and Riparian Habitat by Local Governments: *An Inventory of Measures Adopted in the Lower Fraser Valley, 1995*;
- Partners in Protecting Aquatic and Riparian Resources (PPARR) in the Lower Mainland and Urban Areas (1994).

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## **1. Introduction**

This paper outlines the provisions of the *Municipal Act*, *Land Title Act* and *Condominium Act* which allow local government to protect fish habitat and promote local stream stewardship. In particular, this review will consider how specific provisions of these Acts provide municipalities with the tools and the authority to create and preserve stream leave strips, prohibit alterations of stream beds, manage water drainage and prohibit the deposit of substances in streams. Some of the strengths and weakness of these provisions will be outlined, as well as enforcement options.

The opportunities available under these provisions do not detract from the obligation of the local government to maintain fish habitat under the *Fisheries Act*. Although there can be no blanket protection from the obligations under the *Fisheries Act*, there exists an opportunity for intergovernmental cooperation. If local government develops standards and guidelines for fish habitat protection contained in their plans, policies and bylaws in conjunction with DFO, a letter of understanding among federal and provincial Departments could endorse the best management practices as acceptable to all parties. Although never immune from the provisions of the *Fisheries Act*, such a regulatory package would ensure that all landowners and developers, as well as local government, are aware of the standards expected by DFO.

Unlike the *Fisheries Act*, the Acts reviewed in this paper are not environmental protection legislation. The main strengths of these Acts are the tools they provide to local governments to take a proactive approach to environmental protection and stream stewardship. Although the enforcement capabilities under these Acts are not particularly strong, monitoring and enforcement are still essential to ensure compliance. Although opportunities exist to encourage community monitoring programs, local governments must be prepared to enforce their own bylaws and covenants.

In addition, there are a number of provisions in the *Municipal Act* that permit local governments to create potentially powerful environmental protection bylaws which would require landowners to obtain permits prior to carrying out activities such as tree removal and soil deposition. The implementation of these bylaws may be costly to administer unless priorities are carefully chosen in advance. These factors underlie the importance of careful advance planning.

Please note that any references in this paper to statutory provisions are subject to change, amendment and repeal, and the most recent version of the statutes should be consulted.

## **2. The Municipal Act**

In general, the *Municipal Act* provisions have several features that act as both strengths and weaknesses. By and large the provisions of the Act relating to the adoption of bylaws and community plans are permissive. Thus, municipalities are under no obligation to use any provisions with the power to protect the environment or fish habitat. Similarly, the content of community plans and bylaws created pursuant to the Act is extremely flexible and at the discretion of the local government. While this flexibility allows each municipality to meet its own needs and desires, it may result in adjoining communities having different levels of environmental regulations, creating the potential for “pollution havens” for developers without environmental stewardship ethics. The practical benefits of strong environmental bylaws may be undermined by upstream or downstream communities who have not taken the same measures to protect shared watercourses. This, in turn may provide disincentives for municipalities to become or remain a “green” community.

In some instances the *Municipal Act* differentiates between regional districts and municipalities. This review focuses on municipalities and for specific information on provisions relating to regional districts please refer to the Act and the document *Community Greenways: A Guide to Stewardship Bylaws*<sup>1</sup> which outlines the scope of principles that can be incorporated into regional and municipal bylaws, as well as providing draft bylaw language.

The *Municipal Act* was amended in 1995 to provide for a “regional growth strategy” (see Appendix 1). Under the new provisions, regional districts are authorized to prepare a regional growth strategy. The strategy is required to “work towards” specified objectives, including protecting environmentally sensitive areas, maintaining the integrity of a secure and productive resource base including agricultural and forest land reserves, reducing and preventing air, land and water pollution, and protecting the quality and quantity of groundwater and surface water. The strategy is intended to provide a policy context for official community plans at both the regional and municipal levels, in much the same manner that official community plans provide policy context for the development of municipal zoning bylaws (see below). The major strength of these new provisions is that the preparation of a regional growth strategy in a designated area can be required by Cabinet order.

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<sup>1</sup>Fraser River Action Plan, Department of Fisheries and Oceans; Ministry of Environment, Lands and Parks; and Ministry of Municipal Affairs, *Community Greenways: A Guide to Stewardship Bylaws*, in press.

**Official Community Plans**  
(s. 945 - 949)

The Official Community Plan (“OCP”) is a bylaw that sets broad goals, objectives and policies for development of a community for a period of five years. An OCP acts as a vision for the community, and presents an opportunity to set environmental policies. Prior to adoption of an OCP the Act requires that a public hearing be held, giving all persons who believe their interests in property are affected the right to be afforded a reasonable opportunity to be heard or to present a written submission.

Policies set out in an OCP do not commit the local government to an action and do not impose any land use restrictions directly on landowners. However, all bylaws enacted or works undertaken by a council or board must be consistent with the OCP (s. 949). As such, an OCP can be used to identify and set policies for environmentally sensitive areas (“ESAs”), parks and greenway systems, as well as outlining policies on erosion control, tree cutting, stormwater management, and cooperation with other agencies and governments. An OCP may include plans, maps or other graphic material, as well as lists of ESAs. The Plan may also identify environmentally sensitive zones as Development Permit Areas, which may be subject to higher environmental standards for development.

A comprehensive OCP, which includes environmental policies and an environmentally sensitive area inventory, creates tools to encourage proactive planning for community stewardship. The language in the Act is flexible allowing for creative responses to the local requirements of habitat and stream protection.

The use of OCPs by local governments serves to articulate and clarify the land use expectations of the community to newcomers, landowners and developers. One way in which a municipality can set out land use expectations in the OCP is through the adoption of the standards set out in the federal and provincial publication *Land Development Guidelines for the Protection of Aquatic Habitat* (1992). An OCP also serves to inform the officer responsible for approval of subdivision plans under the *Land Title Act* whether a subdivision plan is contrary to the community's public interest or could adversely affect the natural environment. This ensures that the approving officer's discretion is exercised in accordance with the desires of the community. Furthermore, under the OCP, timing of implementation of other important policies and bylaws may be detailed, creating a model for the future for the community.

***Limitations***

The flexibility mentioned above is, in fact, one of the greatest weaknesses of the Act. The development of an OCP is not obligatory and there is no requirement that an OCP contain

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any provisions relating to environmental matters generally, and protection of fish and fish habitat specifically.

In addition, an OCP is subject to change by the local government council. Any changes, however, require a public hearing be held. The public hearing must afford all persons who believe their interests in property will be affected a reasonable opportunity to be heard. It is unclear whether this provision requires a local government to hear from individuals in other municipalities who believe that their property will suffer adverse affects. Finally, there is no obligation on the part of the local government, beyond their desire to be re-elected, to design or amend an OCP in accordance with majority views.

