WEST COAST ENVIRONMENTAL LAW

The Smart Growth Guide to Local Government Law and Advocacy

A PROJECT OF THE INSTITUTE FOR NEW ECONOMICS
AND SMART GROWTH BRITISH COLUMBIA

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NOTE ON CHANGES TO THE LAW

The main law discussed in this book is the *Municipal Act*, which was renamed the *Local Government Act* by statutory amendment in June of 2000. We have used the new name throughout this report.

The law in this Guide is current to June 1, 2000. The *Local Government Statutes Amendment Act*, 2000, S.B.C. 2000, c.7, Bill 14, received royal assent on June 14, 2000, but many of its provisions are not yet in force. The authors have therefore not referred to these amendments, which are not yet binding law in BC, in this report. Some of these amendments will substantially change the state of local government law in BC. For example, provincial policy guidelines for official community plans (OCPs) will be developed, and the requirements for mandatory content for OCPs will be eliminated.

For more information about the regulatory changes, the reader is directed to the following resources.

Bill 14 can be found at: http://www.legis.gov.bc.ca/2000/3rd_read/gov14-3.htm

More information about *Municipal Act* Reform, along with the Regulatory Impact Statement for Bill 14, can be found on the Ministry's web site at: http://www.marh.gov.bc.ca/LGPOLICY/MAR/

More detailed information on aspects of Bill 14 will be published by the Ministry in the next months in various forms, including updates to the *Using the Reformed Municipal Act* resource manual. That manual can be found on the Ministry's web site at: http://www.marh.gov.bc.ca/LGPOLICY/MAR/URMA

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INTRODUCTION

Contrast two neighbourhoods. In the first, residents walk, bike or take the bus to work. Shops, community centres, parks, schools, and offices are mingled closely together, making car travel unnecessary most of the time. Less traffic means less noise, and less risk of car accidents. The residents of this community know their neighbours, and take pride in keeping the streets and parks clean and green. Ratepayer groups promote infill developments that fit in with the character of the neighbourhood, as well as development of old industrial and commercial sites. These residents want to reduce their community's ecological footprint. They recognize that Canadians, as a whole, use more than their share of the planet's resources, and they favour energy-efficient design, stormwater infiltration, more transit options and preservation of ecologically significant areas like coastal and riparian zones. A range of housing types exists to meet the needs of all community members.

Life is different in the second residential subdivision neighbourhood. Due to lack of transit and long distances separating homes from other urban activities and amenities, a car is needed for almost every pursuit. Residents spend more time on crowded highways, battling traffic on their commute to and from work. More time on the road means less time for family, friends and community activities. The neighbourhood has few housing developments or facilities for the poor, aged or disabled. Though residents of this neighbourhood care about the environment, their energy, water and land use are far above average, and the subdivision they live in has once again moved the urban boundary farther into agricultural or underdeveloped land.

The difference between these two communities is the smart growth difference. The purpose of this Guide is to provide information on how law in British Columbia can be used to promote smart growth.

"SPRAWL HURTS US ALL"

Urban sprawl is growing across Canada. Between 1966 and 1986, over 3000 square kilometres of rural land (most of it prime agricultural land) was consumed by urban sprawl.[1] Single detached homes are the worst culprit leading to sprawl and continue to increase in popularity, accounting for only 31% of new urban homes in 1971, but 53% in 1994.[2] However, development of all kinds can cause sprawl, not just new single family housing.

As the Sierra Club of the U.S. says, "sprawl hurts us all." Poorly planned development increases car dependence, air pollution, and leads away from the steps necessary to address

climate change. Sprawl interferes with the natural functioning of ecosystems. Sprawl is costly to both taxpayers and governments: the infrastructure costs of new development are often far in excess of what would be required for infill development in existing urban areas. Sprawl contributes to water pollution. Acres and acres of pavement lead to more contaminated storm water runoff and less infiltration of water into the natural water cycle. Sprawl destroys habitat for fish that depend on urban streams, and for a myriad of other wildlife species that make their homes in or around urban areas. People don't like sprawl. Most people would prefer to walk to work, school, stores, and other daily destinations. And often, sprawl is ugly.

Many citizens and communities want to change development practices. Common goals include limiting sprawl; preserving agricultural, forest, park and ecologically sensitive land; providing a wide range of housing, including affordable housing; reducing car dependency; and increasing the sense of community in neighbourhoods and urban spaces.

A SOLUTION: SMART GROWTH

Smart growth refers to urban development approaches that are fiscally, socially and environmentally responsible. Smart growth is development that enhances the quality of life in communities, complements ecosystem functioning, and uses tax revenue wisely. Smart growth applies sustainability principles to urbanizing areas where government policies have traditionally favoured low density, discontinuous, auto-dependent, single use development. Rather than subsidizing urban growth, local governments and citizens who understand the benefits of smart growth are requiring more efficient development ideas. As a comprehensive approach to development, smart growth encompasses strategies such as greenways protection, nodal development, demand management, industrial ecology, and community partnerships.[3]

SMART GROWTH AND SPRAWL IN BC

Some of BC's urban areas are leaders in smart growth practices. For example, Vancouver's West End is the highest density residential area in western Canada. Higher density has been proven to reduce auto dependence. Higher density has other benefits as well: the amount of urban space per resident that must be allocated to roads, parking spaces and other automotive facilities diminishes. Experts cite Vancouver's downtown urban core as a model of a high density, compact community. A recent magazine cover story describes the influx of architects, planners, and developers from cities up and down the American west coast that come to study Vancouver, and quotes the CEO of one of Portland's largest architectural firms: "We come to Vancouver because there is no where else with development of this quality on anything like this scale. For us it's like looking into the future."[4] As many American cities search for ways to attract people back to decaying inner-city urban areas, Vancouver has added almost 20,000 new residents to its downtown peninsula in recent years.

However, local residents may not agree with the idea of Vancouver as a model of smart growth as they battle traffic, try to find transit alternatives, and look for affordable housing. Rampant sprawl persists in many parts of the Greater Vancouver Regional District and other BC communities, from the capital city of Victoria to interior cities such as Kelowna. Despite the active engagement of many planners, local governments and concerned citizens in the quest for smart growth, there are many indicators that smart growth has not yet been fully adopted in BC. For example:

- by 2005, the Greater Vancouver region's population will be making an additional 500,000 to 600,000 trips per day. If the transportation mode shares remain the same, about 70-75% of the trips will be made by cars, 10% by public transit and 13% by walking or cycling[5];
- the province of BC lists urban and agricultural development as the largest threats to endangered species in BC;
- 120 streams in the Fraser Valley have been lost to urbanization; and 61% of the remaining streams are classified as endangered;
- the best agricultural land in the province is threatened by the sprawl of single family housing; and
- with the highest housing costs in Canada in the Greater Vancouver Regional District and Capital Regional District of Victoria, the affordable housing agenda competes with the provision of infrastructure to suburban developments.

Smart growth can provide answers to some of these problems.

WHAT CAN CITIZENS DO ABOUT SMART GROWTH?

This Guide provides information on legal aspects of smart growth. The purpose of the Guide is to empower community groups and others to more effectively influence the pattern of growth in their neighbourhoods. As many smart growth decisions are made at the local government level, this Guide focuses on that level of government decision-making. Local governments are the most important decision-makers for managing growth, providing affordable housing and regulating urban design, protecting the urban environment and promoting livable communities.

The Guide describes the current laws and policies that can help or thwart smart growth. The key objective of smart growth is to use land more efficiently. Ecologically responsible urban form can reduce the ecological footprint of citizens living in urban areas, with less stress on air, land and water. Efficient land use also saves money. Advocates need information on how law can be used to promote desirable urban design principles, such as:

- *Five-Minute Walking Distance to Transit and Shops*

  Research suggests that North Americans will leave the car at home if they can walk to the store or transit in five minutes or less.

- *Interconnected Streets*

  Interconnected street systems ensure that all trips, whether in a car or on a bike or on foot are by the shortest possible route.

- *Natural Drainage Systems where Surface Runoff Infiltrates Back into the Soil*

  Until now communities have been engineered to keep water from returning to the soil, a mistake because water infiltration prevents flooding, filters pollution, and is required for fish and other habitat.

- *Lighter, Greener, Cheaper, Smarter Infrastructure*.

  Every dollar spent on pavement creates at least one dollar's worth of damage to the environment. Green streets and lanes use less pavement, they save money and allow storm water to seep naturally into the ground.

- *Buildings that Present a Friendly Face to the Street.*

  Rear lanes allow porches and trees out front, parking out back in a mix of housing types.

- *Different Dwelling Types in the Same Neighbourhood and Even on the Same Street.*

  Different family types and incomes can be accommodated in neighbourhoods that retain a "single family district" feel.[6]

The Guide is organised in these chapters:

Chapter 1 – An Overview of the Land Use Planning Process

This chapter describes the jurisdiction, laws, and public bodies involved in the land use planning process.

Chapter 2 – Legal Framework for Local Government Land Use Planning

This chapter discusses the two major laws for land use planning, and provides an overview of the process.

Chapter 3 – Sustainable Transportation

Smart growth is closely related to transportation policy. Land use decisions profoundly affect transportation choices and transportation choices affect land use.

Chapter 4 – Green Space

Green space in urban areas is an important part of smart growth, necessary to integrate development into ecosystems, create complete communities and enhance liveability. Green space provides numerous benefits to residents: recreation, aesthetic and spiritual satisfaction, enhanced property values and healthy ecosystems functioning.

Chapter 5 – The Built Environment

Smart growth requires compact communities, nodal development, integrated land uses, heritage preservation – all of which relate to the built environment and how buildings are regulated. Increased densification in urban centres is required to achieve other smart growth goals such as protecting green space.

Chapter 6 – Protecting Agricultural Land

Maintaining the agricultural land base is a key feature of smart growth to provide food security, economic opportunities, enhance liveability and contain urban sprawl.

Chapter 7 – Regulating Gravel Pits

The location and regulation of gravel pits and aggregate extraction is an issue smart growth must address. Extraction of these resources should be planned so that these economic activities can continue without unduly interfering with other community values.

Chapter 8 – Protecting Forest Land

Smart growth includes protecting forest land near urban centres, as a source of economic opportunity as well as for the many other benefits provided by forests.

Chapter 9 – Protecting Coastal Land

The smart growth goal of livable communities is linked to preservation of coastal land. Communities value coastal land for its ecological value (open space, access to the ocean, prime wildlife habitat) as well as its economic value (high property values).

Chapter 10 – Public Participation

Livable communities require active engagement of residents. Smart growth is more easily achieved if residents participate fully in growth and development management in their communities, and promote the objectives and principles of smart growth. Public participation provides welcome opportunities to advocate positive change to influence the shape of communities, rather than resist all new developments.

There are different opinions about the adequacy of the current legal framework for smart growth in BC. Many in the land development industry view the current regulatory structure as overly stringent, and their development rights as precarious: "It is only a mild overstatement to say that the development rights attached to a particular site in BC may be relied on only until the next meeting of the local government."[7] Others believe that sustainable urban neighbourhoods are few and far between, if those neighbourhoods are to "protect and enhance the social and economic health of the community as well as the health of local and global ecosystems.[8]

This Guide is a project of Smart Growth BC, and is a companion to other Smart Growth BC reports:

1. Deborah Curran and May Leung, *Smart Growth: A Primer* (Victoria: University of Victoria, Eco-Research Chair, 2000), and
2. Deborah Curran, *Smart Growth: Reforming B.C.'s Urban Development Regime for Ecosystem and Community Health* (Victoria: University of Victoria, Eco-Research Chair, 2000).

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West Coast Environmental Law – http://www.wcel.org

University of Victoria Eco-Research Chair – http://www.law.uvic.ca/~elp

Smart Growth Network – http://www.smartgrowth.org

Sustainable Communities Network – http://www.sustainable.org

Sierra Club (US) Sprawl Solutions Campaign – http://www.sierraclub.org/sprawl

NOTES

[1] Canada, *The State of Canada's Environment*, 1996 (Ottawa: Public Works and Government Services, 1996, at 12-26.

[2] *Ibid.*

[3] Deborah Curran and May Leung, *Smart Growth: A Primer* (Victoria: University of Victoria, Eco-Research Chair, 2000).

[4] Shawn Blore, "Building Smileyville - the Great Vancouver Building Boom" Vancouver Magazine, November 1999, page 49.

[5] Greater Vancouver Transportation Authority, draft Strategic Transportation Plan, January 12, 2000.

[6] Patrick Condon is the chair, landscape and livable environments, at the Faculty of Landscape Architecture at the University of British Columbia. *"Green Infrastructure" for Smarter Urban Design: Principles for Sustainable Development* is a slide presentation that Patrick Condon has presented on numerous occasions including at the smart

development and storm water management workshop in Sechelt on September 22, 1999, from which these principles have been excerpted.

[7] *BC Real Estate Development Practice Manual* (Vancouver: Continuing Legal Education Society of BC, 1999), 5-6.

[8] The Sheltair Group, *Urban Sustainable Development: Southeast False Creek*, (Vancouver: City of Vanouver, 1998), 7.

CHAPTER 1

AN OVERVIEW OF THE LAND USE PLANNING PROCESS

INTRODUCTION

Smart growth uses land more efficiently and saves money. It limits urban sprawl. New developments are designed to work with rather than conquer nature. Smart growth promotes "live, work, walk" communities, and reduces dependency on car use.

In short, smart growth aims to address many of the problems facing urban communities today.[1] Many barriers to smart growth are rooted in current land use and development laws and policies. Smart growth advocates need to understand how the law works so that they can overcome these barriers and take full advantage of smart growth opportunities.

The land use planning system is complex. The main law controlling municipal land use planning, the BC *Local Government Act*, is over 1000 sections in length. Many other federal, provincial and local government laws affect land use planning. The focus of this Guide is on local government law and "settlement" planning. It also addresses land use controls for other types of land located in or near urban areas, such as agriculture, forest and coastal land, and special cases, such as gravel pits. It does not address forest or resource use planning.[2]

This chapter provides an overview of the jurisdiction, laws and government and public bodies involved in the land use planning process. First, the chapter discusses the responsibilities of different levels of government for land use planning. Then it discusses the relationship between local and other levels of government.[3] Finally, it lists the many statutes that governments use for urban land use planning. The most relevant statutes for land use control in urban areas, the *Local Government Act* and the *Land Title Act* are discussed in detail in the next chapter.

GOVERNMENT RESPONSIBILITIES FOR LAND USE PLANNING

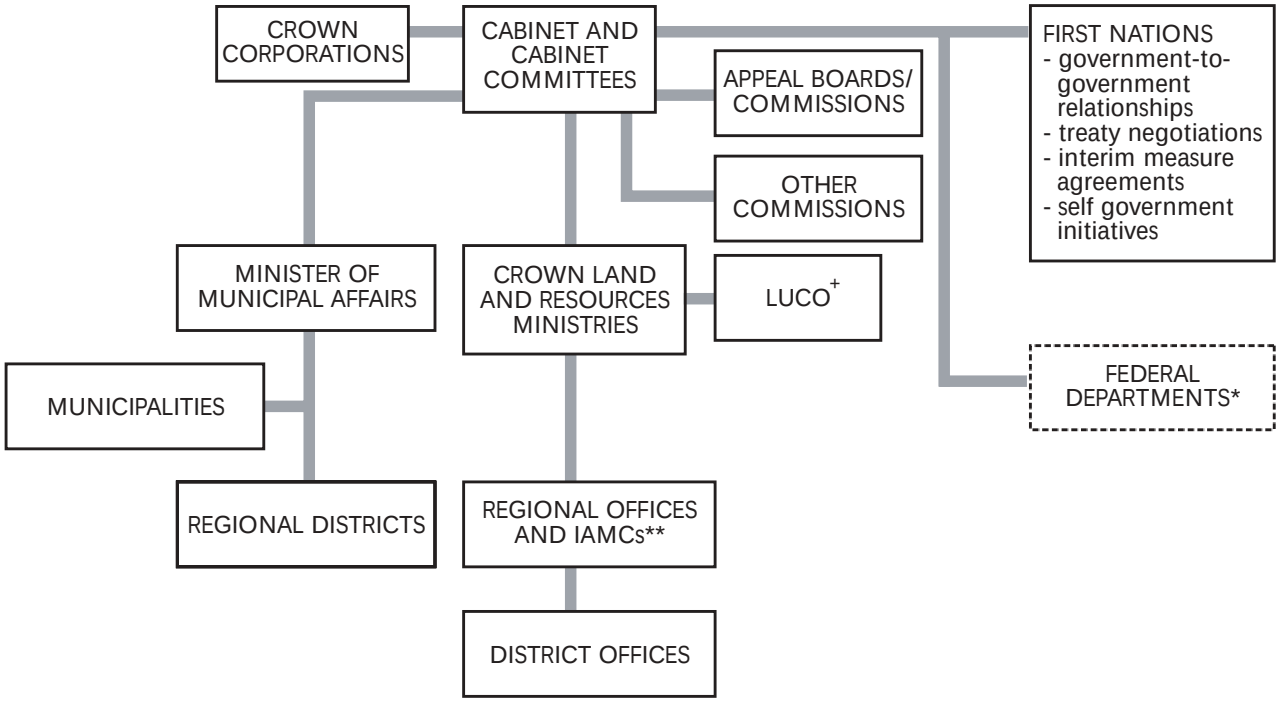
Land use plans in BC may be provincial, regional, subregional, local or site specific. Land use controls also vary according to the owner of the land: the provincial or federal Crown, or private individuals or companies. In BC, about 92% of land is owned by the provincial Crown and 5.3% is privately owned. Most land in urban areas is privately owned.[4] Smart growth proponents need to understand how different levels of government work together on all the diverse issues that make up smart growth, such as transportation, habitat

protection, and resource development, as well as more traditional local government subjects such as redevelopment applications, zoning bylaws and official community plans.