**Zoning Bylaws**  
(s. 963)

Zoning bylaws adopted by a municipality create a variety of areas or zones, and within each zone bylaws regulate land uses and density development on the parcel of land. The bylaws may also regulate siting, size and dimension of buildings and structures, and uses permitted on the land, as well as shape, dimension and area of the parcels of land. Thus, based on the nature and location of land, the zoning will vary.

Zoning is a way in which the OCP can be implemented. It can be used to encourage desirable development and discourage undesirable development. In order to be valid, however, zoning cannot be aimed at one particular property and must apply uniformly to all parties within the zoned area.

With respect to stream stewardship opportunities, zoning bylaws can implement a variety of potentially strong environmental tools. Zoning bylaws may describe setback requirements for developments adjacent to watercourses or other ESAs. By controlling land use and density, the bylaws may be used to avoid polluting uses near fish habitat and provide special regulations for certain uses. The bylaws may also trigger dedication of ESAs during densification by rezoning or subdivision.

The strength of a local government's zoning bylaws may be tied to the strength of the OCP. All bylaws must be consistent with the community plan, and if a community has strong environmental policies, goals and objectives in the OCP, zoning requirements will also be environmentally proactive.

If alteration of land occurs which is not permitted by the zoning bylaw, enforcement options include withholding any local government building permits, issuing a municipal ticket (section 934.1) or commencing an action under the *Offence Act* (see page 12).

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One significant zoning tool is the incentive for environmental protection through density bonuses. A recent amendment to the *Municipal Act* specifically permits local governments to offer, through zoning bylaws, density bonuses allowing a developer to build on specific portions of the property at increased density in exchange for a specific amenity, such as the dedication of an ESA, revegetation or watercourse protection (see Appendix 2). Similarly, local governments may require the dedication of ESAs or greenways during densification rezoning.

***Limitations***

A weakness of the zoning provisions is the permissive nature of the language in the Act. Although a zoning bylaw must be consistent with an OCP, if the OCP does not deal with environmental matters, there is no obligation for the zoning bylaws relating to density and use to be tied to environmental protection.

A local government is required to hold a public meeting prior to the adoption of zoning bylaws. Under the Act, where there is an OCP in place and the proposed zoning bylaw is consistent with the plan, the local government can waive the public hearing requirement. Thus, in situations where an OCP does not deal with or designate environmentally sensitive areas, zoning bylaws which do not take into account environmental protection can be adopted without a public hearing.

A limitation with the use of density bonuses to encourage environmental stewardship is that these incentives cannot be relied upon in all circumstances. These incentives are triggered at the request of the developer and if the incentives to create ESAs or other environmental amenities in exchange for higher density are not sufficient from an economic standpoint, a developer may proceed under the underlying zoning bylaw without triggering a density bonus and protection of any new areas. Incentives such as density bonuses should be reinforced with other environmental protection policies and bylaws, as well as the use of development permits.

***Development Permit Areas***  
**(s. 976)**

Development permit areas may be designated in the OCP, along with guidelines and justification for the dedication (see Appendix 3). Within a development permit area, a local government can designate specific areas for protection of the natural environment, for protection from hazardous conditions or as a municipal heritage site. Once development permit areas are identified in an OCP, development can only take place through a permit issued by the municipality and containing terms and conditions of the development. In addition, the Minister of Environment and Parks may request that a

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development permit require that vegetation or trees be planted or retained in order to control erosion or protect banks or to protect fisheries.

Development permits in environmentally sensitive areas may describe the terms and conditions of the permit, including work standards requiring responsible development near ESAs, preservation of natural watercourses, submission of geotechnical reports, intensive stormwater management, erosion control, environmental monitoring during development, and bonding. In environmentally sensitive areas, all permit conditions must be connected to the protection of the natural environment. Pursuant to section 980(5) the land is to be developed in strict accordance with the development permit.

The developer may be required to post a bond, an irrevocable letter of credit or some form of security acceptable to the municipality. If the developer fails to comply with the permit requirements, the local government can use the security to complete an unsafe condition or complete landscaping that an owner failed to complete in accordance with the terms of the permit (section 980(2)). In addition, “development cost charges” may be imposed at the time a building permit is issued to pay the capital costs of providing, among other things, park land which directly or indirectly service the development (section 983).

If a municipality does not have some of the basic stewardship bylaws in place (i.e. tree removal, soil removal and deposition, and watercourse conservation bylaws -- see below), then development permits can be used to incorporate similar environmental protection standards. If the basic stewardship bylaws are in place, then the development permits can be used to vary the terms of any land use regulation other than use and density (bylaws enacted pursuant to Part 29 of the Act). The variance must be in accordance with the guidelines specified in the OCP. Tree removal, soil removal and deposition, and watercourse conservation bylaws cannot be varied under a development permit. The permits, therefore, are useful tools to deal with specialized cases, but do not afford a great deal of flexibility.

A “comprehensive development zone” is not a term specifically recognized under the Act, but it is a term referring to complex, mixed use site development. This type of complex zoning is often used in conjunction with development permit and density bonuses on the same site and gives an opportunity to set strong development standards and protect environmental values.

***Limitations***

The strength of development permits depends in part on the strength of the OCP. If the OCP does not designate important stream banks and water courses as environmentally sensitive areas, a development permit is not required to carry out development in that

area. Thus, the municipality loses an opportunity to set standards for the development and to protect the natural environment. As with other provisions, the Act states that a development permit “may” require certain conditions. Even when a development permit is required, it is conceivable that a permit may be issued without any environmental protection requirements.

Although the Act permits the Minister of Environment and Parks to take a role in the preservation of streams and stream banks, there is no assurance that the Ministry of the Environment will take an active role, particularly on small developments (this provision would be strengthened by allowing the Minister of Fisheries and Oceans to make a request regarding the protection of fisheries and fish habitat). A final weakness of the development permit system is that a municipality cannot refuse to issue a permit or issue a permit with impossible conditions which effectively prohibit development<sup>2</sup>.

### ***Subdivisions and Servicing Standard Bylaws***

*(s. 989-992)*

Subdivision control is another mechanism for local government to implement the OCP. A municipality may set out, through bylaw, the work and services that are required for the subdivision and also set out standards for development. The service and development standards may include considerations such as stream setbacks, special treatment for water and waste disposal systems, and storm water collection systems. In addition, “development cost charges” may be imposed by local government to pay the capital costs of providing, among other things, park land which directly or indirectly services the development (section 983).

If a developer fails to comply with the standards required, a local government can withhold other building permits. Completion of work under a subdivision plan is secured by a security deposit.

During subdivision, the local government can also require the dedication of up to 5% of the subdivision lands or the equivalent market value for that amount of the property for park land and, similarly, up to 5% for school land (sections 992 and 992.1, respectively) (see Appendix 4). The dedication requirements do not apply to: a subdivision where fewer than three additional lots would be created; a subdivision where the smallest lot being created is 2 ha; and consolidation of existing parcels. The local government and school board may enter into an agreement which will determine the proportion of the total dedicated land (10%) which will be used for park purposes and the proportion that

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<sup>2</sup>Fraser River Action Plan, Department of Fisheries and Oceans; Ministry of Environment, Lands and Parks; and Ministry of Municipal Affairs, *Community Greenways: A Guide to Stewardship Bylaws*, in press.

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will be used for school purposes (s. 992.1(2)(c)). The legislation does not limit the allocation, as long as the aggregate does not exceed 10%.

With respect to the 5% dedication of park land under section 992, the choice of whether the dedication is land or cash is at the option of the owner unless there is an OCP containing policies and designations of locations and types of future park. Where such an OCP is in place it is the local government which has the option of deciding whether the owner will provide land or money. This park land dedication provision is an example of the importance of the OCP in influencing land use control decisions and environmental conservation in the future. Under section 992.1, dedication of school land or equivalent value is always at the option of the local government.

Used effectively these dedication options present an opportunity for local governments to expand on the protection of environmentally sensitive areas, including streams and riparian zones.

All subdivision plans require the approval of the subdivision approving officer under the *Land Title Act*. An approving officer can reject a plan on the basis that it is contrary to public interest or that the land could be subject to flooding, erosion, landslide, avalanche or that it adversely affects the natural environment. The subdivision bylaw, as well as the OCP, create an opportunity to inform the approving officer of the environmental policies and considerations which are important to the community prior to subdivision approval.

***Limitations***

Although ample provisions for municipalities to control subdivisions exist under the Act, as previously stated the content of such bylaws is discretionary. In addition, there is no requirement that environmental concerns be incorporated into the subdivision bylaws. Another potential concern is ensuring that the environmental standards required under the OCP and zoning are the same as those required under the subdivision provisions.

There is no requirement for the local government to tie the development cost charges to the real environmental costs of the development or to tie the park land dedication to environmentally sensitive areas. While the scope for the use of the development cost charges to acquire park land that could have a conservation purpose exists, this provision was not intended to deal with environmental issues.

The 5% dedication for park land is often inadequate to meet the greenspace need and protect riparian habitat. Although under the new provisions of the Act as much as 10% of the subdivision land could be dedicated as park land; conversely, upon agreement with the school board as little as 0% could be dedicated as park land. It remains to be seen how local governments and school boards react to this relatively new provision.

Another limitation of these provisions is that “park land” is not defined under the Act. Thus, a local government may have wide discretion in what it considers park land dedications, including recreation areas and playing fields. Furthermore, the Act does not require the municipality to tie the park land dedication to environmentally sensitive areas, particularly in the absence of an OCP setting out park land priorities.

### ***Other Stewardship Provisions***

There are a number of other provisions available to a local government to regulate alteration of the local environment and to help protect fish habitat. Although these powers are not specific to stream stewardship, properly crafted they may assist in the protection of riparian habitat and watercourses. It is important that any requirements under these bylaws are consistent with any specific requirements under the subdivision bylaws and development permits.

#### ***Tree Management Bylaws*** *(s. 929)*

Tree protection bylaws may have a significant role in the protection of tree cover along riparian zones. Regulation may be achieved through bylaws prohibiting the cutting or removal of all trees without a permit. The bylaw may also set out special conditions which apply within ESAs.

Tree management bylaws can be used within a municipality to prohibit removal of trees in ESAs in order to preserve habitat functions. They may require that trees outside ESAs be either left or replaced for wildlife protection, erosion control and stormwater management. The bylaws can specify when replacement trees are required, that they must be native species and that replacement designs must function as wildlife habitat, and to augment erosion control and stormwater management. The bylaws may also identify trees which are significant for heritage, landmark or wildlife values and set out standards for protection of each value.

#### ***Soil Removal and Deposition Bylaws*** *(s. 930.1)*

The Act allows local governments to regulate the removal and placing of fill through soil removal and deposition bylaws. These bylaws allow the municipality to minimize the potential impacts of sedimentation, and flooding of watercourses and storm drainage systems.

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These bylaws can require permits for all grading activity, both soil removal or soil deposition, above a certain threshold of grading. The bylaws may also require an erosion control plan, certified by a specialist, for permits on larger parcels. The bylaws may set out the standard of design, construction and erosion control techniques. These may be either incorporated directly into the bylaw or into local government engineering standards. Furthermore, special conditions and standards could apply to ESAs, particularly riparian areas, upland areas and sloping terrain, with restricted grading and higher standards of practices.

***Water Conservation Bylaws***

***(s. 585, 587-589, 593, 614, 692, 966, 933)***

A series of provisions of the Act provide a municipality with the tools to set requirements for stormwater management design, erosion control design and water quality, and to establish a referral process for instream or leave area works.

Through these bylaws the local government may require a permit for all works on watercourses, watercourse corridors or wetlands. The bylaws may also require that detailed plans, including an environmental impact statement, be completed as part of the permit application process. The bylaws can set out standards of design and construction, such as construction scheduling, protection of vegetation, and erosion control practices including revegetation, storm water management facilities and supervisory responsibilities. Again these standards can be incorporated directly into the bylaw or into local government engineering standards.

These bylaws can be useful in supplementing other stewardship bylaws. For example the water quality requirements could control the deposit of deleterious substances and supplement soil removal and deposition bylaws which restrict the deposit of sediment. Water quality performance standards could also supplement stormwater management requirements.

***Landscaping and Screening Bylaws***

***(s. 968)***

This provision may be used generally to encourage and set standards for landscaping restoration, in order to promote ecological values near ESAs. It may set the minimum level of landscaping required along setback areas from ESAs.

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***Sewers and Storm Drains***

***(s. 611-615)***

These provisions give the municipality broad powers to establish a system of sewage and drainage works for the collection and disposal of sewage, and the impounding, conveying and discharge of surface and other waters. A municipality is specifically empowered to purchase or construct the necessary works, including easements and rights of way, required to carry out the sewage and drainage works. The local government may regulate the design and installation of drainage and sewer works by persons other than the municipality and require a landowner to carry out such installation.

***Highways***

***(s. 571-584)***

The Act defines highway to include a “street, road, lane, bridge, viaduct and any other way open to public use”. A local government is authorized to establish highways and to acquire the rights of possession and title to highways. A municipality also has the power to expropriate land for the purpose of establishing a highway. Given the broad definition of highways, it is conceivable that a local government could use these provisions in a creative manner to create a network of wilderness trails adjacent to riparian habitat.