The provincial Ministry of Municipal Affairs and Housing administers the *Local Government Act* and has an oversight role for some municipal land use decisions. Urban land use planning may involve a number of other provincial and federal Ministries and agencies including:

- Department of Fisheries and Oceans (federal): any development or activity affecting fish habitat; involvement in the urban referral process for new developments.
- Transport Canada (federal): land use around airports, harbours and ports.
- Environment Canada (federal): environmental assessment of certain projects affecting federal interests in development.
- Agriculture and Food (provincial): farm bylaws, regulation of agriculture.
- BC Hydro (provincial): land use affecting power lines, stations, dams and other installations for power. BC Hydro is not generally subject to local government land use bylaws.
- Energy and Mines (provincial): public utilities, pipelines, gravel pits.
- Environment, Lands and Parks (provincial): floodplains and floodplain specifications, protection of habitat for fish and wildlife, involvement in the urban referral process for new developments, environmental assessments in limited circumstances.

MAJOR ORGANIZATIONS INVOLVED IN LAND USE PLANNING AND REGULATION



* Federal departments exercise jurisdiction over federal lands (e.g., National Parks, defense lands) as well as having statutory authority for various aspects of resources (e.g., fisheries and navigable waters).
\+ LUCO is the land use coordination office
** IAMCs are interagency management committees based in the regions

Adapted from CORE, The Provincial Land Use Strategy – Planning for Sustainability, *Volume 2, November 1994, available on line at http://www.luco.gov.bc.ca/lrmp/plus/vol2/vol2-04.htm.*

- Forests (provincial): private forest land regulations.
- Land Commission (provincial): land use for the Agricultural and Forest Land reserves.
- Transportation and Highways (provincial): provincial, highways, ferries and transit, as well as approval of permits for commercial and industrial buildings exceeding 4,500 m^2, s. 924.

While all land use regulations have an impact on the patterns of growth in the province, this report focuses on local government, the level of government that most closely affects growth and development.

WHAT IS LOCAL GOVERNMENT?

The term "local government" is defined in the *Local Government Act* as the council of a municipality, or the board of a regional district.[5] So, local government refers to both municipalities and regional districts. The province of BC is divided into both regional districts (RDs) and smaller units of municipalities (which may be a village, town, district or city) located within RDs. The province's 27 regional districts, federations of municipalities and unincorporated or rural areas, cover most of the province, except the Stikine region in the north. Most of the province's settled areas are located inside the boundaries of either a municipality, a regional district or both. For example, residents of Kelowna live in the City of Kelowna, a municipality, which is within the Okanagan Regional District. There are 151 municipalities in the province.

Municipalities and regional districts work closely together to provide local services. Since the passage of growth management legislation in 1995, they also work together on occasion to manage regional growth.

Both municipalities and regional districts are created by incorporation, similar to incorporation of a company. The document that creates the municipality or regional district is called the "letters patent". It can be amended by "supplementary letters patent". Settled areas of the province that are not incorporated as a municipality under the *Local Government Act* are unorganized areas, also sometimes called rural areas. Regional districts provide land use planning and services to these areas. The Minister of Municipal Affairs also has the power to regulate land use planning in these areas under the *Local Services Act*.

Local government often bills itself as the level of government that is the "closest to the people". It provides the day-to-day services residents depend on such as water supply, roads, fire and police protection, sewage disposal, garbage disposal and park and recreational facilities. Local government is also primarily responsible for governing land use, planning, zoning of land, and controlling building and development – the legal tools used to manage growth.

The *Local Government Act* states that the purposes of a local government include:

- providing good government for its community,
- providing the works, services, facilities and other things that the local government considers are necessary or desirable for all or part of its community,
- providing stewardship of the public assets of its community, and
- fostering the current and future economic, social and environmental well-being of its community, (s. 2).

Vancouver – A Special Case

Vancouver is not subject to *Local Government Act* but is subject to the Vancouver Charter, another provincial law. Many of the provisions in the *Local Government Act* have their exact parallels in the Vancouver Charter, sometimes using different names for essentially the same processes. This Guide only describes the *Local Government Act*. For information on Vancouver, readers should consult the city's website at http://www.city.vancouver.bc.ca

MUNICIPALITIES AND REGIONAL DISTRICTS

Municipalities are governed by elected municipal councils made up of councillors and a mayor. Regional districts are governed by a regional board, composed of elected directors representing different unincorporated electrol areas and appointed directors who are members of council of the member municipalities, (s. 783). Regional boards govern regional districts in the same way that municipal councils govern municipalities.

Councils and regional district boards develop policy, adopt bylaws or resolutions based on the policies and ensure that their decisions are executed by the local government staff. Local government land use powers include:

- adopting community plans and regulatory bylaws;
- issuing by resolution development permits, development variance permits and temporary use permits;
- deciding whether other types of permits will be required; and setting up Commissions such as an Advisory Planning Commission, Parks Commission, and/or Recreation Commission.

Regional districts manage unincorporated land and co-ordinate actions on regional issues such as water supply, regional parks and regional planning, such as regional growth strategies. Water supply provides an example of how the services of a regional district and a municipality fit together. A regional district manages the central reservoirs and treatment facilities and delivers water to each municipality in the district, while the municipality is responsible for the distribution of water to individual customers.

The major distinctions between municipal council and regional board powers relate to:

- the greater involvement of the Minister of Municipal Affairs in certain regional district land use matters;
- different procedures used to adopt plans;
- regional districts require assent of electors before offering certain services (e.g. parks, garbage collection, regulating nuisances); and
- specific restrictions on certain powers not available to regional districts, such as tree bylaws.

Given these broad responsibilities, it is important for citizens to work closely with local governments to promote smart growth.

CONSTITUTIONAL SOURCE OF MUNICIPAL AUTHORITY FOR LAND USE PLANNING

Understanding how land use in urban areas is regulated requires some background on the powers of different levels of government.

Canada is a federation of provinces. Both the federal Parliament and the provincial legislatures have the constitutional authority to make laws.

Legally, responsibility for land use planning rests with the province.[6]

In practice, provinces have delegated the responsibility for urban, suburban and rural land use planning to local governments through the *Local Government Act*.[7]

The Constitution does not directly give municipalities any legal powers. All authority exercised by local government derives from delegation by the provincial government. So, local governments have only the powers that are delegated to them by other levels of government. A municipality cannot act for a purpose beyond its powers.

THE RELATIONSHIP BETWEEN LOCAL GOVERNMENT AND SENIOR LEVELS OF GOVERNMENT

The division of powers between different levels of government is important. Only the level of government which has jurisdiction over a property or an activity has the right to control its use through law. Only that level of government which has legislative authority over a subject area can make laws for that area. Sometimes legislative authority is shared by the federal and provincial governments. For example, agriculture is a shared responsibility of the federal and provincial governments.

There is a hierarchy in government regulation as well. Generally speaking, the most senior level of government will take precedence over lower levels of government. For example, the federal government under its power to control aviation may prohibit the construction of high-rise buildings near airports, even if the province authorizes this construction.[8] Courts have ruled that where such a constitutional conflict arises, the federal law is paramount. A federal or provincial law will usually prevail if it conflicts with a municipal bylaw.

FEDERAL GOVERNMENT

Local governments must comply with federal and provincial statutes, including the federal Charter of Rights and Freedoms. Bylaws and other municipal actions have been challenged as violating the Charter. For example, zoning regulations must be interpreted so as not to violate freedom of religion, or the right to live in accordance with religious beliefs. "It is not the function of municipal councils through the medium of zoning bylaws, or otherwise, to strive to forestall the practices of a particular religious faith."[9]

The federal government maintains control over land it owns and manages such as national defense land, airports, railways and federal harbours.[10] Separate statutes govern land use for these federal lands: respectively, the *Aeronautics Act*, *Railways Act*, *Canada Marine Act* and *National Defense Act*. Indian reserves are also under federal jurisdiction, unless a First Nation has opted out of the existing land management provisions in the *Indian Act*, and has assumed responsibility itself for management of reserve lands.[11] While some municipal laws may apply to federal land, any municipal attempts to regulate the land use on federal land are invalid.[12]

PROVINCIAL GOVERNMENT

Though the provincial government is the chief land use control authority in BC, due to its resource and integrated land use planning for the land it owns in the province (94% of the provincial land mass), local governments have a more important role for land use control in urban areas where the principles of smart growth need to be implemented.

The Minister of Municipal Affairs and Housing is responsible for the administration of the *Local Government Act* and also has specific duties under that *Act*, such as approving certain regional district and rural land use bylaws.

Provincial Crown land is generally immune from municipal zoning bylaws, because of s.14(2) of the *Interpretation Act*.

EFFECT OF FEDERAL AND PROVINCIAL EXEMPTIONS FROM LOCAL GOVERNMENT LAND USE CONTROL

Because of the federal and provincial Crown land exemptions, municipal land use authority does not apply to airports, harbours, railways, Indian reserves or tree farm licenses on Crown land, even if located within local government boundaries. One of the goals of

Evolving Role of Local Government

In recent years, local governments have assumed greater responsibilities for smart growth, as the result of more delegation of power from the province. For example, local governments now have a role in:

- contaminated sites appraisal and remediation;
- judging the sufficiency of certificates under the *Environmental Assessment Act* for issuance of mine permits within their boundaries;
- determining how to protect streamside fish habitat areas under the *Fish Protection Act*; and
- incorporating many new environmental protection powers which are now part of the *Local Government Act*.

smart growth is to encourage all levels of government, including First Nations, to work together on efficient, integrated sustainable land use plans and to engage in co-operative processes to resolve disputes over the use of land.

INTER-GOVERNMENTAL AGREEMENTS

Since governments share responsibilities for land use planning, memorandums of understanding may be helpful to clarify who does what and to provide all necessary approvals for proposed developments at the same time. A pilot project on Vancouver Island provides a good example of how governments can work together for improved environmental protection. The *Intergovernmental Partnership Agreement for the Protection of Environmentally Sensitive Areas* between the Ministry of Environment, Lands and Parks; the Department of Fisheries and Oceans; and the Comox/Strathcona Regional District is a written agreement that provides a "one window" approach to development applications, with coordinated examination of the habitat impacts of each new proposal. The government agencies that use this Agreement find it works well to reduce bureaucracy.

THE RELATIONSHIP BETWEEN LOCAL GOVERNMENT AND FIRST NATIONS

First Nations occupy a unique position in BC. As the original inhabitants of the province, they have aboriginal rights of land ownership and use. Though the area of land currently reserved for their use is small (reserve land accounts for 0.36 per cent of BC's total land),[13] land claims negotiation will increase the area of land primarily controlled by First Nations.

Reserves may be located partially or wholly within municipal boundaries, or may abut municipal boundaries. Most reserves are located within the regional districts that cover almost the entire land area of the province. Municipal or regional district bylaws regarding land use, targeting First Nations people or prohibiting anything that would affect "native peoples' aboriginal nature" do not apply on reserve land or non-Indians living on reserve land.[14]

Conflicts have arisen between local governments and BC First Nations in relation to land use and development. A First Nation has challenged the legality of an OCP adopted by a local government due to failure to consult the First Nation.[15]

Reserve land is federally owned and managed by First Nation band councils pursuant to the *Indian Act*, except for those First Nations that have taken advantage of the *First Nations Land Management Act*, s. 20. That *Act* requires each First Nation that is already a party to the Framework Agreement on First Nations Land Management to adopt a Land Code, and gives the First Nation legislative authority to make laws regulating land use and development, including zoning and subdivision control, environmental assessment and protection, the provision of local services to reserve land, and charges for those services. To date, five BC First Nations are ready to assume this control.[16]

TREATY NEGOTIATIONS

Treaty negotiations to settle aboriginal claims to land throughout the province will continue to have an impact on land use planning and development in the years to come.

The Province of BC recognized the concepts of aboriginal rights and the inherent right to self-government in 1991, and created the BC Treaty Commission to resolve outstanding land claims. Municipal representatives are involved in treaty negotiations as a result of the 1994 Protocol Agreement between the Province and the Union of BC Municipalities. The

Union of BC Municipalities (UBCM) has an Aboriginal Affairs Office to provide a point of liaison between First Nations and local governments.

The treaty process will clarify the division of power over land use planning between First Nations and local governments. To date, one claim, that of the Nisga'a Nation in northwestern BC, has been approved by the Nisga'a Nation, the province, and the federal government. The Nisga'a Final Agreement contains a chapter on local and regional government relationships which provides that residents of Nisga'a land have the right to vote in elections for the Regional District Board of Kitimat-Stikine; the Nisga'a Nation and each Nisga'a Village may enter into agreements with the regional district for the provision of services; and may also enter into agreements to coordinate their activities with respect to common areas of responsibility such as planning, health services, and infrastructure development.[17]

STATUTES GOVERNING LAND USE PLANNING

In BC, the two primary statutes governing municipal land use are the *Local Government Act*, which establishes the legal powers and authority of local governments, and the *Land Title Act*, governing subdivision of land, and establishing a system of registering interests on the title to each parcel of land. Both these statutes are discussed in detail in chapter 2.

In several special cases, land use powers in urban areas are controlled by other laws. For example, the *Vancouver Charter* gives the City of Vancouver planning powers.[18] *The Strata Property Act* is important for applying smart growth concepts to bare land strata.[19] The *Islands Trust Act* gives the Islands Trust control over land use and establishes the Islands Trust Council to "preserve and protect the unique environment" of the Gulf Islands.[20] Whistler has, to some extent, its own land use control powers under the *Resort Municipality of Whistler Act*. A separate statute also regulates land use on the University Endowment Lands at the University of British Columbia. The *University Act* also partially limits local government land use actions for BC universities.[21] BC Hydro and other provincial utilities such as BC Gas also have different land use controls according to the statutes that govern them.[22]

A host of other statutes also regulate local government and land use and development – one authority estimates that these powers are found in more than 70 BC statutes.[23]

Key statutes affecting land use are discussed in subsequent chapters of this report:

- The *Fish Protection Act*, which will set standards for streamside protection in urban areas, is discussed in chapter 4 on green space preservation.
- The *Heritage Conservation Act* is discussed in chapter 5 on the built environment.
- The province retains control over land use and development for agricultural and forest reserve land, through the *Agricultural Land Commission Act* and the *Forest Land Reserve Act*. Land use for planning these types of land is discussed in chapters 6 and 7.
- The *Environmental Assessment Act* which requires the environmental impacts of major projects to be reviewed before a project is approved is discussed in chapter 2. Examples of municipal projects which may require assessment include major landfill projects or sewage treatment facilities.
- The *Expropriation Act* governs expropriation of land by governments or public agencies throughout the province. Generally, the provincial government has the power to take away land for a public use without the owner's consent if reasonable

compensation is paid and if the expropriation is authorized by another specific provincial statute, such as, for example, the *Highways Act*. Local governments and public agencies such as BC Hydro also can expropriate land for a public purpose if fair compensation is paid. The federal government also has the power to expropriate land through a federal statute. Expropriation is discussed more in chapter 2.

- Under the *Freedom of Information and Protection of Privacy Act*, local governments have legal requirements to disclose information. This important legal tool is discussed in the chapter on advocacy and public participation, chapter 10.
- The *Waste Management Act* regulates the discharge of waste into the environment. Municipalities are required by this legislation to prepare solid waste and liquid waste management plans. Local governments are also subject to the contaminated sites regulations of this *Act*. Remediation of contaminated sites can provide opportunities for redevelopment of land which would otherwise remain vacant, and can therefore be an important factor in limiting sprawl. Parts of this statute are discussed in the chapters on protecting green spaces and the built environment.

NOTES

All citations for statutes can be found in the Table of Statutes, Appendix A. In addition, the full text of provincial statutes is available on-line at http://www.qp.gov.bc.ca/bcstats/ and all federal statutes at http://canada.justice.gc.ca/en/laws/index.html.

[1] Deborah Curran and May Leung, *Smart Growth: A Primer* (Victoria: University of Victoria, 2000).

[2] For a comprehensive report on these topics, see WCEL's *Guide to Forest and Land Use Planning*, (Vancouver: WCELRF, 1999).

[3] "Local government" includes municipalities, regional districts and the Islands Trust. The term local government will be used throughout this report to refer to all these forms of government, unless specified otherwise.

[4] BC Ministry of Environment, Lands and Parks, *BC Land Statistics, 1996*, at 4.

[5] The Islands Trust is also a form of local government. It is discussed in the chapter on Protecting Coastal Land.

[6] Provincial legislatures have the power to regulate "property and civil rights in the province", "the management and sale of the public lands belonging to the province" and " generally all matters of a merely local or private nature in the province." Sections 92(13), (16) and (5) of the *Constitution Act* (1867).

[7] Section 92(8) of the *Constitution Act* assigns control over "municipal institutions in the province" to provincial governments.

[8] John Ince, *Land Use Law – British Columbia* Handbook (Vancouver: Butterworths, 1977).

[9] *Re: Hutterian Brethren Church of Eagle Creek Inc. and Eagle Creek (Municipality*) (1982) 21 MPLR 108 (Sask C.A.), a case involving a proposed communal development that did not strictly conform to the applicable agricultural district zoning bylaws.

[10] Under an agreement within the federal government and the province, a number of small boat harbours are being transferred to regional districts from the federal government so that regional districts will have authority over them.

[11] The *First Nations Land Management Act*, S.C. 1999, c.24 provides the authority for First Nations to manage reserve land pursuant to the Act and pursuant to a Land Code which must be adopted for this provision to take effect.

[12] *Canadian Occidental Petroleum* v. *North Vancouver* (1986), 13 B.C.L.R. (2d) 34 (B.C.C.A.); *Delta* v. *Aztec Aviation Group* (1985), 28 M.P.L.R. 215 (B.C.S.C.); *International*

Aviation Terminal Inc. v. *Richmond (Township)* (March 16, 1992), Van. Reg. CA01384 (B.C.C.A.), all of which involved provincial or municipal attempts to actually regulate use of federal land through zoning and building by-laws.

[13] This statistic is from the Ministry of Aboriginal Affairs website at http://www.aaf.gov.bc.ca.

[14] *Surrey v. Peace Arch Enterprises Ltd.* (1970), 74 WWR 380 (BCCA).

[15] *Comox Indian Band v. Regional District of Comox Strathcona* (BCSC). 1999 Pleadings in this case have been filed but no court date has yet been set.

[16] Patsy Scheer, "The First Nations Land Management Act" in *Municipal Law – 1999*, Continuing Legal Education Society of BC, Vancouver, BC.

[17] The text of the Final Agreement is at http://www.aaf.gov.bc.ca/aaf/treaty/nisgaa/nisgaa.htm

[18] S.B.C. 1953, c.55. Also see the City of Vancouver web site at http://www.city.vancouver.bc.ca

[19] S.B.C. 1998, c.43.

[20] This Act is discussed in the chapter on coastal land.

[21] R.S. 1996, c.468.

[22] Two of these acts, for example, are the *Hydro and Power Authority Act*, R.S. 1996, c.212, and the *Gas Utility Act*, R.S. 1996, c.170.

[23] Don Lidstone, "How We Live, Where We Live, If We Live" in Michael M'Gonigle, ed. *Urban Green Governance: The View from the United Nations Conference on Human Settlements*, University of Victoria, Eco-Research Chair, Report R96-2 (Dec.1996). A list of all statutes mentioned in this report is contained in the Table of Statutes. Statutes are available online at http://www.legis.gov.bc.ca.

CHAPTER 2

LEGAL FRAMEWORK FOR LOCAL GOVERNMENT LAND USE PLANNING

INTRODUCTION

The legal framework for local government land use planning is complex. Smart growth advocates need to know about land use planning processes on three levels:

- **Direct Substantive Requirements and Actions.** "On the ground" requirements such as development permits, capital expenditures, and/or zoning bylaws directly determine what can be built.
- **Municipal Level Guiding Plans.** Plans at this level guide or limit the direct actions undertaken by municipalities, such as official community plans and capital expenditure plans.
- **Regional Level Guiding Plans.** Higher level plans influence the content of municipal level guiding plans, such as regional growth strategies.

Understanding all three levels of planning is necessary to have a complete picture of the legal requirements for a particular area or piece of land. Participation at all levels is more likely to ensure that smart growth occurs in a community.

This chapter discusses the two major laws that affect local government land use planning, the *Local Government Act*, and the *Land Title Act*.

The *Local Government Act* is an enabling statute, which means that it allows, but does not require, local governments to take certain actions. There are many discretionary provisions in the *Local Government Act* which give municipalities powers (such as for environmental protection) which they are under no obligation to use.

The *Land Title Act* requires procedures to be followed to register interests to land on the title to the land, a record maintained by the Land Titles Office.

This chapter discusses planning processes and tools, starting from the broadest level – processes that cover the largest land area with the longest time frame such as growth management strategies – and ending with individual site specific tools such as development permits.

BC's population growth is rapid and largely unrestricted. In the Lower Fraser River region alone the population increased by 11% from 1991 to 1995. In recent years, BC's population has increased by about 60,000 people each year. There are no signs that this trend is waning. The increased population growth, along with increased land consumption and waste generation, threatens the quality of life in the province.

Unplanned and unmanaged growth has a number of negative impacts:

- increased reliance on the automobile leading to higher fossil fuel emissions and consequent climate change and local air quality impacts;
- lack of affordable housing; urban sprawl that destroys wildlife habitat and reduces green space; and
- impairment of the water quality and quantity of urban streams and rivers through paving, culverting, pollution and runoff.

Individually, communities have been planning for growth and change within their own boundaries for many years with varying degrees of success. Regional coordination to guide these efforts was set up by amendments to the *Local Government Act* in 1995 encouraging adoption of regional growth strategies.

REQUIREMENTS FOR REGIONAL GROWTH STRATEGY (RGS)

The *Local Government Act* contains a framework for developing regional land use plans that have legal status. Under this regime, a regional district can (but is not required to unless the Minister of Municipal Affairs orders it to do so) initiate a regional growth strategy (RGS). The RGS is negotiated by the municipalities located in the regional district. A RGS is a course of action to meet common social, economic and environmental objectives.

Although there are few mandatory requirements, a RGS can deal with the entire slate of smart growth issues: avoidance of sprawl, densification of existing urban areas, settlement patterns that support transit and walking, efficient transportation, protection of green space, affordable housing.

If a RGS is adopted after the lengthy process set out in the legislation, each municipality in the regional district should eventually bring its official community plan into compliance with the RGS through the preparation of a regional context statement. Ideally, the official community plan will incorporate smaller scale plans – watershed plans and neighbourhood level plans.

Both RGS and official community plans (OCPs) have demonstrable impacts at the level of capital works, zoning bylaws and development permits. Regional works like waterlines and sewer lines must be consistent with regional growth strategies, and the laws and permits that govern the actions of developers must be consistent with official community plans.

Regional growth strategies are an important "vision statement", though their practical impact to date has been limited, in part because the most vocal participants in public planning processes often do not support the changes to urban form required to achieve smart growth.

MINIMUM REGIONAL GROWTH STRATEGY REQUIREMENTS

The *Local Government Act* sets out the purpose, goals and content of an RGS and establishes procedures for its initiation, preparation and adoption. A RGS is initiated and adopted by a regional district and referred to all affected local governments for acceptance.

An RGS *must* cover a period of at least 20 years and contain social, economic and environmental objectives for the region; population and employment projections; and actions to provide for the needs of the projected regional population in relation to:

- housing;
- transportation;
- regional district services;
- parks and natural areas; and
- economic development, s. 850.

OPTIONAL CONTENT OF REGIONAL GROWTH STRATEGY – THE "WISH LIST"

One of the most important features of the legislation is the set of provincial goals that are meant to guide the regional growth strategies developed under the *Act*. These goals are a "wish list" for smart growth. If all regional districts and municipalities adopted binding plans that worked towards this set of 14 goals, the province would be well on its way to smart growth. The set of goals listed in the *Act* says that a RGS is to work towards:

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) designing settlement patterns that minimize the use of automobiles and encourage walking, bicycling and the efficient use of public transit;

c) requiring 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) promoting economic development that supports the unique character of communities;

g) reducing and preventing air, land and water pollution;

h) providing adequate, affordable and appropriate housing;

i) developing adequate inventories of suitable land and resources for future settlement;

j) protecting the quality and quantity of ground water and surface water;

k) designing 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; and

n) providing good stewardship of land, sites and structures with cultural heritage value.

A RGS can set targets to concentrate growth in defined locations. For example, one of the goals of the Greater Vancouver Regional District (GVRD) Liveable Region Strategic Plan is to achieve a compact metropolitan region. The Plan identifies Growth Concentration Areas and sets population and housing targets for each municipality. The GVRD transportation plans are also designed to concentrate growth along major transportation corridors. Densification of these areas is necessary to concentrate growth, which will be

challenging, given the popularity of single detached homes in Canada – accounting for 31% of building starts in 1971 and 53% in 1994.[1]

To meet the growth capacity requirements of a RGS, an individual OCP will also set a time frame, estimate population growth, and targets for housing based on these estimates. To illustrate, the Fraser Valley Regional District set a target of 134,000 residents for Chilliwack. The Chilliwack OCP accepts this target and now plans for new growth based on that target within a ten-year time frame. New developments need to be concentrated to allow growth to proceed and maintain green space at the same time. In the Chilliwack OCP, public participants favoured leaving undeveloped areas such as Ryder Lake as low density minimal growth areas, primarily to limit urban sprawl. The final OCP leaves Ryder Lake undeveloped for the life of the plan.

Communities will need to decide where to concentrate growth if they wish to preserve undeveloped areas and green space. If no planning for growth takes place, growth will naturally concentrate in the parts of the community where residents are least vocal or have minimal political clout. Participation in planning is critical to make not only the decisions about where not to develop, but also where development should be allowed and encouraged.

REGIONAL GROWTH STRATEGY PROCEDURE: THE REGIONAL CONTEXT STATEMENT

After a regional growth strategy has been adopted, each municipality in that region has up to two years to prepare a Regional Context Statement (RCS). The RCS will set out the relationship between the growth strategy and the OCP of the municipality and describe how they will be made compatible over time.

Each local government has the flexibility to decide what its Regional Context Statement will contain. The RCS *must* address the regional issues listed in Section 850(2) of the Act (the five minimum issues that the growth strategy has to address: housing, transportation, regional district services, parks and natural areas, and economic development). The regional district has to accept each community's RCS.

An OCP does not have to be amended to give effect to a Regional Growth Strategy. Although the legislation states that the RGS and the rest of the OCP must be consistent, it provides no guidance for how this is to take place. A municipality may amend its OCP over time to give more effect to a RGS. Subsequent amendments of an OCP do not automatically have to be referred to a regional district for acceptance unless they change the RCS component.

There are procedures for dispute settlement in this part of the *Act*, anticipating that not all municipalities in a region will agree on future growth, or what actions should be taken to address growth.[2]

Legal Effect of Regional Growth Strategy

A growth strategy has no immediate effects on the development rights of owners of land covered by the strategy, but subsequent regulatory consequences may follow from the OCP or zoning changes related to adoption of the strategy.[3]

The legal effect of a RGS is that all bylaws adopted and works and services undertaken by a regional district must be "consistent with" the strategy, although a strategy does not commit or authorize a local government to proceed with any project referred to in the strategy. The growth strategy is not binding in itself on a municipality. The non-binding character of a RGS makes it even more important for citizens to exert political pressure on each local government to address these issues.

Regional infrastructure decisions have a major impact on how growth occurs. Recent BC examples of major infrastructure decisions are construction of the Island Highway on the east coast of Vancouver Island and extension of SkyTrain in the GVRD. If these infrastructure agreements contravene a RGS, no penalty applies. The public has no legal avenues to use to force local governments to comply with a RGS and must rely on advocacy and political activity.

The Smart Growth Alternative to More Skytrain Extensions

Transport 2021, the basis for the transportation section of the GVRD's growth management plan, favoured light rail transit and more buses over extending SkyTrain. Light rail transit is cheaper than the expensive SkyTrain technology. Dollars spent on building another SkyTrain line also mean less dollars for bus purchases. The smart growth alternative is to buy new buses, providing more public transit services to more GVRD residents at a far lower cost than the Skytrain extension. In the GVRD, buses still carry 80 percent of all transit users.

IMPLEMENTATION AGREEMENTS

Implementation agreements are a new legal tool enabling a regional district and other government bodies to take action on decisions such as major new transportation investments, sewers, parks, or hospitals. Implementation agreements will likely also be used between the regional district and its member municipalities on issues such as coordination of water or sewer extensions, for example.

Implementation Agreements provide a means by which regional or municipal governments can bind provincial government agencies to their vision. Implementation Agreements can morally commit provincial agencies to a plan of action. Often, lack of such a commitment has been a problem in the past when provincial agency priorities shift, and the province proceeds with projects that contravene the letter or the spirit of a RGS. There are two examples in the Greater Vancouver Regional District of this type of decision. First, in October 1997, the GVRD approved a sewer network extension in Langley contrary to the GVRD's RGS, the Liveable Region Strategy, which does not designate this part of Langley as a growth concentration area. Second, as the sidebar shows, the Vancouver SkyTrain extension decision contravened the GVRD's transportation plan.

Senior levels of government, such as the provincial government, are not bound by a RGS. This allowed the province to proceed with the SkyTrain extension decision with no fear of reprisal even though the decision contravened the transportation plan and arguably also contravened the GVRD's regional growth strategy.

BYLAWS

Local governments use OCPs and other bylaws to control land use. Nothing in the *Act* requires a local government to adopt an OCP or any other type of bylaw. Many smart growth issues, such as density and green space are regulated and controlled through bylaws, so understanding bylaw procedures is important for the smart growth advocate.

Bylaws are laws passed by local councils or regional boards, and are binding on the local government and on property owners. They are formally passed in accordance with the procedures set out in the *Local Government Act*. Both OCPs and capital expenditure plans are bylaws. Zoning bylaws are the most common type of land use bylaw. Briefly, zoning is the division of land into zones in which different uses are allowed.

In addition to zoning, bylaws may be used to regulate:

- the form and character of development through development permit (DP) areas in OCPs and zoning regulations concerning height, lot size, and floor-space ratios;
- increased densities appropriate to smart growth;
- urban green spaces by designating environmentally sensitive areas as DP areas in OCPs, protecting trees, and creating parks;
- heritage conservation;
- gravel pit activities if done in conjunction with approval from the Minister of Mines; and

- watercourse protection by requiring riparian setbacks; stormwater management or prohibiting activities which could damage watercourses.

BYLAW PROCEDURES

Each local government must pass a bylaw setting out the procedures that must be followed to pass bylaws, s. 258.

Each bylaw has three readings before final adoption, which means the local government reads it, or considers it, three times. The normal procedure for passing a bylaw is to introduce it and give it first, second and third reading, all by resolution of council, at one meeting of council. There must be at least one day between the third reading of a bylaw and the adoption of the bylaw. Zoning bylaws may be adopted at the same meeting of council at which third reading of the bylaw took place, an exception to the general rule.

Bylaws require a simple majority of those present to pass. If a bylaw requires:

- voting by the electors; or
- the approval of Lieutenant Governor in Council (provincial cabinet); or
- the approval of the Minister; or
- the approval of the Inspector of Municipalities (an official – usually with the Ministry of Municipal Affairs – who has certain approval and supervisory powers under the *Local Government Act*); or
- is a land use bylaw that requires a public hearing;

the relevant approval must be obtained or hearing held after the third reading and before the final adoption, s. 257.

Bylaws become effective on the date they are adopted unless the bylaw provides otherwise. The bylaw may provide that different parts of a bylaw may come into effect at different times.

A bylaw or resolution of council may be quashed, or declared invalid, by a court for illegality on both statutory and common law grounds. Further discussion of bylaw procedures and legal justifications for quashing bylaws is found in the chapter on public participation.

POWERS OF THE PROVINCIAL GOVERNMENT TO ORDER BYLAWS TO BE CHANGED

Certain types of bylaws require the approval of the Minister of Municipal Affairs and this is routinely given. For example, s. 913 of the *Act* requires most rural land use, zoning and subdivision servicing bylaws made by regional district boards to be approved.

However, the Minister of Municipal Affairs does have the power under the *Local Government Act* to object to a bylaw or community plan if the Minister believes that all or part of the bylaw is contrary to the public interest, s. 874. This power is available for bylaws that concern management of development related to OCPs; rural land use bylaws; land use designations; permits and fees; and subdivision and development requirements. This power has never been used.

INFRASTRUCTURE: CAPITAL EXPENDITURE PLANS AND DEVELOPMENT COST CHARGES

New infrastructure has a major impact on growth patterns. Development soon follows the installation of new sewer and water lines. New roads fill with traffic, often in excess of projected traffic increases.

Capital Expenditure Plans – Spending for Smart Growth

The spending plans of local governments for new infrastructure is a critical influence on growth. These plans can:

- focus on improving existing facilities instead of approving new infrastructure,
- set priorities and time horizons for approval of new services,
- place geographical limits on new infrastructure – e.g., the District of North Vancouver will not extend infrastructure above a certain elevation,
- restrict new servicing to areas already planned to receive growth, e.g., concentrated development around SkyTrain stations in the Lower Mainland, and
- ensure that developers pay the true costs of new infrastructure required for their developments through development cost charges.[4]

A municipality's spending plan is called a capital expenditure plan (CEP). These plans are mandatory. Capital expenditure plans explain how a local government will pay for all its new capital projects. There are rules for how these plans are adopted by local government. A council must adopt a capital expenditure program by bylaw for a period of at least 5 years which shows spending estimates of the proposed source and application of funds for capital purposes for each year of the program, s. 329.

Capital expenditure plans must account for designations in an official community plan that will require future acquisition by a local government. For example, any OCP designation of privately owned lands for future public uses, such as park land or highway corridors, must be accompanied by allocations in the capital expenditure plan to allow the acquisition to occur. These must be genuine plans for acquisition of all the land affected by the designation. Local governments are not entitled to allocate only a portion of the projected costs in the expectation that additional funds will be contributed by other sources, such as other levels of government. [5]

Development Cost Charges – a useful tool for smart growth

Development cost charge (DCCs) bylaws are meant to offset some of the costs that municipalities would otherwise have to pay for new development, by transferring responsibility for some new infrastructure costs to developers, s.933. If a local government has adopted a DCC bylaw, DCCs are payable by every person (subject to some limited size exemptions) who obtains approval of a subdivision or a building permit. DCCs may be used for sewage, water, drainage and highway facilities, other than off-street parking facilities, and for park land that services, directly or indirectly, the development for which the charge is being imposed. There are exceptions to when DCCs are payable. DCCs must be related to the costs of capital expenditures in the municipality's Capital Expenditure Plan. **DCCs can encourage smart growth by shifting infrastructure costs onto developers, which in turn encourages more compact development because such developments have lower infrastructure costs per unit**. DCCs in urban centres should be lower than, or comparable to, DCCs in outlying communities in order for this incentive to work.

OFFICIAL COMMUNITY PLANS

An OCP is a bylaw adopted by council that "is a general statement of the broad objectives and policies of the local government respecting the form and character of existing and proposed land use and servicing requirements in the area covered by the plan", s. 876. It sets the vision for how the community will grow. Although OCPs do not directly regulate the specifics of land development, and do not authorize capital expenditures, they are a crucial aspect of ensuring smart growth because any new zoning bylaws, capital expenditures or development permits must be consistent with the OCP.

OCPs are used by almost all municipalities in BC. Regional districts also use OCPs, and may have multiple OCPs for large geographical areas. Some municipalities also have special OCPs for specific areas of the community, such as areas in need of downtown revitalization.

An OCP *must* contain map designations and policy statements on some specific issues, such as:

- residential housing;
- commercial, industrial, institutional, agricultural, recreational and public utility land uses;
- location and area suitable for future sand and gravel extraction;
- restrictions on the use of land subject to hazardous conditions or environmentally sensitive to development;
- location and phasing of major road, sewer and water systems;
- location and type of public facilities such as school, parks and waste treatment and disposal sites;
- and policies for affordable housing, rental housing and special needs housing, s. 877.

The policy statements are not directly binding on the local government. The OCP may address optional issues such as social needs and the maintenance and enhancement of farming, s. 878 (1).

An OCP may also address issues outside its jurisdiction, such as provincial roads and transportation but only in terms of broad objectives, s. 878 (2). An OCP cannot regulate developments outside a municipality's boundaries, or on land it does not control, such as land in the Agricultural Land Reserve, First Nations land, or Crown land.

Why are OCPs important for smart growth?

As the "vision" statement for a community, the OCP provides guidance to councillors who will need to make tough decisions on individual proposed developments during their term of office. Incorporating smart growth principles and objectives into an OCP ensures that these principles will influence the decision making process. Public participation in the preparation of an OCP is critical to communicate residents' hopes for their neighbourhood to politicians. Political will to make tough choices can be built upon strong, detailed statements in the guiding plan for the community.