***Gifts of Land***

***(s. 531)***

The Act enables a local government to accept a gift of land, subject to the terms of the trust on which the land is transferred. This provision provides an opportunity for municipalities to expand its protected areas at little cost to the local government. Municipalities should educate and encourage community citizens to consider this option.

***Enforcement of Bylaws***  
(s. 934.1-934.3)

The development of bylaws requiring work descriptions, environmental assessments and permits are a proactive way in which a local government can control development and ensure environmental preservation. However, there is a concomitant obligation to monitor and enforce the bylaws.

The enforcement options provided by the Act include ticketing, with fines up to \$500 per offence (s. 934.1). The Act specifies the bylaws that, when contravened, can be subject to ticketing and these include tree management bylaws, soil removal and deposition bylaws and water conservation bylaws. The Act provides for stop work orders where a permit has lapsed due to the work not being in conformance with the permit.

Under sections 750 and 751 of the Act, a municipality can commence a court proceeding to enforce a bylaw, including situations where land has been altered or used in contravention of the Act or a bylaw. In addition, for more serious offences, the local government can lay charges under the *Offence Act*.

**3. The Land Title Act**  
*Covenants*  
(s. 215)

Covenants granted under the *Land Title Act* can be used by local government to complement development controls and land acquisitions (see Appendix 5). Covenants can also be granted to the federal and provincial Crowns or any person designated by the Minister of Environment, Lands and Parks (this may include conservation groups). Under section 215, a landowner may grant a covenant that contains provisions that the land or specific amenities in relation to the land be will protected, preserved, conserved or kept in its natural state as provided by the covenant. Amenities are defined to include natural, heritage, environmental, wildlife or plant life value relating to the land that is the subject to the covenant. This provision is both broad and flexible allowing local governments and landowners to maintain environmental values.

Covenants can be sought for any range of possibilities and not just for lands which are in the process of being developed. In areas where development and some environmental degradation has already occurred a covenant could be sought which would allow all current land uses to continue, without further development or alteration of ESAs. Covenants are generally advantageous to local government as they may be cheaper to obtain than the acquisition of land and they continue to stay in force when the land is sold to a new owner.

### ***Limitations***

A documented downfall of covenants is a potential for high levels of noncompliance with covenants and encroachment onto sensitive areas. There must be active and ongoing monitoring and enforcement<sup>3</sup>. Not only must a municipality ensure that there is continuity of knowledge and understanding of the content of the restrictive covenants, the municipality must be prepared to enforce the terms and conditions of the covenants.

### ***Statutory Rights of Way***

*(s. 214)*

Statutory rights of way are an easement over a piece of property. They present an alternative to the purchase of title to land. Under the Act a statutory right of way may be granted to a local government "for any purpose for the operation and maintenance" of the municipality's undertaking. A benefit of the right of way is that it runs with the land and therefore stays in place even if the landowner sells the property.

A common use for this tool is to acquire land for a nature trail or wildlife corridor. A statutory right of way may be undertaken in conjunction with a restrictive covenant to ensure that the landowner does not undertake undesirable activities on the land subject to the right of way<sup>4</sup>.

### ***Powers of the Approving Officer***

As previously mentioned, the approving officer under the Act has the power to refuse a subdivision plan if it is contrary to the public interest, as expressed in the OCP, or if the land could be subject to flooding, erosion, landslide, or avalanche, or if the natural environment is adversely affected (see Appendix 6).

In addition, under section 75, where the land to be subdivided borders on a body of water, highway access to the body of water may be required. The approving officer has the authority to require reasonable access through subdivisions by means of a highway. The definition of highway includes walkways, trails, paths, thoroughfares and other public ways.

Thus, an approving officer has the ability to ensure that environmental policies and considerations which are important to a community and are set out in the OCP are taken into account during subdivision development.

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<sup>3</sup>S.D. Inglis, P.A. Thomas, E. Child, *Protection of Aquatic and Riparian Habitat on Private Land: Evaluating the Effectiveness of Covenants in the City of Surrey, 1995*. Fraser River Action Plan, Department of Fisheries and Oceans; and City of Surrey, 1995.

<sup>4</sup>David Loukidelis and Bill Buholzer, *Tools and Mechanisms for Protecting Ecologically Sensitive Areas*, Proceedings of the Nanaimo Land for Nature Forum, February 18, 1994.

## **4. The Condominium Act**

Under the *Condominium Act* the strata owners may by special resolution (75% of all persons eligible to vote) direct the strata corporation to, among other things, grant an easement or covenant burdening the common property. Thus, an opportunity exists for local governments to pursue both statutory right of ways and covenants to protect sensitive areas in association with condominium developments.

The strata corporation itself has wide authority to pass bylaws for the use and enjoyment of the common property and strata lots. The strata corporation can make rules and regulations it considers necessary or desirable for the enjoyment, safety and cleanliness of the common property. It is possible that both of these powers could extend to the protection of sensitive areas within the common property.

In addition, the approving officer, under the *Land Title Act* may refuse, in the public interest, to approve a bare land strata plan unless the owner-developer has provided, without compensation, a strip of land not exceeding 7 meters in width along the bank or shore for the purposes of providing public access. When an OCP identifies the preservation of watercourse and riparian areas as an important community value, an approving officer is more likely to invoke this section and require such a dedication.

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## **APPENDIX 1**

### **Regional Growth Strategies** *Municipal Act (section 942)*

#### **BILL 11**

strategy is initiated or adopted on the basis of the converted value of land and improvements.

7. *The following Part is added:*

#### Part 28.1 Regional Growth Strategies

**Definitions**

**942.1** In this Part:

“**affected local government**“, in relation to a regional growth strategy, means a local government whose acceptance of the regional growth strategy is required under section 942.19;

“**Converted value of land and improvements**” means the converted value of land and improvements within the meaning of section 808;

“**facilitator**”, in relation to a regional growth strategy, means the facilitator designated by the minister under section 942.18;

“**first nation**” means an aboriginal governing body, however organized and established by aboriginal people within their traditional territory in British Columbia;

“**greater board**” means a greater board as defined in section 943 (1);

“**improvement district board**” means the board of trustees for an improvement district;

“**initiate**”, in relation to a regional growth strategy, means initiation under section 942.16;

“**municipality**” includes the City of Vancouver;

“**official community plan**” includes

- (a) an official settlement plan under section 809 (3) of this Act before that section was repealed by section 4 of the *Municipal Amendment Act, 1985*,
- (b) Part 1 of a rural land use bylaw, and
- (c) an official development plan under the *Vancouver Charter*;