OCPs may also:

- designate areas in which no development may occur without the owner having applied for and obtained a development permit, s. 879, 920;
- in certain municipalities, designate areas for intensive residential development, s. 223;
- designate areas in which development approval information may be required, s. 879.1;
- designate heritage conservation areas, guidelines for issuing heritage alternation permits, and scheduling protected heritage property, part 27.[6]

ADOPTION OF AN OCP

OCPs are amended by the local government itself, or on the application of an owner of property, who is applying for rezoning approval. There are opportunities for public involvement in the preparation and amendment of the plans through a public hearing process, discussed in chapter 10, Public Participation. Local governments may waive the public hearing requirement, though this is rarely done.

Local governments must follow the procedures in the *Local Government Act* when adopting an OCP. A council must, after first and before third reading of a community plan, examine the current capital expenditure program and any waste management plan or economic strategy plan applicable to the area in terms of their effect on the community plan. If the plan contains a regional context statement for a regional growth strategy, the plan must be referred to the regional district board for comment. If the plan affects land in the agricultural land reserve, it must be referred to the Agricultural Land Commission for comment. After these steps, the council must hold a public hearing and then may adopt the plan by giving it final reading, s. 882.

Different procedures apply to OCPs in regional districts. The Minister of Municipal Affairs must approve the OCPs of regional districts, s. 883.

LEGAL EFFECT OF OCP

The legal effect of an OCP is limited, but does exist. OCPs are more of a "vision statement" than a source of binding authority for land use decisions. On a particular site, the land use or uses, density, and restrictions on building, tree cutting and vegetation retention are controlled primarily by the zoning and other bylaws and building codes and permits, rather than the OCP. However, an OCP may limit a landowner's development rights by designating development permit areas and heritage conservation areas, and by providing direction which a subdivision approving officer may take into account.[7]

The *Local Government Act*, s. 884 (2), states that all bylaws and works must be consistent with the relevant plan; however, the OCP does not commit or authorize a municipality, regional district or improvement district to proceed with any project that is specified in the plan, 884 (1).

OCPs do have legal impact because of this requirement. Smart growth advocates should work to ensure that OCPs include precise policy statements and guidelines that will have more of an impact on land use decisions. For example, if an OCP designates an area as residential, a bylaw that contemplated other incompatible uses for that area would be directly inconsistent, and could be invalid. In contrast, it would be difficult to overturn a zoning bylaw because of a general policy provision to favour compact communities.

Bylaws and works are seldom invalidated because of inconsistency with an OCP. Bylaws which vary from an OCP have been upheld by the courts.[8] The test found in the *Local Government Act* is whether the bylaw is "consistent with" the OCP. Courts have said that there must be a "direct conflict" between the OCP provision and the zoning bylaw provision before there is an inconsistency.

In practice, if a local government wants to amend a zoning bylaw that is not consistent with the OCP, both the OCP and the zoning bylaw will be amended at the same time.[9] The lack of restrictions on how often OCPs can be amended limits their usefulness for strategic long-range land use planning.

NEIGHBOURHOOD OR LOCAL PLANS

Translating the vision of a growth strategy into effective action at the local level requires OCPs and more local detailed neighbourhood plans to follow the RGS. Neighbourhood plans are not required by the *Local Government Act*, but are voluntarily initiated in some areas.

ZONING BYLAWS

Canadian law says that, with some important exceptions such as the law of nuisance, a property owner can do whatever he or she likes with his or her property unless legislation validly limits or prohibits that use. The best example of such limiting legislation is a zoning bylaw.

Zoning provides for orderly development, and coordination of municipal expenditures for infrastructure. Underlying planning laws is the principle that the interest of landowners in securing the maximum value of their land must be controlled by the community.[10]

Zoning regulates the development of property in a city, town or rural area. Zoning bylaws regulate residential, commercial, industrial and institutional use of land.

The *Local Government Act* provides local governments with broad authority to divide land into zones, and to regulate use, density, and aspects of buildings and structures within those zones. Zoning bylaws are used to regulate:

- the use of land, buildings and structures,
- the density of the use of land, buildings and structures,
- the siting, size and dimensions of
  - (i) buildings and structures, and
  - (ii) uses that are permitted on the land, and
- the location of uses on the land and within buildings and structures, s. 903 (1).

Section 903(4) of the *Local Government Act* expressly provides that the zoning authority extends to prohibiting land uses. This power means that a local government can prevent a particular use of land by including a prohibition on this use in every zoning bylaw.

Zoning bylaws can also regulate signs and prescribe minimum parking requirements.[11] The sole restriction on the zoning power relates to prohibiting farming uses. Local governments may not restrict farming by bylaw unless the Minister of Agriculture and Food approves the bylaw.

Interpreting zoning bylaws can take work. The entire bylaw should be read to determine its meaning. Zoning bylaws will often address a number of issues in different places, or even in separate bylaws, such as:

Prospect Lake/Todd Creek local plan

Translating the vision of a Regional Growth Strategy into on the ground action

In a smaller area of the municipality of Saanich, the Prospect Lake/Todd Creek local plan works to ensure that the vision contained in the Regional Growth Strategy is carried out on the ground. This local level plan identifies actions required to attain the plan's goals, who is responsible for taking the action and a time frame for implementing the action. One of the plan's goals is to protect the aquatic ecosystems of both the creek and the lake. A specific action to reach that goal is a review of all water licenses on those water bodies to be done by the municipality within a two-year time frame. If the review shows that too many water licenses are issued and not all are in use, the municipality will take action to have the inactive water licenses cancelled. In addition, it may promote the use of a stream flow protection license by a qualified NGO in the neighbourhood.

The Prospect Lake local plan addresses the needs of a rural area to protect green space and prevent large lot sprawl. Other neighbourhood plans in more urban areas concentrate on planning for growth. An example is the Arbutus area in central Vancouver where densification is slowly being carried out.

Zoning and Smart Growth

Although municipalities rate zoning as an effective tool to ensure orderly and efficient development, zoning can act as a barrier to the creation of complete communities, which are neighbourhoods where workplaces, homes, shops, and recreational opportunities exist side by side. Many of the most common components in zoning bylaws – e.g. prohibitions against multiple land uses, allowing only low-density housing and large setbacks – and other development standards imposed by municipal bylaws and policies – e.g. requiring wide paved roads – increase reliance on single occupancy vehicles, worsen air and water pollution and increase sprawl.

- permitted uses;
- permitted density of development on each parcel (e.g., the number of dwelling units allowed, the permitted square footage for buildings, maximum height and maximum lot coverage);
- off street parking requirements;
- screening requirements;
- building lines; and
- general use regulations.[12]

Density requirements in bylaws regulate the number of dwelling units that may be constructed on each parcel of land, the percentage of parcel area that may be covered by buildings, and the ratio of building area to parcel area. Very low-density requirements in rural areas guard against sprawl. For instance, portions of Galiano Island have minimum lot sizes of 50 acres, ensuring maintenance of green space, watershed protection, adequate water supplies for the island's population, and habitat protection, among other values. On the other hand, density is a component of compact communities. Density restrictions in urban and suburban areas increase pressures for outward sprawl and inhibit compact communities. A variety of density requirements can exist within an area – for example, small lot subdivisions that are approved on a site specific basis.

Procedural protections for landowners whose rights may be affected by zoning changes comes from the requirement to hold a public hearing for OCP or zoning changes. If a proposed bylaw affects an interest in property, property owners must have a reasonable opportunity to be heard by the local government, s. 855, 890.

RURAL LAND USE BYLAWS

Outside municipal boundaries, rural land use bylaws may regulate land, s. 886-889. They are a "hybrid" between an OCP and a zoning bylaw, and are adopted by Regional Boards in the same manner that OCPs and zoning bylaws are adopted in a municipality. They raise the same kind of issues for smart growth as are raised by OCPs and zoning bylaws.

DUTY OF COUNCIL TO ENFORCE BYLAWS

Enforcement is a discretionary matter. Citizens can expect that local government will enforce its bylaws, but the time, place and mode of enforcement will be left to the discretion of the council or board. Courts will generally not interfere with this type of discretionary decision.

EXCEPTIONS TO ZONING REQUIREMENTS

Often zoning bylaws are changed to allow new developments or create exemptions from zoning requirements. A smart growth advocate's work is not over when a bylaw is passed. S/he should also understand all the possible exceptions to zoning requirements.

DEVELOPMENT PERMIT VARIANCES

Landowners may apply to vary the bylaws that would otherwise apply to them by asking local government for a development variance permit. These types of permits are not restricted to "minor" variances from the bylaw requirements, and an applicant does not have to demonstrate that the bylaw would cause him or her "undue hardship", both

conditions that are required for an appeal to a Board of Variance, another procedure that can be used to change zoning requirements.

Development variance permits may vary the provisions of a rural land use bylaw, a land use bylaw, a farm area bylaw or a subdivision servicing bylaw, s. 922. They cannot be used to vary the use or density of land from that specified in the applicable bylaw, or to vary a flood plain specification.

As there are no formal public hearing requirements for granting these permits, if a local government receives and approves many development variance permit applications, the goals of an OCP may be thwarted.

NON-CONFORMING BUILDINGS

Non-conforming uses (buildings and uses that violate current zoning restrictions but that existed before a zoning bylaw was passed) impact the overall pattern of growth in a community. They can allow growth without eliminating existing housing stock.

APPEALS TO BOARDS OF VARIANCE

Because zoning bylaws impose requirements that may have a greater impact on some property owners than others, the law provides a forum for owners to seek changes to the application of zoning bylaws. The administrative tribunal established by the *Local Government Act* for this proposal is called a Board of Variance. If a local government adopts a zoning or a rural land use bylaw, it must also establish a Board of Variance. A Board of Variance can make orders relieving property owners from complying with every nuance of the zoning bylaw if they would experience "undue hardship", s. 901. Procedures to be followed by boards of variance in carrying out their duties are established by bylaw. These Boards may only order "minor" variances from bylaws. Board of Variance decisions are reviewable by the court.

Courts will not lightly interfere with findings of Boards of Variance.[13]

SUBDIVISION

Property owners must obtain the permission of an approving officer or other official before they can divide existing parcels of land into new parcels and sell them to new owners. Existing bylaws, the development goals of the community and the need for new or expanded services must be taken into account when new parcels of land are created through subdivision. Ensuring that subdivisions follow smart growth principles requires knowledge of the legal framework for subdivision and the opportunities for public involvement in that framework.

Subdivision of land is regulated by statutes: the *Local Government Act, Land Title Act* and *Strata Property Act*.

Most, but not all, subdivision applications are decided by an approving officer acting pursuant to the *Land Title Act* or the *Strata Property Act*. Therefore, the decisions of approving officers are critical. The approving officer is usually the municipal engineer, chief planning officer or other municipal employee appointed by the relevant Council. In rural areas, approving officers are usually Ministry of Transportation and Highways employees, though this function is being transferred to regional district employees in some areas.

The approving officer may reject a proposed subdivision if it fulfills one of a list of ten conditions, including that:

Density bonuses – a smart growth tool

Zoning can be used to increase the density in a particular area if a landowner agrees to provide amenities such as parkland or affordable housing, s. 904. The term "amenity" is not defined in the Act. This legal tool has been successfully used to protect green space and provide other community benefits in many areas. Smart growth advocates need to attend hearings where density bonusing is proposed to make sure that the amenities that they want are included in the density bonus bargain.

Use of density bonuses can have significant community benefits by encouraging density in appropriate locations and protecting important green space elsewhere.

- the land is subject, or could reasonably be expected to be subject, to flooding, erosion, land slip or avalanche,
- after due consideration of all available environmental impact and planning studies, the anticipated development of the subdivision would adversely affect the natural environment or the conservation of heritage property to an unacceptable level and
- "the subdivision is unsuited to the configuration of the land being subdivided or to the use intended, or makes impracticable future subdivision of the land within the proposed subdivision or of land adjacent to it", s. 86 (1) (c).

In addition, an approving officer may refuse to approve a subdivision if it:

- does not conform with all applicable municipal, regional district and improvement district bylaws regulating the subdivision of land and zonings, and
- is against the public interest.[14]

Both these requirements provide smart growth proponents with opportunities to influence the pattern of new subdivision.

In particular, the requirement for the approving officer to decide that the subdivision is in the public interest is a critical piece of subdivision law. The approving officer on all of the facts must determine whether the public interest is contravened if the subdivision is approved.

Subdivision Applications, Smart Growth and the "Public Interest"

Smart growth advocates can and should intervene in subdivision applications to argue that an application either promotes or is against the public interest.

Case law has affirmed that the term "public interest" includes aesthetic and environmental concerns.[15] When considering whether the subdivision application is in the public interest, one source of information is the OCP. In several cases, an OCP policy has been cited as the justification for refusal of an application that otherwise meets the applicable zoning regulations.[16]

A subdivision which results in higher density to prevent sprawl in an appropriate area should be supported as being in the public interest.

Subdivisions may be against the public interest, for example, if they:

- contravene long term plans for waterfront park development[17] or
- do not account for the presence or absence of trees in the subdivision area.[18]

PROCEDURE FOR SUBDIVISION APPROVAL

Though there is no legal requirement under the *Land Title Act* to hold a public hearing before subdivision approval is granted, section 86 (1) provides that the approving officer may "hear from all persons who, in his opinion, are affected by the subdivision." In some municipalities, it is common practice for the approving officer to notify and hear from residents within a specified radius from the land to be subdivided. Smart growth advocates could ask their municipality to adopt policies or bylaws regarding notice of subdivision applications to people who have expressed an interest.

An approving officer also has the discretion to require the applicant for subdivision to provide additional information such as highway profiles, environmental impact or planning studies. The discretion to order reports has been broadly interpreted by the courts. Approving officers also must refer subdivisions to other government officials under certain circumstances, such as if the land is located in a flood plain designated by the Ministry of Environment Lands and Parks.

Once the approving officer has received all of the information and reports he or she has requested, and has heard from any interested parties, the officer then approves or refuses the plan. If the plan is rejected the approving officer must notify the applicant and provide reasons for the rejection.

Cabinet may intervene in subdivision decisions. Where it appears that the deposit of the subdivision plan is against the public interest, Cabinet may order the Registrar of Land Titles not to receive the plan, whether or not approved by the approving officer, and despite the right of appeal to Supreme Court, s. 90.[19] This cabinet power is rarely, if ever, used in practice.

Courts will not lightly overturn the decision of an approving officer. The Court of Appeal of BC has said that any court reviewing the decision of an approving officer should "allow

the approving officer substantial latitude and should not be quick to find fault with his decision".[20]

Approval of sewage disposal plans is necessary before areas can be subdivided. If property is not connected to municipal sewage disposal systems subdivision cannot take place until **s**ewage disposal permits are approved. Sewage disposal permits are issued by the Environmental Health officers pursuant to the *Health Act*, and in some areas designated as Environmental Control Zones, more stringent standards apply. In some cases, citizens have opposed subdivisions by appealing the issuance of sewage permits; however, such permits can only be refused for environmental health reasons.[21]

Promoting Compact Growth Vs. Opposing All Growth

New or redevelopment that is proposed for areas where more growth is appropriate, such as in downtown industrial areas, or areas within an urban growth boundary, should be publicly supported by smart growth advocates. Too often the public opposes all new developments. For smart growth to occur, communities need to work on promoting and supporting growth in designated areas. Otherwise, sprawl will continue.

DEVELOPMENT AND TEMPORARY INDUSTRIAL AND COMMERCIAL USE PERMITS

Specific land use permits are another key set of legal tools for smart growth. Development permits in particular can be used to achieve a number of smart growth goals, such as site-specific development approval and restrictions on building on or near ecologically sensitive land.

Three different types of permits may be issued under the development part of the *Local Government Act:*

- development permits, which limit development in a designated area until the permit has been obtained;
- temporary industrial or commercial use permits, which a landowner may apply for; and
- development variance permits, which a landowner may apply for, discussed above.

DEVELOPMENT PERMITS

Areas designated as development permit areas (DPAs) cannot be altered, subdivided, or built on without a development permit (DP) from the municipality. DPAs are designated in an OCP and may be used for a number of purposes. These land use tools are important for smart growth and will be discussed in more detail in the chapters on preserving urban green space and the built environment. DPAs are like an overlay on zoning with site or area specific guidelines. They are most often used to regulate the form and character of commercial, industrial and multi-family residential development, and less often used for protection of the natural environment.[22]

Development Permit Uses

DPs are a powerful tool for smart growth. Areas where development permits are required have additional planning requirements, and for example, can be useful for:

- ensuring that infill housing is constructed in a manner that fits within existing neighbourhoods
- guiding development away from environmentally sensitive areas.

While councils do have discretion about whether to issue a development permit in a particular case, that discretion must be exercised reasonably and in accordance with the guidelines specified in an OCP (s. 920(1)). If an applicant meets the guidelines set out in the OCP for development permits, then council must approve the application. This is true even if they believe that the applicant has the intention of violating the relevant bylaws at a later date.[23] A court has the power to order a council to issue a permit upon judicial review. A council's discretion in issuing DPs is therefore quite limited.

Precise standards in DPs will be upheld more often than general statements of intent in an OCP. In the case of *Washi Beam Holdings Corp. v. West Vancouver (District)*, a developer challenged the District's refusal to grant him a development permit. The refusal did not refer directly to OCP guidelines, but more generally to issues of "views, design and access". The court examined the OCP to see what guidelines existed to support the planner's refusal and found that phrases such as "to protect the character of the municipality and to guide design of any multiple family development" and " to foster compatibility of development" were objectives, rather than guidelines. However, one statement in the OCP was considered

specific enough to justify the planners' refusal: a guideline on "considering the impact of new construction on the views from adjacent properties".[24]

Another example comes from Tofino, where the OCP identified protection of beach headlands as one policy goal, and referred to new developments being appropriately set back from beaches. Another policy goal in the OCP promoted tourism. When a community group tried to challenge a beachfront motel development as contrary to the OCP, the court ruled that the bylaw did not conflict with the OCP taken as a whole. The Plan referred to "reasonable" setbacks. The court said that it was up to council to decide how much weight to put on environmental protection as opposed to tourism and that council could decide what "reasonable" setbacks were.[25]

DEVELOPMENT APPROVAL INFORMATION

In development permit areas, developers may be required to provide more information on the likely effects of their proposals. The *Local Government Act* allows councils to ask for development approval information. Smart growth advocates may want to promote this tool, as councils and municipal staff may not yet be aware of it.