“**regional context statement**” means a regional context statement referred to in section 942.28;

“**regional matter**” means a matter that involves coordination between or affects more than one municipality; more than one electoral area, or at least one of each, in a regional district

**BILL 11**

**Division (1) – Application and Content of Regional Growth Strategy**

**Purpose of regional growth strategy**

- 942.11** (1) The purpose of a regional growth strategy is to promote human settlement that is socially, economically and environmentally healthy and that makes efficient use of public facilities and services, land and other resources.
- (2) Without limiting subsection (1), to the extent that a regional growth strategy deals with these matters, it should work towards but not be limited to the following:
- (a) avoiding urban sprawl and ensuring that development takes place where adequate facilities exist or can be provided in a timely, economic and efficient manner;
  - (b) settlement patterns that minimize the use of automobiles and encourage walking, bicycling and the efficient use of public transit;
  - (c) the efficient movement of goods and people while making effective use of transportation and utility corridors;
  - (d) protecting environmentally sensitive areas;
  - (e) maintaining the integrity of a secure and productive resource base; including the agricultural and forest land reserves;
  - (f) economic development that supports the unique character of communities;
  - (g) reducing and preventing air, land and water pollution;
  - (h) adequate, affordable and appropriate housing;
  - (i) adequate inventories of suitable land and resources for future settlement;
  - (j) protecting the quality and quantity of ground water and surface water;
  - (k) settlement patterns that minimize the risks associated with natural hazards;
  - (l) preserving, creating and linking urban and rural open space including parks and recreation areas;
  - (m) planning for energy supply and promoting efficient use, conservation and alternative forms of energy;
  - (n) good stewardship of land, sites and structures with cultural heritage value.

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**BILL 11**

**Content of regional growth strategy**

- 942.12** (1) A board may adopt a regional growth strategy for the purpose of guiding decisions on growth, change and development within its regional district.
- (2) A regional growth strategy must cover a period of at least 20 years from the time of its initiation and must include the following:
- (a) a comprehensive statement on the future of the region, including the social, economic and environmental objectives of the board in relation to the regional district;
  - (b) population and employment projections for the period covered by the regional growth strategy;
  - (c) to the extent that these are regional matters, actions proposed for the regional district to provide for the needs of the projected population in relation to
    - (i) housing,
    - (ii) transportation,
    - (iii) regional district services,
    - (iv) parks and natural areas, and
    - (v) economic development.
  - (3) In addition to the requirements of subsection (2), a regional growth strategy may deal with any other regional matter.
  - (4) A regional growth strategy may include any information, maps, illustrations or other material.

**Area to which regional growth strategy applies**

- 942.13** (1) Unless authorized under subsection (2) or required under section 942.14, a regional growth strategy must apply to all of the regional district for which it is adopted.
- (2) On request by the applicable board or boards, the minister may authorize a regional growth strategy that
- (a) applies to only part of a regional district, or
  - (b) is developed jointly by 2 or more regional districts to apply to all or parts of those regional districts.
- (3) The minister may establish terms and conditions for a regional growth strategy authorized under subsection (2) or required under section 942.14.
- (4) If the minister considers this necessary or advisable for a regional district service in relation to a regional growth strategy referred to in subsection

## **APPENDIX 2**

### **Density Bonusing** *Municipal Act (section 963)*

#### **DIVISION (4) – LAND USE DESIGNATION**

##### **Zoning bylaws**

- 963** (1) A local government may, by bylaw, do one or more of the following:
- (a) divide the whole or part of the municipality or regional district, as the case may be, into zones, name each zone and establish the boundaries of the zones;
  - (b) limit the vertical extent of a zone and provide other zones above or below it;
  - (c) regulate within a zone
    - (i) the use of land, buildings and structures,
    - (ii) the density of the use of land, building and structures,
    - (iii) the siting, size and dimensions of
      - (A) buildings and structures, and
      - (B) uses that are permitted on the land, and
    - (iv) the location of uses on the land and within buildings and structures;
  - (d) regulate the shape, dimensions and area, including the establishment of minimum and maximum sizes, of all parcels of land that may be created by subdivision, in which case
    - (i) the regulations may be different for different areas, and
    - (ii) the boundaries of those areas need not be the same as the boundaries of zones created under paragraph (a).
- (2) The authority under subsection (1) may be exercised by incorporating in the bylaw maps, plans, tables or other graphic material.
- (3) The regulations under subsection (1) may be different for one or more of the following, as specified in the bylaw:
- (a) different zones;
  - (b) different uses within a zone;
  - (c) different locations within a zone;
  - (d) different standards of works and services provided;
  - (e) different siting circumstances.
- (4) The power to regulate under subsection (1) includes the power to prohibit any use or uses in a zone.

1993-58-4.

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**Zoning for amenities and affordable housing**

- 963.1**
- (1) A zoning bylaw may
    - (a) establish different density regulations for a zone, one generally applicable for the zone and the other or others to apply if the applicable conditions under paragraph (b) are met, and
    - (b) establish conditions in accordance with subsection (2) that will entitle an owner to a higher density under paragraph (a).
  - (2) The following are conditions that may be included under subsection (1) (b):
    - (a) conditions relating to the provision of amenities, including the number, kind and extent of amenities;
    - (b) conditions relating to the provision of affordable and special needs housing, as such housing is defined in the bylaw, including the number, kind and extent of the housing;
    - (c) a condition that the owner enter into a housing agreement under section 963.2 before a building permit is issued in relation to property to which the condition applies.
  - (3) A zoning bylaw may designate an area within a zone for affordable or special needs housing, as such housing is defined in the bylaw, if the owners of the property covered by the designation consent to the designation.

1993-58-4

**Housing agreements for affordable and special needs housing**

- 963.2**
- (1) A local government may, by bylaw, enter into a housing agreement under this section.
  - (2) A housing agreement may include terms and conditions agreed to by the local government and the owner regarding the occupancy of the housing units identified in the agreement, including but not limited to terms and conditions respecting one or more of the following:
    - (a) the form of tenure of the housing units;
    - (b) the availability of the housing units to classes of persons identified in the agreement or the bylaw under subsection (1) for the agreement;
    - (c) the administration and management of the housing units, including the manner in which the housing units will be made available to persons within a class referred to in paragraph (b);
    - (d) rents that may be charged and the rates at which rents may be increased over time, as specified in the agreement or as determined in accordance with a formula specified in the agreement.
  - (3) A housing agreement may not vary the use or density from that permitted in the applicable zoning bylaw.
  - (4) A housing agreement may only be amended by bylaw adopted with the consent of the owner.
  - (5) If a housing agreement is entered into or amended, the local government must file in the land title office a notice that the land described in the notice is subject to the housing agreement.
  - (6) Once a notice is filed under subsection (5), the housing agreement and, if applicable, the amendment to it is binding on all persons who acquire an interest in the land affected by the agreement, as amended if applicable.
  - (7) On filing under subsection (5), the registrar must make a note of the filing against the title to the land affected but, in the even of any omission, mistake or misfeasance by the registrar or the staff of the registration relation to the making of a note of the filing,
    - (a) the registrar is not liable nor is the Crown liable vicariously, and
    - (b) the assurance fund or the Attorney General as a nominal defendant is not liable under Part 20 of the *Land Title Act*.
  - (8) The Lieutenant Governor in Council may prescribe fees for the filing notices under subsection (5), and section 315 of the *Land Title Act* applies in respect of those fees.