Section 920.1 (1) defines "development approval information" as "information on the anticipated impact of the proposed activity or development on the community including, without limiting this, information regarding impact on such matters as

(a) transportation patterns including traffic flow,

(b) local infrastructure,

(c) public facilities including schools and parks,

(d) community services, and

(e) the natural environment of the area affected."

This section allows the local government to require information on the potential impacts of a new project. Some municipalities have had a Social and Environmental Review Process in place for many years, which may require significant studies on the impact of new developments. Initiating this process means that impact statements become an accepted part of doing business in the municipality.

If an OCP has established development permit areas, it must then, by bylaw, establish procedures and policies on the process for requiring development approval information under this section and the substance of the information that may be required. Applicants for

(a) an amendment to a zoning bylaw,

(b) a development permit, or

(c) a temporary commercial or industrial use permit

may be asked to provide to the local government, at the applicant's expense, development approval information. Development approval information may only be required for these applicants, and is not required if the proposed activity or development is subject to an environmental assessment under the provincial *Environmental Assessment Act*. Usually, environmental assessments are only required for major industrial or infrastructure projects.[26]

TEMPORARY COMMERCIAL AND INDUSTRIAL USE PERMITS

Smart growth advocates should also be aware of temporary commercial and industrial use permits, which can be used to temporarily vary zoning bylaws to accommodate industrial or commercial uses. These permits may only be issued if the applicable OCP allows permits in that area. The permit expires after two years, and may be renewed once. Though these permits are useful for genuine temporary uses, they have been used for industrial users to get a toehold into the area. For example, a cement plant could be temporarily authorized for a construction project under this type of permit. Once the permit expires, the owner could seek re-zoning approval for permanent use and argue that the job creation and capital investments involved in the plant justified the re-zoning.

DEVELOPMENT AGREEMENTS

Developers often enter into development agreements with local governments for large new developments or re-developments.

However, when local governments make agreements with developers, they cannot give up their future ability to rezone the properties. A council cannot "tie the hands" of a future council who may decide that re-zoning is justified even if it violates a development agreement. If future land use regulatory action results in wasted costs to a developer, the municipality may be liable to reimburse those costs.[27]

OTHER GUIDELINES

Often, councils and boards adopt policy statements or guidelines to direct land use and development but do not formally adopt the guidelines as bylaws. A local government is free to disregard these policy statements. Thus, there is real value in ensuring that policies and guidelines are not only written in specific language, but that they are contained in actual bylaws – either OCPs or other specific bylaws.

An example from the Kamloops region concerns re-zoning approval for lakeside property on Paska Lake. The Thompson-Nicola Regional District approved re-zoning allowing construction of an additional 30 cabins on land owned by a resort, despite recommendations from the planning department not to approve the proposed development due to concerns about septic and overcrowding impacts on a sensitive lakeside environment, and despite the existence of policies limiting development around lakes.

Similarly, guidelines such as the Federal/Provincial *Land Development Guidelines for the Protection of Aquatic Habitat* may be ignored by local governments in land use decisions, unless these *Guidelines* have been incorporated into a bylaw.[28] However, these *Guidelines* may be persuasive in subdivision approval decisions. An approving officer may be entitled to take the *Guidelines* into account if they are relevant to issues raised by a subdivision application under the *Land Title Act*.

Smart growth proponents should work to ensure that policy documents or guidelines are adopted as bylaws so that they are binding on local governments. Policy documents must be adapted, however, so that they are clearly and precisely expressed enough to be valid as laws, not just as policy documents or guidelines.

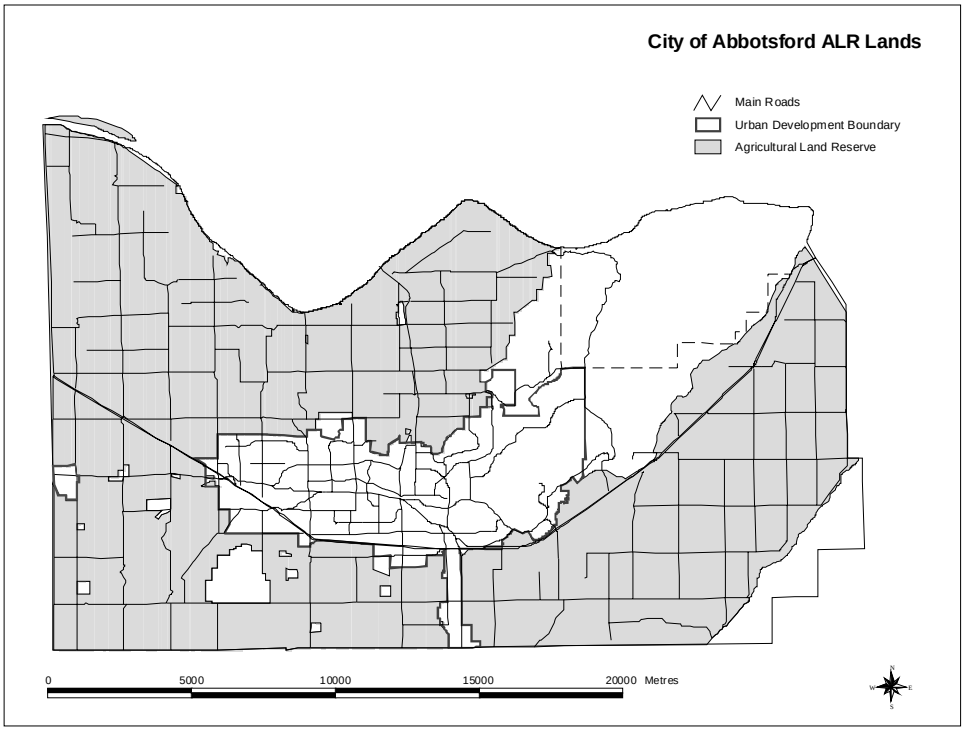
LIMITING SPRAWL

To limit urban sprawl, a number of steps can be taken.

URBAN CONTAINMENT BOUNDARIES

Urban containment or urban growth boundaries are attempts by local government to set boundaries beyond which development should not occur. The City of Nanaimo outlines an urban containment boundary in its OCP. In addition, the Nanaimo regional growth strategy also draws urban growth boundaries around each settlement in the regional district area.[29]

Legal tools designed to contain urban boundaries are: formal designations in an OCP or RGS; zoning bylaws; water or sewer servicing limits; rural land designations; and the use of the Agricultural and Forest Land Reserves.[30]



As this map of Abbotsford shows, the ALR boundary has acted as an urban boundary, avoiding sprawl into protected farm land.

Reprinted with permission from the City of Abbotsford

MAINTAINING LAND IN THE AGRICULTURAL LAND RESERVE

Since the creation of the Agricultural Land Reserve (ALR) in 1972, in many communities ALR boundaries have acted as de facto urban containment boundaries. Regional growth strategies and OCPs should leave ALR lands intact. (In practice, the ALC rarely grants applications to exempt land from the ALR – see chapter on agricultural land).

MAINTAINING LAND IN THE FOREST LAND RESERVE

Similarly, the Forest Land Reserve (FLR) can be used as an urban containment boundary. Restrictions on forest management practices in the FLR are crucial to maintaining the forest boundary. Stopping urban development at the edge of a clearcut privately managed forest is not the goal of smart growth. See the chapter on Protecting Forest Land for more information on private forest land regulations.

ALTERNATIVE DEVELOPMENT STANDARDS

Development standards are essentially the combination of zoning bylaws and requirements such as requiring hook-ups to storm sewer system for roads, prohibitions on open ditches, and minimum road widths that are imposed by approving officers and municipalities. Typical development standards often work against smart growth.

Alternative development standards (ADS) can encourage compact growth patterns that are affordable, increase density, preserve green space and support transit.[31]

Evolution of Development Standards

Conventional Ideas	Alternative Thinking	**Benefits of ADS**
Large-lot development	Compact development/ narrower lots	• More efficient infrastructure • More affordable housing • Reduced capital costs
Wide roads/no sidewalks/ cul-de-sacs Front drives	Narrower roads/sidewalks/ roads in a grid pattern Rear lanes/on-street parking	• Less dependence on cars • Traffic 'calming' • Pedestrian-friendly • Improved streetscape • Better safety
No neighbourhood shopping area	Mixed-use 'main street'	• Provision of community focus, sense of neighbourhood • Shopping, jobs close by
Lower road grades (road cuts through land)	Higher road grades (roads follow topography)	• Less disturbance to natural land forms • Reduced grading costs

Adapted from Taking Action: Growth Strategies in B.C., *November 1996, Ministry of Municipal Affairs, BC Government (http://www.marh.gov.bc.ca/GROWTH/NOV1996/alt.html)*

Some examples of ADS are:

Parking

Parking bylaws are authorized by section 906 of the *Local Government Act*. Although parking generally is to be provided on the land being developed, there is provision to provide offsite parking or money in lieu of the required off-street parking subject to certain restrictions, section 906 (2) (b). There are considerable variations in parking bylaws between municipalities. Reductions in parking requirements for transit oriented locations and townhouses, and innovations such as shared parking spaces are alternative development standards that could be implemented for more compact and less car dependent urban growth.

Grading and Drainage

Current development practice is to remove water from a site as quickly as possible through grading and drainage that diverts surface water to subsurface systems. Alternative development standards favour grading that is sensitive to existing conditions, establishes natural storm drain systems and uses surface drainage, rather than underground pipes.[32]

Setbacks and Minimum Lot Size

Many bylaws exhibit a "larger is better" philosophy, containing at least one minimum lot size requirement that would make it difficult to consolidate enough land to develop a particular type of ground oriented medium density housing in an economical manner.[33] Compact housing may face barriers due to bylaw requirements for minimum front and

rear yard setbacks. If infill developments are subject to the same setback requirements as older established homes on larger lots, infill housing is unlikely to be developed. Urban centres in other parts of Canada outside BC have lower minimum lot areas and smaller front setback requirements.[34]

Minimizing Paving

Increasingly, scientists find evidence that "pavement kills". As pavement increases, infiltration of storm water decreases, and the likelihood of damage to urban fish habitat increases. Paving is also expensive for taxpayers and local governments. Safety is also an issue. Studies demonstrate that pedestrian death rates are higher on wider roads.

The *Local Government Act* now provides that local government may limit the maximum percentage of an area of land that can be covered by impermeable material by bylaw, section 907 (2). Similarly local governments may also by bylaw require landowners who carry out construction of a paved area or roof area to manage and provide for the ongoing disposal of surface runoff and storm water.

These new bylaw powers are not well known by local government. However, some are making use of ADS which minimize pavement and road levelling in new neighbourhoods, such as the district of West Vancouver. Leaving back lanes unpaved and locating storm drainage systems above ground are other ways to minimize paving.

Street Dedications

Another area where standards could be changed is to reduce requirements for street dedications. Some examples in BC where narrower streets are being approved include West Vancouver, the Gulf Islands and the District of Highlands.[35] Roadways can be reduced from the 8.5 metre standard to 6 metres, while still allowing two lanes of traffic to move.[36]

Pre-zoned Sites for Infill Development

One method of overcoming difficulty in increasing density in already built up urban areas is to pre-zone some sites in some neighbourhoods for infill development, providing certainty for developers as well as reducing neighbourhood opposition which may arise at a late stage of a public hearing.

Utilities

Services such as sewers, power, phone, gas and cable are regulated by subdivision servicing bylaws. Modifications can be made to the location of utilities to significantly reduce the right-of-way widths required for utility location. Utility lines can be strung between poles rather than buried underground, reducing the amount of land required for a road right-of-way.

Allowing Mixed Uses

Zoning bylaws that allow for home businesses and a mix of residential, business and commercial uses that encourage walking, cycling and transit while reducing reliance on motor vehicles for commuting and shopping.

Promoting Greater Density

Zoning restrictions can work to limit the in-filling of existing suburban areas. Mandatory building setbacks from parcel boundaries (i.e. minimum front, back and side yards) and density restrictions can be relaxed to allow multiple family dwellings and secondary suites while preserving or improving the ambience of neighbourhoods. Bylaws can allow increased densities while being sensitive to a neighbourhood's desire to maintain a quiet ambience. Existing large houses can be divided into multiple units; greater reliance on on-street parking and traffic calming can slow traffic and make streets safer for children. Development permit area designations can be used to help address form and character issues involved with infill development.

Allowing Freehold Townhomes

Freehold townhomes are multifamily residences that are individually owned. Residents enjoy the benefits of home ownership and avoid the problems associated with strata corporations or other ownership in common arrangements. Development standards in place in many municipalities make this type of housing difficult to build, due to minimum lot sizes, setback requirements, and other barriers.[37]

Natural Stormwater Management – Increasing Permeability

Using surface methods, such as street-side swales and dished lanes, rather than buried storm sewers to manage stormwater, allows ground water to be recharged, reduces costs and respects natural systems. Retention swales can be used to retain excess water and nourish community gardens.[38]

Narrow but tall 8.00 metre – 26.20 foot building footprints can be used to increase the permeability of a site.

ZONING CHANGES, "DOWN-ZONING" AND COMPENSATION

Down-zoning is re-zoning land to a less dense use.[39] The question of down-zoning is important for smart growth, because many municipal councillors and municipal staff will argue that they cannot afford to restrict private property rights of land owners by changing the existing zoning because they will then be required to pay compensation. Yet this point of view is not well founded. Councils do have the discretion to change zoning without giving rise to a right of compensation for affected landowners, as long as they follow the legal rules related to zoning changes. Councils will often "up-zone" land without question, by approving new development of higher density.

However, unless they pay compensation, purchase land or expropriate, local governments cannot use bylaws to restrict the use of private land to public uses, s. 914.[40] Whether any private uses remain available to the landowner is the key factor that must be examined when looking at the issue of whether the land in question has been converted to a public use.

Legislation is presumed not to authorize the expropriation of land without compensation unless the statute clearly shows a contrary intent.[41] If the statute is clear that compensation will not be paid, that direct statement of intent will be the law.

In the case of municipal law, only when private land is converted to completely public uses will the land owner be entitled to compensation or an order quashing the re-zoning. Compensation is payable pursuant to section 324 of the *Local Government Act* which states that a municipality must compensate owners, occupiers or other persons interested in real

Alternative Development Standards – Actions for the Smart Growth Advocate

Identifying and removing the barriers to alternate development standards is a good goal for smart growth advocates. To identify the barriers, advocates should:

1. Review the OCP for their community,
2. Review the zoning bylaws for the areas they are interested in,
3. Identify areas appropriate for infill development and increased density, as well as areas that should be preserved,
4. Ask local governments to change zoning requirements to allow for infill development,
5. Examine standards for paving of roads and back alleys, and ask for change to these standards if they favour too much paving (expert assistance from biologists may be required), and
6. Engage the community in discussion of smart growth practices to ensure that when OCP or zoning bylaw changes are proposed, there is widespread community support for these initiatives.

property that have been injuriously affected by the exercise of any of the municipal powers. This municipal liability is restricted by section 914 of the *Local Government Act*. Compensation will not be payable for any reduction in value of land or for any loss or damages that result from the adoption of an OCP, a rural land use bylaw or other land use bylaw.

Courts have considered this rule in a number of cases, and have found no compensation to be payable when local governments take these actions:

- Down-zoning Uses – Mere restriction of uses will not justify quashing a bylaw. The District of North Vancouver successfully changed the zoning on land owned by the federal Canada Mortgage and Housing Corporation (CMHC) agency from "residential" to "parks, recreation and open space". The CMHC sought to quash the zoning bylaws which made these changes. As there was no evidence that the District was trying to acquire the lands or hold them pending future decisions, both the BC Supreme Court and Court of Appeal held that the bylaws were valid.[42]
- Down-zoning Density – Courts have allowed zoning bylaws to substantially change the use of land without giving rise to a right of compensation. In *MacMillan Bloedel Ltd. v. Galiano Island Trust Committee*,[43] the logging company was a large landowner of land in a forest zone, which it wanted to sell for residential uses. The local trust committee increased the minimum parcel size to 50 acres which effectively sterilized the use of the land for residential purposes. A Court of Appeal decision held that since the Trustees acted for a statutorily authorized purpose, in that case "to preserve and protect the trust area and its unique amenities and environment for the benefit of the residents of the trust area and the Province generally", there was no reason to interfere with their decision, s. 3.
- Requiring Setbacks – Current case law holds that imposing riparian setbacks, even if they substantially affect a private land owner, are valid zoning and land use bylaw purposes and will not therefore give rise to a right of compensation. The BC Supreme Court has held, for example, that a 30-metre setback requirement contained in a development permit for the purpose of fish protection did not amount to expropriation without compensation.[44] Similar cases have reached this conclusion.[45]

The "no compensation" rule does not apply where improper purposes are being pursued, for example, where the property meets all requirements, but the zoning change is nonetheless refused[46] or where down-zoning is used to reduce the compensation that a landowner would be entitled to.

WHAT YOU CAN DO

1. The first step for smart growth advocates is to obtain information about growth management, planning and zoning requirements that apply to a community. The planning department of each local government office has a wealth of information. There, the Regional Growth Strategy, Regional Context Statement, Official Community Plans, neighbourhood plans and zoning and other by-laws can be reviewed.
2. Citizens can:
   - lobby for their regional district to adopt RGS (by provincial government regulation if necessary);
   - participate in the preparation and adoption of OCPs, zoning and other bylaws;

- monitor OCP and zoning bylaws to make sure that RGS are being implemented;
- monitor trends to ensure that the goals of RGS and OCPs are being fulfilled;
- educate councillors on what they can do to promote smart growth;
- monitor and participate in zoning changes and infrastructure investments to make sure they are consistent with RGS;
- organize with others in the community to support compact communities, smart growth initiatives and other anti-sprawl activities;
- work with developers to incorporate smart growth into all developments within urban containment boundaries, and
- monitor councillor's voting on smart growth issues and mobilize the community to vote based on councillor's records.