1993-58-4.

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## **APPENDIX 3**

### **Development Permit Areas** *Municipal Act (section 976)*

#### **Development permits**

- 976** (1) If an official community plan designates areas under section 945 (4), the following prohibitions apply unless an exemption under section 945 (4.1) applies or the owner first obtains a development permit under this section:
- (a) land within the area must not be subdivided;
  - (b) construction of, addition to or alteration of a building or structure must not be commenced;
  - (c) a building or structure on a Provincial or designated municipal heritage site must not be altered;
  - (d) land within an area designated under section 945 (4) (a), (b), or (c) must not be altered;
  - (e) land within an area designated under section 945 (4) (d), or a building or structure on that land, must not be altered.
- (2) Subject to subsections (3) and (4), a local government may, by resolution, issue a development permit which may
- (a) vary or supplement a bylaw made under Division (4) or (7),
  - (b) include requirements and conditions or set standards under subsections (5) to (7), and
  - (c) impose conditions respecting the sequence and timing of construction but only in accordance with the applicable guidelines specified in an official community plan under section 945 (4) (g).
- (3) A development permit shall not vary the use or density of the land from that permitted in the bylaw except, where the land was designated under section 945 (4) (b), the conditions and requirements referred to in subsection (5) may vary that use or density but only as they relate to health, safety or protection of property from damage.
- (4) A development permit shall not vary a flood plain specification under section 969 (2).
- (5) Where land has been designated under section 945 (4) (a) or (b), a development permit may
- (a) specify areas of land that may be subject to flooding, mud flows, torrents of debris, erosion, land slip, rock fall, subsidence, tsunami or avalanche and that must remain free of development, except in accordance with any conditions contained in the permit,
  - (b) require, in an area that the permit designates as containing unstable soil or water which is subject to degradation, that no septic tank, drainage and deposit fields, or irrigation or water systems be constructed,

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- (c) require that
  - (i) natural water courses be preserved or dedicated, and
  - (ii) works be constructed to preserve or enhance natural water courses,
- (d) specify areas of land that are located above the natural boundary of streams, rivers, lakes or the ocean that shall remain free of development, except in accordance with any conditions contained in the permit, and
- (e) require, where the Minister of Environment and Parks has requested it, that vegetation or trees be planted or retained in order to
  - (i) control erosion or protect banks or
  - (ii) protect fisheries.
- (6) Where land has been designated under section 945 (4) (c), (d) or (e), a development permit may include requirements respecting the character of the development, including landscaping, and the siting, form, exterior design and finish of buildings and structures.
- (7) Notwithstanding subsection (6), where land has been designated under section 945 (4) (e), a requirement under subsection (6) shall only related to the general character of the development and not to particulars of the landscaping or of the exterior design and finish of buildings and structures.
- (8) Before issuing a development permit under this section, a local government may require the a applicant to furnish, at his expense, a report, certified by a professional engineer with experience in geotechnical engineering, to assist the local government in determining what conditions or requirements under subsection (3) it will impose in the permit.

1985-79-8; 1987-14-36; 1993-59-37.

### **Intensive agriculture**

- 977**
- (1) In this section “intensive agriculture” means the use of land, buildings and structures by a commercial enterprise or an institution for
    - (a) the confinement of poultry, livestock or fur bearing animals, or
    - (b) the growing of mushrooms.
  - (2) Notwithstanding rural land use bylaw or zoning bylaw, but subject to regulations under subsection (4), where land is located in a reserve established under the *Agricultural Land Commission Act* and that land is not subject to section 19 (1) of that Act, intensive agriculture is permitted as a use.
  - (3) A local government may designate an area as an intensive agricultural control area if the area is
    - (a) located in a reserve established under the *Agricultural Land Commission Act*, or
    - (b) zoned for agricultural use.
  - (4) The Minister of Agriculture and Food, with the approval of the Minister of Municipal Affairs, may, in respect of all or part of an intensive agriculture control area, make regulations
    - (a) respecting
      - (i) the density of intensive agricultural use of land, buildings and structures, and
      - (ii) the siting of buildings, structures, stored materials, waste facilities and stationary equipment,
    - (b) requiring that certain buildings, structures, machinery and equipment be utilized by a person carrying on an intensive agriculture operation, and
    - (c) prohibiting intensive agriculture or types of intensive agriculture in all or part of the area.
  - (5) A regulation under subsection (4) may prescribe different densities, siting requirements and machinery and equipment requirements and operational standards for machinery and equipment for different
    - (a) sizes and types of operations,
    - (b) site conditions,
    - (c) adjoining land uses, and
    - (d) locations in the Province.

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- (6) A local government or a person who operates or proposes to commence or expand an intensive agriculture operation may apply to the Minister of Agriculture and Food for a variance permit that may, in respect of a particular operation identified in the permit, vary the requirements of a regulation under subsection (4).
- (7) The Minister of Agriculture and Food may, on the application in the prescribed manner, of an operator in respect of any intensive agriculture operation located within an intensive agriculture control area, issue a certificate of compliance where he is satisfied that, at the time that he issues it, the operator is carrying on his operation in conformity with
  - (a) any applicable regulations made under subsection (4), and
  - (b) where there is an intensive agricultural variance permit in effect, the provisions of that permit.
- (8) A certificate issued under subsection (7) is prima facie proof that the operator is in compliance with the regulations or the permit at the time the certificate was issued.
- (9) A person who is carrying on an intensive agriculture operation that
  - (a) would, but for section 970, be contrary to a rural land use bylaw or zoning bylaw, and
  - (b) is contrary to a regulation under subsection (4) made after he commenced his intensive agriculture operation, is not required to comply with that regulation.
- (10) The Lieutenant Governor in Council may prescribe fees for applications, permits and certificates under this section.

1985-79-8; 1993-59-38.