3. Interested residents can check to see if all necessary permits have been obtained for new developments. For example, in Vancouver, these are some of the permits that are required before starting any new development:
   - development permit
   - building permit
   - excavation permit
   - temporary crossing permit
   - sewer connection permit
   - access approvals.
4. Smart growth advocates can find out if a public hearing has been scheduled for any proposed new development, or if there are other avenues available for participation. Some local governments have informal consultation processes for new development proposals.
5. Bylaw violations should be pursued with the local government employees responsible for enforcement.
6. Residents may want to become involved in an Advisory Planning Commission or Environmental Advisory Committee of local government, or consider asking the local government to establish an advisory group for a specific topic, such as stream stewardship.
7. Encourage compact growth patterns at the same time as encouraging protection of specific green space or environmentally sensitive areas.

REFERENCES AND WEBSITES

Municipal planning departments

For more information about what measures your local government may have taken on growth management, a good starting point is the municipal office. See phone numbers in Blue Pages of phone book.

Eleanor and George Gregory, *Annotated British Columbia Local Government Act* (Vancouver: Western Legal Publications)

West Coast Environmental Law at http://www.wcel.org. West Coast has an extensive information collection on land protection and smart growth, including:

Information for Conservation is an electronic collection of legal and environmental materials regarding the voluntary protection of private land in British Columbia (Revised 1996); Leaving a Living Legacy: Using Conservation Covenants in BC (January 1996); Here Today, Here Tomorrow: Legal Tools For The Voluntary Protection of Private Land in British Columbia (January 1994); Giving It Away: Tax Implications of Gifts to Protect Private Land (January 2000); Greening Your Title: A Guide to Best Practices for Conservation Covenants (December 2000).

Stewardship Centre, http://www.stewardshipcentre.org

Stewardship series available online at the stewardship centre:

Stewardship Bylaws: A Guide for Local Government

Land Protection Guidelines for the Protection of Aquatic Habitat

Stream Stewardship: A Guide for Planners and Developers

Community Greenways: Linking Communities to Country, and People to Nature

Watershed Stewardship: A Guide for Agriculture

Access Near Aquatic Areas: A Guide to Sensitive Planning, Design, and Management

Community Stewardship: A Guide to Establishing Your Own Group

Landowner Contact Guide

Stewardship Options: For Private Land Owners in British Columbia

Naturescape British Columbia Provincial Guide

The Wetlandkeepers Handbook: A practical guide to wetland care

Cheryl Webb, *Environmental Stewardship in the Local Government Act: A Synopsis of Local Governments' Powers* (Vancouver: Department of Fisheries and Oceans, 1996)

NOTES

1. Canada, *The State of Canada's Environment*, 1996 (Ottawa: Public Works and Government Services, 1996) at 12-26.
2. For a detailed description of these procedures, see *Reaching Agreement on Growth Strategies (c 1998)*, available on the Ministry's web site at http://www.marh.gov.bc.ca/GROWTH/PUBLICATIONS/index.htm.
3. BC Real Estate Development Practice Manual, (Continuing Legal Education Society, Vancouver, BC), 1985, 5.5.
4. Deborah Curran and May Leung, *Smart Growth: A Primer* (Victoria: University of Victoria, 2000).
5. *Hall v. Maple Ridge (District)* (1993) 15 MPLR (2d) 165, and *Century Holdings v. Delta* (Feb. 9,1992) BCSC Vancouver Registry A914410.
6. Also see discussion in Chapter 5, Built Environment.
7. BC Real Estate Development Practice Manual, (Continuing Legal Education Society, Vancouver, BC), 1998, 5-6.
8. See cases at Section 3.36 in Rogers Canadian Law of Planning and Zoning, 1999.

[9] BC Real Estate Development Practice Manual, (Continuing Legal Education Society, Vancouver, BC), 1998, 5-26.

[10] Rogers, *Canadian Law of Planning and Zoning* (1997) Release 4, 116.

[11] Felix Hoehn, *Municipalities and Canadian Law – Defining the Authority of Local Governments* (Saskatoon: Purich Publishing), 157.

[12] BC Real Estate Development Practice Manual, (Continuing Legal Education Society, Vancouver, BC), 1998, 5-35.

[13] *Metchosin* v. *Metchosin Board of Variance* (1993) 81 B.C.L.R. (2d) 156.

[14] Section 87 of the *Land Title Act* states that an approving officer "may" refuse to approve the plan if he or she "considers" that the subdivision does not conform to all applicable provisions of the *Local Government Act* and municipal regional district or improvement district zoning and subdivision bylaws or Island's Trust local trust committee bylaws. Section 85(3) of the *Land Title Act* says that the approving officer may refuse to approve the subdivision plan if the approving officer considers that the deposit of the plan is "against the public interest."

[15] *McFarlane v British Columbia* (Minister of Transportation and Highways) (1994) (27 MPLR) (300) (BCSC).

[16] *Cole v. Campbell River (District Approving Officer)* (1995) 27 MPLR (2d) 56 (BCCA); *Hylnsky v. West Vancouver (Approving Officer)* (1989) 37 BCLR (2d) (CA); *Wyles v. Penticton (Approving Officer)* (1995), 28 MPLR (2d) 250.

[17] *Vancouver (City) v. Simpson* (1976), 3 WWR 97 (SCC).

[18] *Larmon Developments Inc. v. Saanich (District)* (1994), BCWLD 197 (SC).

[19] This provision has never been used.

[20] *Hylnsky v. West Vancouver (Approving Officer)* (1989), 37 BCLR (CA). For additional cases appealing refusals of subdivisions see Grant Anderson, in the CLE publication noted above.

[21] Section 8(4) of the *Health Act* provides an appeal to the Environmental Appeal Board for a person "aggrieved by the issue or the refusal of a permit for a sewage disposal system."

[22] BC Ministry of Municipal Affair and Housing, *Tools of the Trade – Local Government Planning in British Columbia*, 1999.

[23] *Westfair Foods Ltd. v. Saanich (District)* (1997), 38 MPLR (2d) 202 (BCSC), appeal dismissed (1997), 46 MPLR (2d) 104 (BCCA).

[24] (1999), 2 MPLR (3d) 118 (BCSC).

[25] *Striegel v. Tofino (District)* (1994), 20 M.P.L.R. (2d) 218 (BCSC).

[26] For more information on environmental assessments, see the web site of the BC Environmental Assessment Agency at www.eao.gov.bc.ca.

[27] *Pacific National Investments Ltd. v. Victoria (City)* (1999), 1 MPLR (3d) 58 BCCA.

[28] See discussion in Chapter 4 on green space.

[29] Deborah Curran, Environmental Stewardship and Complete Communities (Victoria: University of Victoria, 1999).

[30] Deborah Curran and May Leung *Smart Growth: A Primer* (Victoria: University of Victoria, 2000).

[31] For examples of alternative development standards in use in BC, see Deborah Curran, *Environmental Stewardship and Complete Communities: A Report on Municipal Environmental Initiatives in British Columbia 1999* (Victoria: Eco-Research Chair, University of Victoria, 1999).

[32] Patrick Condon, ed., *Alternative Development Standards for Sustainable Communities* (Vancouver: UBC Press, 1999).

[33] City Spaces Consulting Ltd., *The Regulatory Environment for Ground-Oriented Medium Density Housing – Greater Vancouver* (GVRD: Vancouver, 1998), 29.

[34] City Spaces Consulting Ltd., *The Regulatory Environment for Ground-Oriented Medium Density Housing – Greater Vancouver* (GVRD: Vancouver, 1998), 29.

[35] These examples are from Calvin Sandborn, *Green Space and Growth: Conserving Natural Areas in BC Communities*, CORE, March 1996. See also Deborah Curran, *Municipal Environmental Initiatives in BC* (Victoria: University of Victoria Eco Research Chair, 2000).

[36] Patrick Condon, ed., *Alternative Development Standards for Sustainable Communities* (Vancouver: UBC Press, 1999).

[37] Michael Geller, "Taking the condo out of the box," Vancouver Sun, Oct. 22, 1999, A21.

[38] Patrick Condon and Jacqueline Teed, eds., *Alternative Development Standards for Sustainable Communities*, UBC James Taylor Chair in Landscape and Liveable Environment, 1999.

[39] *Rogers Canadian Law of Planning and Zoning* (1997 – Release 4), 138.

[40] Rogers, s. 5.22.

[41] *Her Majesty the Queen-in Right of the Province of British Columbia v. Tener*, [1985] 1 S.C.R. 533 at 559.

[42] *CMHC* v. *Corporation of District of North Vancouver*, (1998), B.C.D. Civ. 660.90.80 – 10-01, [2000] BCCA 142.

[43] *MacMillan Bloedel* v. *Galiano Island Trust Committee* (1995), 10 B.C.L.R. (3d) 121 (B.C.C.A.).

[44] *Bignell v. Municipality of District of Campbell River*, (1996), 34 M.P.L.R. (2d) 193 (B.C.S.C.).

[45] *Frobeen* v. *District of Central Saanich* (1996), 58 LCR267 (VCUCB).

[46] *First National Properties Ltd.* v. *The Corporation of the District of Highlands et al*, Victoria Registry B.C.S.C 95/1435.

CHAPTER 3

MOVING TOWARD SUSTAINABLE TRANSPORTATION

INTRODUCTION

Smart growth is intimately tied to transportation policy. Land use decisions profoundly affect transportation choices and transportation choices affect land use.

All too often, as growth occurs, low density suburban housing is developed away from business and commercial districts, only connected by a network of roads and highways. Businesses, commercial and residential areas are separated from each other, forcing people to drive between them. Children are too far away from school or play to walk or cycle and end up becoming dependent on cars. Zoning bylaws often prohibit the location of commercial services in residential areas, meaning families need to drive to buy groceries and commute to work. Minimum lot size requirements, minimum set backs, prohibitions on secondary suites also create car dependency as densities are too low to support either good public transit or stores or other businesses that rely on pedestrian customers.

Low density also tends to consign people to cars because transit cannot adequately service low density at a reasonable cost. Higher density communities ensure that there are enough residents in a given area to sustain good transit routes.

Similarly, choices concerning how transportation dollars are invested profoundly affect smart growth. Investments in road capacity tend to increase miles driven. Investment in roads encourages long commutes and therefore increases the pressure for low-density sprawl. Investments in transit encourage development along transit access corridors and more compact developments close to transit lines.

By looking at examples around the world, we can compare different models of cities and their degree of automobile use. American cities such as Los Angeles, Detroit and Houston are typical models of low density, auto dependency whereas European cities such as Vienna, Stockholm, Amsterdam and Copenhagen are models of higher density and greater transportation choice. This reflects their longer history: cities which developed in before the industrial revolution had to be designed to facilitate walking – the only mode available to all residents. City planners in Europe who now begin to appreciate the wisdom of this

Older, denser cities in North America owe their growth to the streetcar and the electric train. Cities such as Boston, New York and San Francisco still have very high transit usage. Within North America, Toronto and Vancouver are often viewed as model cities by Americans because of their relatively high density and transit usage. However, the outlying suburbs of Toronto and Vancouver are sprawling and growing rapidly. Some BC communities highlight typical examples of sprawl: Kelowna (above) has almost twice as much space devoted to roads per household as Vancouver.

approach are rebuilding city centres to promote pedestrian access and control the impact of cars. Older, denser cities in North America owe their growth to the streetcar and the electric train. Cities such as Boston, New York and San Francisco still have very high transit usage. Within North America, Toronto and Vancouver are often viewed as model cities by Americans because of their relatively high density and transit usage. However, the outlying suburbs of Toronto and Vancouver are sprawling and growing rapidly. Some BC communities highlight typical examples of sprawl: Kelowna has almost twice as much space devoted to roads per household as Vancouver.[1]

Dependence on the automobile is inimical to many smart growth goals. As well as facilitating sprawl, car dependence consumes land. Walking-oriented cities typically devote less than 10 per cent of land to transportation, while automobile-oriented cities devote up to 30 per cent for roads, and another 20 per cent or more to off-street parking.[2] Over dependence on the car carries a commercial cost, as congestion increases expenses for businesses shipping goods on roads. Reducing vehicle use has a number of intangible benefits: more people-friendly cities and a greater sense of community as streets become safer and calmer places for pedestrians, cyclists, and children. It leads to less air pollution, fewer traffic accidents, less land devalued by adjacent traffic, reduced noise pollution and vibration, and less water pollution from road run-off.

To develop smart transportation systems, there needs to be an integration of land use and transportation planning. Over time the goal should be to develop compact mixed use communities where transit is profitable and convenience levels exceed that of the single occupancy car. At 30 people per hectare densities or less, bus systems are rarely economic while at 40 people per hectare they become economically sustainable and at 60 become completely self-sustaining.[3]

What does this mean in practice? Some of the most highly prized neighbourhoods in British Columbia have the densities that make transit work. Areas of Vancouver's Kitsilano neighbourhood have densities of over 80 people per hectare. The average lot size – 371 square metres – is relatively small, but ensures a traditional residential ambience. Streets are in a grid pattern, allowing pedestrians and cyclists to use pleasant, low traffic side streets. Parking is on street. The average walking time to commercial nodes is two minutes.

In comparison, the Fraser Heights neighbourhood in Surrey has a density of under thirty people per hectare. The average lot size – 665 square meters – is large. Houses are built on cul-de-sacs, and parking is off street. Anyone wanting to walk or cycle is required to use arterial streets with heavy traffic. The average walking time to commercial nodes is twelve minutes.[4] Not surprisingly, people in high-density areas like Kitsilano drive one-third as much as people in low-density districts, and as many as one-third of households do not own a car at all.[5]

Smart transportation systems and complete communities are also linked with the other environmental or social goals such as protecting neighbourhoods, improved air and water quality, protection of fish habitat and reduced greenhouse gas emissions.

An indicator of the link between smart growth and air quality is the level of gasoline consumption in different cities. Per capita gasoline consumption in the European cities is a quarter to a fifth of the North American Cities. Torontonians burn less than half as much gas per person as residents of Houston. Gasoline consumption is directly linked to greenhouse gas emissions, and reducing vehicle miles travelled is a key to reducing air pollution from cars. In Greater Vancouver, 81.5% of carbon monoxide, 32.9% of volatile organic compounds, and 35.7% of nitrogen oxide emissions comes from light duty cars

and trucks. In the atmosphere, these emissions form fine particles.[6] The resulting toxic soup has a direct impact on health: an estimated 16,000 Canadians per year die prematurely due to air pollution.[7]

Improved transportation and land use also helps protect fish habitat and water quality. Road run off is one of the greatest threats to water quality in BC. Traditional neighbourhood developments that are designed to protect the ecological infrastructure have a quarter as much pavement per dwelling unit as suburban sprawl developments.[8] This means less land is covered by impermeable surfaces with the resulting negative impacts on stream flows.

OUTLINE OF CHAPTER

Responsibilities for transportation services in BC are highly divided, with virtually all levels of government having a part to play in planning for and implementing smart growth transportation strategies. Smart growth advocates will need to have at least a rudimentary understanding of these responsibilities to be effective in advocating smart growth strategies.

Most of this chapter is devoted to a description of the different agencies and government bodies involved in transportation. The chapter begins at the local level, describing what municipalities can do to further smart growth transportation options through their control over municipal roads and parking management. Municipalities also play a key role in relation to transit. The next section discusses the responsibilities for delivery of transit services by BC Transit, municipalities and regional transit commissions. The chapter then discusses the role of regional districts in transportation planning. A separate section describes the powers and responsibilities of TransLink – also known as the Greater Vancouver Transportation Authority – a new regional entity that has considerable power over the Greater Vancouver's regional transportation system, including both transit, roads and transportation demand management. The chapter then looks at the role of the provincial government in transportation planning, in particular the Ministry of Highways and Transportation and environmental assessment.

The chapter continues with a discussion of integrated transportation planning. Given the integral connection between transportation and land use patterns and smart growth concerns, and given the division of responsibilities relevant to transportation and land use, it is essential for government agencies to co-ordinate transportation planning and to integrate such planning with land use plans and air quality plans. While integrated planning is essential in British Columbia, there are too many examples of integrated plans being developed but not implemented. The end of this chapter is devoted to description of the importance of integrated transportation planning and steps smart growth advocates can take to ensure actual implementation.

MUNICIPALITIES AND SMART GROWTH TRANSPORTATION OPTIONS

WHAT MUNICIPALITIES CAN DO

The role of municipalities in moving toward smart growth transportation is crucial. While municipalities do not have direct responsibility for major highways and do not have full responsibility for transit, there are a number of steps they can take. They are also the level of government that is most easily swayed by citizen action. Smart growth advocates have opportunities to identify specific measures that are essential for smart growth and to promote them with their local council.

MUNICIPAL TRANSPORTATION PLANNING

Many municipalities have adopted transportation plans with targets, clear policies, and time-lines for implementation of capital expenditures.[9] Transportation plans can force integration of municipal thinking on divergent issues, provide guidance to future councils, and provide smart growth advocates with a yardstick by which to measure municipalities' progress. On the other hand, transportation plans will not carry any legal weight unless incorporated into official community plans, and will be subject to unilateral changes unless incorporated into regional growth strategies. More specific plans with timetables for implementing measurable policies are best.

MUNICIPAL ROADS

Municipal roads – essentially all roads that are not designated as arterial highways – are the responsibility of municipalities, and municipalities have full authority to implement a number of important measures.[10] In Greater Vancouver, some municipal roads are designated as the Major Road Network (MRN). The purpose of the MRN is to facilitate regional mobility and therefore the municipalities, while retaining ownership of the road acknowledge a wider, regional interest in their function and operations. The role of TransLink, Greater Vancouver's regional transportation authority, in setting standards for and funding the MRN is discussed in the following sections.

- **Implement Traffic Calming.** Slower speeds on local streets, texturized road surfaces, traffic circles and diverters can all slow the speed of traffic on local and neighbourhood streets and ensure that cars keep to major thoroughfares. This can make cycling and walking more attractive, as well as adding to community safety and provide a higher quality environment for businesses. Traffic calming is most effective when part of a comprehensive area wide process, with extensive public involvement. This process reduces the fear of diverted traffic in neighbouring areas.
- **Implement Transit Priority Measures.** A number of measures can be taken to increase the efficiency of transit and its competitiveness to the car. Bus bulges (curb extensions from the sidewalk) allow buses to stop, load and unload without having to exit and re-enter the main flow of traffic. Buses and traffic lights can be linked by computer and radio, extending the green phase of traffic lights to minimize delay. Queue jumpers that can be built allowing buses to avoid congestion. Less has been done for bus priority in Greater Vancouver than most comparable cities.
- **HOV Lanes.** Dedicating existing lanes on municipal roads to buses and high occupancy vehicles can encourage increased carpooling and transit use by allowing these vehicles to avoid congestion. Dedication is politically easiest when congestion is limited, but will become more difficult as car users demand the space. Creating new highway space for buses and high occupancy vehicles is more problematic. On the one hand, adding an HOV lane allows for an increase in capacity that decreases congestion, but as road capacity increases, so will the number of cars. On the other hand, HOV lanes can provide an incentive to carpooling or bussing. For this to be the case, occupancy requirements need to be sufficiently stringent so there is a significant time saving from car-pooling and taking transit.

In Greater Vancouver, municipalities may or may not be able to implement the above steps on roads that are designated as part of the MRN. Standards set by TransLink (usually with the advice of the Major Roads Technical Advisory Committee) for MRN roads govern what municipalities can do. The legislation creating TransLink forbids municipalities, without

the approval of TransLink, from doing anything that reduces the people carrying capacity of roads in the MRN. It should be noted that this is not the same as the vehicle carrying capacity and may actually encourage transit priority in the longer term. So far, TransLink has focused on better traffic management techniques to reduce congestion, such as improved signal co-ordination.

TRIP REDUCTION SERVICES AND TRANSPORTATION DEMAND MANAGEMENT

Outside of Greater Vancouver, where TransLink has responsibility to implement trip reduction services (van-pooling, ride-matching and employer-based car-pooling), there is no authority with clear responsibility for delivering trip reduction services. However, in areas where commuting and personal business is predominantly within a municipality, municipalities are well suited to offering trip reduction services. Thus, Kelowna, Kamloops and Whistler have trip reduction services. Municipalities also have an obvious role in transportation demand management by allowing mixed uses and promoting communities in where work and shopping are accessible by foot. For transportation demand management to proceed, however, smart growth advocates need to voice their support for transportation demand management.

TRANSIT

Municipalities have key roles in relation to the provision of transit. These include:

- **Transit Priority Measures.** See previous page.
- **Road-side transit infrastructure.** Municipalities are responsible for maintaining all transit facilities such as bus stops, exchanges, shelters and benches. Improvements to these facilities can increase the attractiveness and accessibility of transit.
- **Transit Services.** Outside of Greater Vancouver and Victoria, transit services in B.C. are provided under agreements between local government, British Columbia Transit and, in most cases, private operating companies. Responsibilities for transit are described below at page 57.

PARKING MANAGEMENT

Municipalities control the supply of parking spaces. Most zoning bylaws mandate minimum free parking requirements for new homes and businesses. Cities control the price and amount of on-street parking. The provision of free parking at businesses, shopping centres, and housing developments encourages single occupancy vehicle use. But free parking comes at a price. Businesses that are required to spend money on developing "free" parking have costs that are reflected in the prices of goods and services. Parking with housing developments adds to the cost of homes. Portland, Oregon, recently eliminated requirements for parking in a low-income housing development, shaving $10,000 (US) off the cost of each apartment.[11] There are a number of steps municipalities, employers and senior levels of government can take to take into account the true costs of parking spaces and reduce car use.

Free parking comes at a price. Businesses that are required to spend money on developing "free" parking have costs that are reflected in the prices of goods and services.

- **Eliminate Parking Requirements in Zoning Bylaws.** The rationale for mandatory provision of free off-street parking is to avoid shoppers and employees parking in residential areas, but passing and enforcing residents' only on-street parking would be cheaper than the costs of providing free parking.[12] Moreover, increases in on-street parking have the benefit of slowing traffic on quiet residential streets: reducing the number of cars cutting through neighbourhoods.

- **Provide Developers with Alternatives to Free Parking.** Where municipalities are unwilling to deregulate parking, they could give developers increased options. For instance, developers could be given the option of providing improved bicycle infrastructure and carpooling as alternatives to off-street parking requirements.
- **Limit Parking Supply.** Municipalities can encourage alternative modes of transportation by limiting parking supply. Limiting the amount of land zoned for parking and limiting on-street parking through time restrictions and residents' only parking can be used to encourage alternatives.
- **Charge More for Parking.** Municipalities can increase charges for on-street parking, increase the number of hours that parking charges are in effect. Different rates can change parking from long term (commuter) parking into short stay shopper and visitor parking. This can dramatically improve the commercial activity of an area and businesses on busy streets are beginning to promote the use of meters in shopping areas to promote business activity.

DEVELOPMENT APPROVAL INFORMATION REQUIREMENTS AND OCP POLICIES

OCPs can contain a number of policies and objectives related to transportation. These can include policies of priority for transit, pedestrian and bikes, and policies of investing in pedestrian, cycling and transit infrastructure. As discussed in Chapter 2, most OCP policies are not legally binding and do not commit municipalities to capital expenditures. However, bylaws and capital expenditures cannot directly conflict with OCP requirements, and municipal councils may be reluctant to take actions that are opposed to OCP polices.

As noted in Chapter 2, OCPs can designate circumstances in which applicants for re-zoning or development permits can be required to provide information on the impact of their proposed development on transportation patterns including traffic flow. Such information can guide decisions to re-zone.

Smart growth advocates can lobby for explicit policies that will favour smart growth transportation options. For instance, policies against re-zoning land to allow stores with large floor space will help guard against developments that are dependent on drive-in customers. Similarly, OCPs can state that re-zoning applications will be denied where development approval information indicates that the development will increase reliance on single occupancy motor vehicles. If written with sufficient clarity and precision, these policies may have some legal impact (see Chapter 2).

PUBLIC INPUT INTO MUNICIPAL TRANSPORTATION DECISIONS

Public means of participating in municipal decisions regarding transportation will vary according to the type of decision. Capital expenditures, adoptions of policies and OCP provisions all have different processes associated with them. See Chapter 2.

Mechanisms for public input into municipal transit decisions vary. Some municipalities have advisory committees with members of the public; others simply rely on council or committees of the municipal council. In all cases, the municipal council is the ultimate decision-maker in relation to fares and routes (although BC Transit has ultimate authority over budgets). Citizens can lobby councillors, write to the mayor and council or make presentations to council.

LOCAL GOVERNMENT, BC TRANSIT AND SMART GROWTH TRANSPORTATION OPTIONS

Outside of Greater Vancouver and Victoria, transit services in BC are provided under agreements between local government, British Columbia Transit and, in most cases, private operating companies. Municipalities and regional districts are the decision-makers in relation to routes and fares and advise BC Transit on budget issues. BC Transit provides professional advice and has ultimate authority for setting capital and operating budgets of municipal and regional transit systems. It is responsible for ensuring that operating agreements are consistent with approved budgets and BC Transit policy. Funding is a shared responsibility of BC Transit and the local government operating a system.[13]

Ensuring an effective transit system can reduce municipal taxes. Because BC Transit makes a fixed contribution to gross transit expenses, any increases in revenue translates into a reduction in municipal property or gasoline taxes.[14]

In addition, under BC Transit policy, municipalities or regional districts that support transit through land use development policies, parking policies and/or transportation demand management will receive priority in terms of increased budgets for expansion from BC Transit.[15] So far (at time of print), this policy has not been particularly relevant, because municipal willingness to pay rather than BC Transit's budget has been the primary constraint on transit expansion outside Greater Victoria and Vancouver. However, if BC Transit's budget becomes more limited in the future, this policy will become important. Smart growth advocates may need to lobby Transit to maintain the policy and define criteria for what constitutes sufficient support.

If a municipality or regional district does not have transit, it can formally request a feasibility study that will be cost shared with BC Transit. This plan will look at general options for transit, and forms the starting point for more detailed implementation plans. Municipalities and regional districts can also establish municipal transit systems that are independent of BC Transit, s. 595, 798. Such systems are rare, however, as they do not receive any provincial subsidy. Finally, for areas where neither a single municipality nor regional district is the logical provider of transit services, transit commissions can be created to provide this service.

GREATER VICTORIA TRANSIT COMMISSION

In Greater Victoria, the Greater Victoria Regional Transit Commission provides transit services in much the same way as local governments do in smaller centres. The Commission is made up of local politicians, and has the same responsibilities as local governments in relation to municipal or regional district operated transit systems.

The Transit Commission has formal hearings in relation to fare increases, and, occasionally, routing disputes. Citizens can find out the local politicians that make transit decisions and can lobby them directly. They can also request to be heard by the Commission.

REGIONAL DISTRICTS AND SMART GROWTH TRANSPORTATION OPTIONS

Regional Districts' primary powers and responsibilities in relation to transportation are facilitating and planning. In relation to planning, to the extent it is a regional issue, a RGS must include actions proposed to provide for the transportation needs of projected populations, s. 850. Although the legal enforceability of RGS is open to question, the *Local Government Act* provides clear direction on the general aims of RGS in relation to transportation. To the extent that they deal with the following matters, RGS are to work towards settlement patterns that minimize use of automobiles and encourage walking,

bicycling and the efficient use of public transit; the efficient movement of goods; reducing and preventing air pollution, s. 849.

The process for development of, and citizen involvement in, RGS has been discussed above in Chapter 2, but a few aspects of regional growth strategies should be repeated in relation to transportation:

- **Regional Transportation Plans need to be translated into OCPs.** Because Regional Districts do not have responsibilities in the provision of transportation infrastructure (transit or roads), RGS will only have their primary legal effect through translation into OCPs. Regional context statements should ensure that local OCPs will be brought into line with regional plans.
- **RGS are not binding on BC Transit or the Ministry of Transportation and Highways.** However, the Province and provincial agencies are empowered to enter into implementation agreements to take actions necessary to implement regional growth strategies. While it is uncertain whether or not such agreements are legally binding, implementation agreements provide a greater level of provincial agency "buy-in" to regional plans. Smart growth advocates should ensure that implementation agreements are in place and seek agreement terms that are specific and convey an intent to be legally bound.[16]

TRANSLINK AND SMART GROWTH TRANSPORTATION OPTIONS

In April 1999, the Province created the Greater Vancouver Transportation Authority, better known as TransLink. By law, TransLink's purpose is to provide a transportation system that moves people and goods, supports the Liveable Regions Strategy and future regional growth strategies, air quality objectives and economic development of the region, s. 3.

TRANSLINK RESPONSIBILITIES

TransLink has varying responsibilities for a number of components of the regional transportation system. These include:

TRANSIT

- **Bus System**. Buses in the Greater Vancouver, including SeaBus are operated by the TransLink subsidiary, Coast Mountain Bus Company, Ltd. The West Vancouver bus system, handyDART (the custom transit system for people with disabilities) and Bowen Island bus system are operated under separate contracts to TransLink.
- **West Coast Express and Skytrain.** Skytrain and West Coast Express – the commuter rail service linking Vancouver with the Fraser Valley – are both operated by TransLink subsidiaries.

MAJOR ROAD NETWORK

- **Major Road Network**. A network of roads and ferries throughout the region is supported by TransLink. Although municipalities – not TransLink – own and operate the major roads, through funding arrangements, TransLink has significant input to the management of these roads. TransLink has established standards for the management of the roads, and financial support to municipalities for road maintenance is contingent on these standards being met, s. 19. These standards can deal with issues such as establishment of high occupancy vehicle lanes, transit priority measures, parking and bicycle facilities. The MRN includes most of the major roads

in the region, but excludes major provincial highways such as the Highways 1, 99 and 91.[17] Because TransLink's board is made up of municipal politicians who are sympathetic to municipalities' desire for autonomy, in practice, the operation of the MRN is largely controlled by municipalities, and TransLink plays a co-ordination role through the Major Roads Technical Advisory Committee. Nonetheless, TransLink has the power to use its control over funding to encourage adoption of transit priority measures or HOV lanes against the objections of a municipality.

- **Regional Bicycle Services.** As well as plans to improve bike facilities on transit, TransLink has the power to develop a regional Cycling Policy. Although TransLink can fund bike lanes and facilities on the MRN, TransLink bridges and along Skytrain routes, provision of most bike routes remains a municipal responsibility. TransLink can facilitate co-operation between municipalities in planning bike routes.

TRANSPORTATION DEMAND MANAGEMENT

- **Trip Reduction Services**. TransLink has a responsibility to implement transportation demand management services. These services include vanpooling and carpooling programs and Trip Reduction Services for major employers and institutions.
- **Parking Taxes**. TransLink can impose taxes on non-residential parking in Greater Vancouver, s. 30. Parking taxes can be higher for areas such as downtown Vancouver, well serviced by transit. This is a key tool in parking management, but should be co-ordinated in a Regional Parking Strategy for maximum effectiveness.
- **Road Charges and Fees**. TransLink can impose tolls associated with a specific improvement to the road network, s. 29 (1). Unfortunately, this does not allow for the charging of tolls in any systematic way that would be most effective in managing transportation demand or to pay for other aspects of the transportation system (e.g. buses). TransLink has requested that they be given this power from the Province.
- **Vehicle Charges.** Starting in October 2001, TransLink is allowed to impose charges on vehicles used principally in Greater Vancouver.[18] Fees can be higher for different classes of vehicles (e.g. more polluting vehicles) or vehicles used in different areas of the region.

In Stockholm, Sweden, Ikea operates its own bus service for customers, reducing the amount of vehicle traffic and parking around its store.

AIRCARE

- **AirCare.** Although the TransLink has responsibility for operating the AirCare inspection and maintenance program in Greater Vancouver, the Province retains authority for setting the regulations that determine AirCare's effectiveness, s. 50.

In addition to operating revenues and the funding sources noted above, TransLink has stable funding through provision of dedicated (provincially collected) fuel tax, property taxes and BC Hydro levies.

STRATEGIC PLAN

TransLink completed its first strategic plan in April 2000. Legislation requires TransLink strategic plans to set out long term action plan, a financial plan and a capital plan. It must also set the relation between the plan and the Liveable Region Strategy. Once adopted by TransLink and the GVRD, TransLink is to carry out its policies and services in a manner consistent with the plan. The plan must be updated every five years to reflect revisions to the Liveable Region Strategy, s. 14.

As discussed further below (see *Integration*, on page 63), the current Strategic Transportation Plan falls far short of what is necessary to meet the land use goals of the Liveable Region Strategy. There has been significant slippage in the implementation of measures such as tolling, transit priority, and parking management. This is partly due to failed implementation prior to the creation of TransLink, but there is likely to be continued resistance from residents of the region to essential measures such as vehicle charges or tolls. Indeed, as this book goes to press, a TransLink vehicle levy is facing heavy opposition from residents in some outlying municipalities. Smart growth advocates within the GVRD will need to improve understanding of local politicians and the public regarding the need for these measures. They will need to monitor actual implementation of transportation measures and compare this to what is needed to actually meet land use and other goals. For hotly contested measures such as vehicle levies, smart growth advocates will need to be politically mobilized: countering misinformation, undertaking letter writing and media campaigns, and getting supporters of smart growth to advocate at council meetings and in their neighbourhood.

AREA TRANSIT PLANS

One component of TransLink Planning is the development of Area Transit Plans which identify 1-6 year priorities for improving local transit service in GVRD municipalities. Transit planning is conducted at the community level for various local districts, with considerable input from both municipal officials and the public. The Plans focus on both local service improvements within the local areas and enhanced connecting services to adjacent parts of the region. All seven-area plans are to be completed by Spring 2001. It is intended that each of the Transit Area Plans will be updated every three years.

VENUES FOR INFLUENCING TRANSLINK

There are a number of formal and informal venues by which the public can influence TransLink decisions. Involvement in both is important, as there is often resistance to smart growth measures. Smart growth advocates must make their voices heard – sending a clear message to decision-makers while at the same time educating the opposition to understand the importance of smart growth. Formal venues include:

- **Mandatory Consultations.** TransLink is required to consult with the public, organizations that it considers will be affected, local governments and the Province before finalizing any strategic plan, imposing tolls, motor vehicle fees, user fees, and parking taxes. Beyond this, TransLink's governing legislation sets few minimum requirements for consultation. TransLink is required to develop consultation plans for all the affected parties, but failures to abide by the Consultation Plan are not fatal as long as reasonable attempts have been made to consult, s. 15.
- **Delegations to the Board.** The TransLink Board is also committed to receiving public delegations wanting to speak on matters of policy, planning, revenue or capital projects. Individuals wanting to appear as delegations must register at least nine working days before the next Committee of the Whole meeting.
- **TransLink Public Advisory Committee.** TransLink also has a public advisory committee that provides input into major decisions and includes representatives of a number of interest groups.
- **Area Transit Plan Consultations.** A number of processes exist for getting public input into area transit plans. Public Advisory Committees (PAC), made up of six to ten

community representatives and transit users selected by local municipal councils, provide consultants, TransLink planners and municipal staff with advice and feedback on the development of underlying principles and desired outcomes for the plan, strategies for soliciting public input and concepts for improving service. Open houses, public forums and workshops are held as plans are developed. The TransLink website provides details on times and locations of these public events as they are confirmed. The public can also provide comments using TransLink's electronic comment service, available on their website.

Informal venues are equally important, and may be even more important on high profile issues. Lobbying municipal politicians, letter-writing campaigns, media campaigns are all essential strategies. These strategies are described further in Chapter 10.

BC TRANSPORTATION FINANCING AUTHORITY, BC MINISTRY OF TRANSPORTATION AND HIGHWAYS AND SMART GROWTH TRANSPORTATION OPTIONS

Highway planning and funding in BC is a joint responsibility of the BC Transportation Financing Authority (the TFA) and the BC Ministry of Highways and Transportation (MOTH). While the MOTH and the TFA are separate legal entities, their functions are closely connected. Indeed, the TFA is a Crown Corporation responsible to the Minister of Highways and Transportation. Identification of congestion problems, safety problems and means to alleviate typically starts within the MOTH. However, all capital investment decisions related to highways – new interchanges, new lanes, re-paving, expanded bridges – are the responsibility of the TFA.