**Tree cutting permits**

- 978.**
- (1) A board may, by bylaw, designate areas of land that it considers may be subject to flooding, erosion, land slip or avalanche as tree cutting permit areas.
  - (2) A bylaw may, in respect of an area designated under subsection (1), regulate or prohibit the cutting down of trees and require the owner to obtain, on payment of a fee fixed by the bylaw, a permit before cutting down a tree.
  - (3) The bylaw may allow the board at its discretion, to require an applicant to provide at his expense, a report certified by a qualified person, agreed upon by both parties, that the proposed cutting of trees will not create a danger from flooding or erosion.

1985-79-8; 1987-14-37; 1992-79-8.

**Highway Act**

- 979.**
- (1) Where a zoning bylaw is subject to section 57 (2) of the *Highway Act*, a permit under this Division shall not be issued for the construction of commercial or industrial buildings exceeding 4500 m<sup>2</sup> in gross floor areas unless a site plan of the buildings, including traffic circulation and parking areas and facilities, has been approved by the Minister of Transportation and highways.
  - (2) In considering whether to approve a site plan under subsection (1), the Minister of Transportation and Highways shall consider only the effect of the proposed development on the controlled access highway.

1985-79-8.

**Permit procedures**

- 980.**
- (1) A local government may, by bylaw, designate the form of permits issued under this Division.
  - (2) A local government may, for the purposes only of subsection (3) and as a condition of the issue of a permit under this Division, require that the applicant for the permit provide security by, at the applicant's option, an irrevocable letter of credit or the deposit of securities in a form satisfactory to the local government, in an amount stated in the permit.
  - (3) Where a local government considers that
    - (a) a condition in a permit respecting landscaping has not been satisfied, or
    - (b) where, as a result of contravention of a condition in a permit, an unsafe condition has resulted,

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## **APPENDIX 4**

### **Provision of Parkland** *Municipal Act (section 992)*

#### **Provision of park land**

- 992**
- (1) An owner of land being subdivided shall, at his option,
    - (a) provide, without compensation, park land of an amount and in the location acceptable to the local government, or
    - (b) pay to the municipality or regional district an amount that equals the market value of the land that may be required for park land purposes under this section determined under subsection (6).
  - (2) Where an official community plan or a rural land use bylaw contains policies and designations respecting the location and type of future parks, the local government may, notwithstanding subsection (1), determine whether the owner shall provide land under subsection (1) (a) or money under subsection (1) (b).
  - (3) The option established by subsection (1) does not apply where a regional district does not exercise a power to provide a community parks service.
  - (4) The amount of land that may be required under subsection (1) (a) or used for establishing the amount that may be paid under subsection (1) (b) shall not exceed 5% of the land being proposed for subdivision.
  - (5) Subsection (1) does not apply to a
    - (a) subdivision where fewer than 3 additional lots would be created.
    - (b) subdivision where the smallest lot being created is larger than 2 ha, or
    - (c) consolidation of existing parcels.

Nov. 3, 1989

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- (6) Where an owner opts to pay money under subsection (1) (b), the value of the land is determined
  - (a) as the average market value of all the land in the proposed subdivision calculated as that value would be on either
    - (i) the date of preliminary approval of the subdivision, or
    - (ii) where no preliminary approval is given, a date within 90 days before the final approval of the subdivision,
  - as though
    - (iii) the land is zoned to permit the proposed use, and
    - (iv) any works and services necessary to the subdivision have not been installed, or
  - (b) as agreed by the local government and the owner.
- (7) Where, for the purpose of subsection (6), an owner and a local government do not agree on the market value, it shall be determined in the manner prescribed in the regulations that the minister may make for the purpose.
- (8) Where an area of land has been used to calculate the amount of land or money provided or paid under this section, that area shall not be taken into account for a subsequent entitlement under subsection (1) in respect of any future subdivision of the land.
- (9) Land or payment referred to in subsection (1) shall be provided or paid to a municipality or regional district before final approval is given or the owner and the local government may enter into an agreement that the land or payment be provided or paid by a date, specified in the agreement, after final approval has been given.
- (9.1) Notwithstanding subsection (9), the minister may, by regulation, authorize the payment that may be required by this section be made by installments and may prescribe the conditions under which installments may be paid
- (10) Notice of this agreement shall be filed with the registrar in the same manner as a permit may be filed and section 980 (8) to (11) applies.
- (11) Where the owner pays money for park land under this section, the municipality or regional district shall deposit this in a reserve fund established for park land acquisition purposes, and sections 378 and 387 apply, but the approval of the minister under section 378 is not required.
- (12) Where land is provided for park land under this section, the land shall be shown as park on the plan of subdivision.

1985-79-8; 1987-47-71989-59-18.

**Bylaws adopted after application**

- 993.** Where, after
- (a) an application for a subdivision of land located outside a municipality has been submitted to a district highway manager in a form satisfactory to him,
- or
- (b) an application for a subdivision of land within a municipality has been submitted to an approving officer and the applicable subdivision fee has been paid,
- a local government adopts a bylaw under this Part that would otherwise be applicable to that subdivision, the bylaw has no effect with respect to that subdivision for a period of 12 months after it was adopted unless the applicant agrees in writing that it should have effect.

1985-79-8; 1987-14-49.

## **APPENDIX 5**

### **Registration of Covenants** *Land Title Act* (section 215)

#### **Registration of covenant as to use and alienation**

- 215.** (1) A covenant described in subsection (1.1) in favour of the Crown, a Crown corporation or agency, a municipality, a regional district or a local trust committee under the *Island Trust Act*, as covenantee, may be registered against the title to the land subject to the covenant and is enforceable against the covenantor and the successors in title of the covenantor even if the covenant is not annexed to land owned by the covenantee.
- (1.1) A covenant registrable under subsection (1) may be of a negative or positive nature and may include one or more of the following provisions:
- (a) provisions in respect of
    - (i) the use of land, or
    - (ii) the use of a building on or to be erected on land;
  - (b) that land
    - (i) is to be built on in accordance with the covenant,
    - (ii) is not to be built on except in accordance with the covenant, or
    - (iii) is not to be built on ;
  - (c) that land
    - (i) is not to be subdivided except in accordance with the covenant, or
    - (ii) is not to be subdivided;
  - (d) that parcels of land designated in the covenant and registered under one or more indefeasible titles are not to be sold or otherwise transferred separately.
  - (e) [Repealed 1994-44-1.]
- (1.2) A covenant described in subsection (1.3) in favour of
- (a) the Crown or a Crown corporation or agency,
  - (b) a municipality, regional district or local trust committee under the *Islands Trust Act*, or
  - (c) any person designated by the minister of Environment, Lands and Parks on terms and conditions he or she thinks proper,
- as covenantee, may be registered against the title to the land subject to the covenant and, subject to subsections (7) and (8), is enforceable against the covenantor and the successors in title of the covenantor even if the covenant is not annexed to land owned by the covenantee.
- (1.3) A covenant registrable under subsection (1.2) may be of a negative or positive nature and may include one or more of the following provisions:

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- (a) any of the provisions under subsection (1.1);
  - (b) that land or a specified amenity in relation to it be protected, preserved, conserved, maintained, enhanced, restored or kept in its natural or existing state in accordance with the covenant and to the extent provided in the covenant.
- (1.4) For the purpose of subsection (1.3) (b), “amenity” includes any natural, historical, heritage, cultural, scientific, architectural, environmental, wildlife or plant life value relating to the land that is subject to the covenant.
- (2) A covenant registrable under this section may include, as an integral part,
- (a) an indemnity of the covenantee against any matter agreed to by the covenantor and covenantee and provision for the just and equitable apportionment of the obligations under the covenant as between the owners of the land affected; and
  - (b) a rent charge charging the land affected and payable by the covenantor and his successors in title.
- (3) Where an instrument contains a covenant registrable under this section, the covenant is binding on the covenantor and his successors in title, notwithstanding that the instrument or other disposition has not been signed by the covenantee.
- (4) No person who enters into a covenant under this section is liable for a breach of the covenant occurring after he has ceased to be the owner of the land.
- (5) A covenant registrable under this section may be
- (a) modified by the holder of the charge and the owner of the land charged;
- or
- (b) discharged by the holder of the charge
- by an agreement or instrument in writing the execution of which is witnessed or proved in accordance with this Act.
- (6) The registration of a covenant under this section is not a determination by the registrar of its enforceability.
- (7) On the death or dissolution of an owner of a covenant registrable under subsection (1.2) (c), the covenant ceases to be enforceable by any person, including the Crown, other than
- (a) another covenantee named in the instrument creating the covenant, or
  - (b) an assignee of a covenantee if the assignment has been approved in writing by the Minister of Environment, Lands and Parks.
- (8) If a covenantee or assignee referred to in subsection (7) is a corporation that has been dissolved and subsequently restored into existence under an enactment of British Columbia, the covenant continues to be enforceable by the restored corporation from the date of its restoration.
- (9) A recital in a covenant that a person has been designated by the Minister of Environment, Lands and Parks under section 215 (1.2) (c) of the Land Title Act, or a statement to that effect in the application to register the covenant, is sufficient proof to a registrar of that fact.

1978-25-215; 1982-60-58, proclaimed effective August 1, 1983; 1989-69-22, 23;  
1991-16-16; 1992-77-4; 1994-44-1.

## **APPENDIX 6**

### **Powers of the Approving Officer** *Land Title Act (section 77)*

#### Division (3) – Appointment, Powers and Duties of Approving Officer

##### **Appointment of approving officer**

- 77.** (1) Where land is situated within
- (a) a rural area, the Lieutenant Governor in Council; or
  - (b) a municipality, the municipality
- may appoint a person to be called an “approving officer” to exercise the jurisdiction conferred on him by this Act or the regulations or any other Act or regulations.
- (2) The approving officer shall be, in the case of land situated in
- (a) a rural area;
    - (i) the Deputy Minister of Transportation and Highways; or
    - (ii) a person appointed by the Lieutenant Governor in Council in respect of all or part of the land situated in a rural area; and
  - (b) a municipality;
    - (i) the municipal engineer;
    - (ii) the chief planning officer;
    - (iii) some other employee of the municipality appointed by the council of the municipality; or
    - (iv) a person who is under contract with the municipality.

1978-25-77; B.C. Reg. 537/79; 1985-65-6, effective February 10, 1986 (B.C. Reg. 14/86).

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**Certain designations prohibited on subdivision plans**

78. No approving officer shall approve, and the registrar shall not accept for deposit, a plan of subdivision which designates the land subdivided as a municipality, townsite or port, or as a separate part thereof or an addition thereto.

1978-25-78.

**Where approving officer not employee of Ministry of Transportation and highways**

79. (1) No person who is not an employee of the Ministry of Transportation and Highways shall approve a subdivision in a rural area unless the subdivision has first been approved by a approving officer of the Ministry of Transportation and Highways.
- (2) The approving officer's approval referred to in subsection (1) is limited to considering the sufficiency of the highways within and leading to, and beyond or around, the subdivision.

1978-25-79, B.C. Reg 537/79

**Controlled access highway**

80. (1) Where a plan of subdivision affects land in a municipality adjacent to a controlled access highway, as defined in the *Highway Act*, Part 6, no approving officer shall approve the plan unless it has first been approved by the approving officer for a rural area.
- (2) The approving officer for a rural area shall not approve a plan of subdivision affecting land adjacent to a controlled access highway, as defined in the *Highway Act*, Part 6, if the plan does not conform to the regulations made under that Act.

1978-25-80; 1980-50-48, effective may 17, 1980.

**Land in improvement districts**

81. Where a plan of subdivision affects land situated in an improvement district incorporated under the *Municipal Act*, Part 25, the approving officer shall, within 7 days after the plan is received by him for approval, notify the trustees of the improvement district.

1978-25-81.

**Subdivided land subject to flooding**

82. (1) The Minister of Environment may designate flood plain areas.
- (2) A designation under subsection (1) may be by map, plan, legal description or a combination of any of them.
- (3) The Minister of Environment may, for the purpose of minimizing potential damage that could be caused by flooding, establish conditions respecting the approval of subdivisions in designated flood plain areas, including a condition that the owner of land being subdivided enter into one or more covenants under section 215 in respect of each of the parcels that are being created by the subdivision.
- (4) Conditions established under subsection (3) may be different for different designated flood plain areas or for different parts of a designated flood plain area.

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- (5) Where the approving officer considers that a proposed subdivision would not comply with an applicable condition established under subsection (3), he shall not approve the plan of subdivision without the consent of the Minister of Environment.
- (6) Where the approving officer considers that land within a proposed plan of subdivision, that is not within a designated flood plain area, is or would likely be subject to flooding, he shall not approve the plan without the consent of the Minister of Environment.
- (7) The Minister of Environment may, as a condition of his consent under subsection (5) or (6), require that the owner of the land being subdivided enter into one or more covenants under section 215 in respect of each of the parcels that are being created by the subdivision.
- (8) Where Crown land is disposed of, the covenants under section 215 referred to in subsections (3) and (7) may be included in the Crown grant or other disposition, and the grantee or other person entitled under it and his successors in title are bound by the covenants, notwithstanding that the person has not signed the grant or other disposition.

1985-52-32, effective April 30, 1985 (B.C. Reg. 254-85).