Together these agencies have a number of responsibilities and powers:

- **Province Wide Transportation Planning.** Together MOTH and TFA are responsible for developing and maintaining a long-term, province-wide, multi-modal transportation strategy, and co-ordinating subsequent planning to ensure that it supports and is supported by regional and local land use plans. Although the TFA has expressed the importance of integrating land use and transportation planning, the importance of reducing demands on tax dollars and the importance of shifting away from reliance on single occupancy vehicles, its record on well planned infrastructure is weak. The 1995 province wide plan – *Going Places* – contains no analysis of options.
- **Regional Planning.** Subsequent to *Going Places*, regional plans have been developed for the Okanagan and Greater Vancouver, identifying specific priorities on provincial highways. These plans and the background studies are especially important from a smart growth aspect as they evaluate and provide direction on specific investments that could work for or against smart growth goals.
- **Corridor Planning.** Often in conjunction with regional plans, MOTH and TFA develop corridor plans for highways that cut through a number of regions. For instance, a corridor plan might extend along the TransCanada Highway from Cache Creek to the Rockies, cutting through a number of regions and municipalities along the way.
- **Funding.** As noted above, the TFA has ultimate control over capital expenditures related to highways. Financing of transportation infrastructure includes direct financing, cost sharing agreements – for instance, the Cycling Network Program gives conditional grants to municipalities for the provision of cycling infrastructure – and private-public partnerships under which parties interested in transportation infrastructure investments (e.g. land developers or resource companies) pay a portion

of costs. When deciding on a particular capital investment project, the TFA also decides whether it, MOTH, or an agency such as a municipal government, is best suited to implementing the project. Thus responsibility for public consultation and contract administration can shift from project to project.

- **Highway Regulation.** MOTH has regulatory authority over highways. Speed limits, establishment of transit priority or HOV lanes, and setting HOV occupancy requirements are the responsibility of the MOTH.
- **Tolls.** Subject to provincial government approval, the TFA has the power to impose tolls on highways or bridges owned by it. Since the TFA generally only owns transportation improvements that it has financed, this limits the potential for system tolling. Furthermore, under TFA policy, tolls will only be charged where and when free alternative routes are available.

PUBLIC INVOLVEMENT

There are no legal requirements for public involvement in MOTH and TFA planning and decision-making. However, *Going Places* includes commitments to increased public consultation during the development of plans and increased public scrutiny of plans and proposals.

In developing corridor or regional plans for areas that have regional growth strategies, the agencies rely largely on the regional growth strategy processes. Consultation occurs with regional and municipal governments, but direct public consultation is often limited to the design details of a specific project.

Where regions have not yet articulated a regional transportation vision, the TFA appointed agency for delivering a project will engage in greater public consultation. For instance, at the beginning of the Vancouver Island Highway Project, MOTH – the agency that the TFA designated as responsible for delivering the project – held open houses regarding phasing and issues associated with urban growth management. Because these processes are not tied in with land use, economic and other aspects of regional planning, participants may not always fully grasp the implications of a particular project. Moreover, open houses do not provide a forum where those questioning a provincial policy decision – e.g. expansion of the Island Highway – can share their concerns with other members of the public.

In the absence of any officially sanctioned regional transportation vision, smart growth advocates may want to articulate their own vision. The more buy-in such a vision has from community groups and municipal politicians, the less chance it will be ignored when MOTH or TFA develop highway plans for a region. It can serve as pre-emptive signal that there is support for smart growth options and that there may be widespread opposition to certain types of project. Once project planning is underway, it will be more difficult to fundamentally alter TFA or MOTH strategies.

ENVIRONMENTAL ASSESSMENT AND TRANSPORTATION

Occasionally, transportation projects will trigger environmental assessments. The BC *Environmental Assessment Act*[19] applies to a number of transportation projects including major construction or major expansion public roads, ferry terminals and airports. Unfortunately, the thresholds for triggering environmental assessment of projects are high – highway expansions must exceed twenty contiguous kilometres and involve two lanes. As a result, there have been no provincial assessments of transportation projects since the *Act* came into force in 1995.

Federal environmental assessments of transportation projects may be triggered by a number of mechanisms. In particular, projects involving alteration of fish habitat or bridges over navigable waters are likely to trigger federal environmental assessments.[20] Even though a single bridge may be the trigger for a project, the federal government has the discretion to consider all the impacts of related works.[21] Smart growth advocates interested in ascertaining whether a project may trigger environmental assessment should contact an environmental lawyer; West Coast Environmental Law Association offers free summary advice on issues such as application of federal environmental assessment.

INTEGRATING TRANSPORTATION PLANNING

The key to sustainable transportation is the implementation of well thought out plans that are integrated with land use, air quality and other goals (e.g. liveable communities, reducing greenhouse gas emissions, maintaining green space and maintaining neighbourhoods). There are two aspects to this. First, plans must be integrated. Transit planning, bike planning, road planning and parking policies need to be integrated, and comprehensive transportation plans need to be linked to land use measures such as mixed use zones and more compact communities. Second, plans must be adopted.

INTEGRATION

Transportation infrastructure development and land use must be guided by a plan that considers long term goals and benefits for the region and long term costs of different transportation and land use choices. Alternative transportation programs and projects – including transportation demand management – should be allowed to compete equally with roadway improvements on the basis of total costs. Environmental impacts of both proposed projects and their alternatives need to be considered. Bicycle and pedestrian facilities should be considered and included in all new transportation infrastructure. The box on page 65 describes US requirements for integrated transportation planning.

British Columbia has a mixed record in regard to smart growth transportation planning. On the positive side, the City of Vancouver's decision in the late 1960s to not build freeways helped Vancouver achieve some smart growth goals. Moreover, considerable public money has been spent on transit.

However, we also have a record of directing money to large projects, which, even if they are transit investments, are not part of integrated transportation plans. Smart growth advocates will need to carefully consider the contents of plans to decide whether they are in the best interest of smart growth.

Transit expenditures all too often focus on politically attractive investments with low "bang for the buck". For instance, large sums of money have been invested in Greater Vancouver's rapid transit and commuter train services. The high costs per passenger kilometre of these systems can mean less money for more cost-effective solutions such as buses.[22] This may explain why, despite investing large amounts in transit, Greater Vancouver stands out as having less transit and less transit usage. The supply of transit per capita – measured as daily seat-km per person – is 55% of Toronto's and the lowest in the country. Annual transit ridership by Greater Vancouverites is 41% of Montrealers' usage.[23]

Thus, smart growth advocates need to consider whether investments are a wise use of money and whether the expenditure will take away from more effective transit investments. Points to consider in evaluating transportation investments include:

- Does the investment reinforce smart growth land use plans? Does it encourage density in areas that have been identified for density, or does it encourage sprawl?
- Is the investment located where it is needed the most – linking areas of high density and poor service?
- Have government agencies completed the ridership studies necessary to evaluate the financial implications of a project? Will expected changes in land use make the project financially viable over a longer term?
- What are the implications of the investment on other transportation investments? Who is paying for a project? Will capital and operating costs mean less service or less investment elsewhere?
- Is the investment integrated with other modes so that it is a viable option to get people out of their car?
- What are the implications of a project for the immediate neighbourhood. Some projects – e.g. street level rapid transit – can enhance neighbourhoods. Others – e.g. freeways or elevated rapid transit – can bisect neighbourhoods.
- What are the politically viable options?
- What are the implications of the project on environmental quality (air emissions, greenhouse gases and land use) over the short and long term? While a project may be expensive in the short term can it have impacts on land use that last for centuries?

IMPLEMENTATION

Where integrated plans are developed, smart growth advocates will need to ensure they are honoured. The BC record on implementing plans is poor. For instance, in 1993, the Province and Greater Vancouver Regional District co-operated in developing Transport 2021[24] – a medium and long range transportation plan that was later incorporated Liveable Regions Strategy. The investments in transit infrastructure necessary to meet the Plan are not occurring. Although an estimated 950 new buses are necessary to meet Transport 2021 goals for 2006, BC Transit's 1997 ten-year plan indicated an intent to only purchase 250 new buses.[25] Similarly, Transport 2021 called for parking management and tolls starting in 1997, but a 1996 report calls for parking management starting in 1999, 2000 or 2001 and road tolls starting in 2002 or later.[26] TransLink's April 2000 Strategic Plan simply states that TransLink will "work to develop a regional Draft Regional Parking Plan by fall of 2001". No date is given for implementation. Similarly, the advantages of systemic tolling are extolled, but there is no reference to an implementation date.[27] The pattern of deferring even modest improvements is a major threat to the liveability of the region.

In the absence of laws that legally commit agencies to implement plans, smart growth advocates will need to vigilantly monitor implementation. Smart growth advocates will need to keep track of commitments and make sure they are implemented. Education on the importance of smart growth is necessary for politicians and the public. And, when politicians' waiver or backtrack, political pressure will be essential to ensuring implementation. Smart growth advocates may also seek to pursue law reform that makes plans more difficult to ignore.

WHAT YOU CAN DO

The smart growth transportation options that will be advocated by any particular group or individual will depend on their interests and the local solution. Neighbourhood groups

AMERICANS MOVE FORWARD WITH SMART TRANSPORTATION SPENDING[28]

While American cities are typically models of low density sprawl and car dependence, Americans have learned from their mistakes and offer some lessons for Canada. After years of offering easy money for highway building, the US federal government has begun to demand intelligent transportation planning. While far short of perfect, US legislation's insistence on reasonably intelligent planning as condition of transportation funding offers a model for Canada.

In the US, transportation projects have to be part of long term integrated transportation plans in order to receive federal money. The *Transportation Equity Act for the 21st Century (*TEA-21) creates a fund with $8.1 billion over eight years that is specially targeted to projects which will demonstrably reduce air pollution. TEA-21 requires states to improve monitoring of fine particulate (PM 2.5) and ozone and will target this $8.1 billion to areas with the worst pollution problems. This fund is in addition to $29 billion dedicated to transit, $3.3 billion dedicated to community-based programs such as bicycle and pedestrian facilities, and an additional $12.6 billion that can be used on transit.

TEA-21 ties funds to projects that are part of an overall land use, economic development and environmental strategy. All major investments and potential alternatives have to be reviewed for their impacts on land use, energy consumption, and other social economic and environmental effects. Projects have to be part of transportation plans and the plans have to be consistent with state plans for reducing pollution to acceptable levels. They also need to be linked with land use plans. Social equity is also a mandatory consideration in transportation plans; indeed, TEA-21 includes a special program that is intended to provide the urban poor with accessible transportation for commuting to work.

Regional transportation plans have to be grounded in the realities of limited budgets. This provides some protection against investment in white elephant highway projects or ill-considered transit mega-projects that bankrupt other parts of the transit system.

may want to concentrate on traffic calming, while regional groups advocate investment in transit. For some small centres, groups may choose to lobby the municipality to provide basic transit services or pedestrian infrastructure and remove minimum parking requirements. In larger centres, the focus may be more on transportation demand management through systemic tolling, parking management and investments in transit.

Smart growth measures include an improved pedestrian and cyclist infrastructure.

MEASURES TO ADVOCATE FOR

The preceding chapter has identified a broad range of measures that can help achieve smart growth goals. These include:

- Municipal smart growth transportation measures such as
  - parking management including changes to or elimination of parking requirements;
  - creation of HOV lanes using existing road space;
  - improved pedestrian and cyclist infrastructure;
  - transit priority measures and improved bus shelters;
  - development approval information requirements tied to commercial re-zoning;
  - transportation, mixed use and density policies in OCPs;
  - increased density and mixed use in zoning bylaws; and

- provision of trip reduction services.

- Outside Greater Vancouver, local government transit plans that maximize impact per dollar spent. This requires both local governments development of such plans and BC Transit to support for municipalities that focus on cost effective transit and aggressive transportation demand management.
- In Greater Vancouver, regional smart growth measures such as:
  - explicit targets, implementation plans and timetables in regional transportation plans;
  - increased parking taxes by the GVTA with funds dedicated to either transit or reductions in other taxes;
  - regional parking management plans;
  - tolling with funds dedicated to either transit or reductions in other taxes;
  - investment in transit; and
  - transit priority and HOV lanes on the Major Road Network.

  In addition, smart growth advocates will need to support changes to TransLink legislation that allows for systemic tolling.
- In other regions, smart growth transportation measures include:
  - coordination of municipal transportation measures;
  - explicit targets, implementation plans and timetables in regional transportation plans and regional growth strategies; and
  - provision of trip reduction services.

In addition, smart growth advocates will need to support changes to TransLink legislation that allows for systemic tolling.

KEYS TO EFFECTIVE MEASURES

While smart growth advocates can, to some extent, pick and choose the measures that best fit their situation, all smart growth advocates should be mindful of the following:

- **Integrated measures will be more successful.** Synergies exist between measures. Plans that integrate increased transit infrastructure with transportation demand management measures such as systemic tolling and parking management will be more effective. Plans should include clear timetables for when different measures will be adopted and specify how they will be financed.
- **Cost-effectiveness is important in prioritizing measures.** Inevitably, there will always be limits on the dollars available for transportation spending. Smart growth advocates need to consider carefully whether investments are worthwhile in the short and long terms. Improving transit services to low density areas may need to be weighed against improvements that are likely to have greater impacts on reducing automobile dependence.
- **Regional issues cannot be ignored.** Even if a community group wants to focus on local traffic calming, they need to consider the impact of regional transportation decisions on their neighbourhood. Traffic calming will be more effective if regional efforts are made to reduce motor vehicle reliance.

- **Monitoring of Implementation is Essential.** Once plans are developed, it is essential to ensure that measures such as investments in transit or implementation of transportation demand management are actually implemented.

MOVING TOWARD POLITICAL EFFECTIVENESS

However, these advocacy efforts are likely to prove less effective if not co-ordinated. Community groups and regional environmental, transit user and other groups are likely to prove most effective if they can work together to develop a vision and a plan for their region. A neighbourhood campaign for better bus service can have greater credibility if put in the context of other group's efforts to change land use patterns in a manner that supports transit. A block association's traffic calming project can become more appealing if co-ordinated with advocacy for regional transportation demand management.

Development of a common vision among diverse groups is also the basis for powerful coalitions. Coalitions such as the Coalition for a Liveable Future in Portland Oregon have been effective because community groups support the campaigns of regional transit advocacy organisations and vice versa. Anti-poverty groups speak on behalf of transit, and transit groups support affordable housing.

One of West Coast Environmental Law's goals in founding Smart Growth British Columbia was to facilitate local groups developing common visions, co-ordinating their efforts and working as coalitions. The Smart Growth BC Directory provides information on other groups working on key issues and Chapter 10 describes what you can do to help build a strong coalition.

MORE SOURCES

Sustainable Transportation Advocacy – Websites

Better Environmentally Sound Transportation, http://www.best.bc.ca

Sustainable Transportation Research – Books

Alan Thein Durning, *The Car and the City, 24 Steps to Safe Streets and Healthy Communities*, Northwest Environment Watch, available at: http://www.northwestwatch.org/products2.html

Sustainable Transportation Research – Websites

Surface Transportation Policy Project: http://www.transact.org

Victoria Transportation Policy Institute: http://www.vtpi.org

Legal Advice – Contacts

West Coast Environmental Law Association, (604) 684-7378, http://ww.wcel.org

Government – Websites

TransLink, http://www.translink.bc.ca

BC Transit, http://www.bctransit.com

Transportation Financing Authority, http://www.tfa.gov.bc.ca

NOTES

[1] British Columbia Roundtable on the Environment and Economy, *State of Sustainability: Urban Sustainability and Containment*, (Victoria: Crown Publications, 1994).

[2] Harry Dimitriou, *Urban Transport Planning*, (New York: Routledge, 1993) at 136.

[3] British Columbia Roundtable on the Environment and Economy, *State of Sustainability: Urban Sustainability and Containment*, (Victoria: Crown Publications, 1994).

[4] Statistics for Fraser Heights and Kitsilano taken from Design Workbook for the April 30, 1998 workshop on Alternative Development Standards for Sustainable Communities, sponsored by the Fraser Valley Real Estate Board and the University of British Columbia James Taylor Chair in Landscape and Liveable Environments. Research for the workbook was undertaken by Patrick Condon, the James Taylor Chair at UBC.

[5] Alan Durning, *The Car and the City*, (Seattle: Northwest Environment Watch, 1996).

[6] Greater Vancouver Regional District and Fraser Valley Regional District, *1998 Emission Inventory for the Lower Fraser Valley Airshed*, (Burnaby: GVRD, 1999).

[7] John Last et. al., *Taking our Breath Away*, (Vancouver: David Suzuki Foundation, 1998) p. 32.

[8] See note 4.

[9] See, for example, City of Vancouver, Transportation Plan, (Vancouver: City of Vancouver, 1997).

[10] *Local Government Act*, RSBC 1996, c. 323, s. 533, vest possession in municipalities and *Highways Act*, section 124, provides power to regulate municipal road use.

[11] Alan Durning, The Car and the City, (Seattle: Northwest Environment Watch, 1996).

[12] Alan Durning, The Car and the City, (Seattle: Northwest Environment Watch, 1996).

[13] BC Transit regulations and policies define how costs will be shared. BC Transit pays a higher portion of costs related to special services for the disabled. *British Columbia Transit Regulation*, BC Reg. 30/91.

[14] While municipalities do not have authority to unilaterally impose gasoline and diesel taxes, the *British Columbia Transit Act* clearly contemplates – for those municipalities which are responsible for transit services – municipalities requesting the provincial government to impose gasoline taxes. Unfortunately, under changes made in 1998, such taxes cannot be accomplished without going to the legislature – a process that makes it more difficult to achieve municipal gas taxes. *British Columbia Transit Act*, R.S.B.C. 1996, c. 36, sections 14 and 15.

[15] See BC Transit, "Assignment of Responsibilities" available at http://www.bctransit.com/munsys/about/responsibilities.stm. Note that the share of net costs contributed by Transit remains fixed.

[16] The *Local Government Act* does not specify whether or not implementation agreements are binding, s 868. Most likely they are binding if their drafting indicates an intent to be bound and there is some exchange of consideration.

[17] See TransLink website.

[18] *Greater Vancouver Transportation Authority Act, Bill 36, 3d Session of the 36th Parliament*, sections 29 (3) and 130 (2).

[19] See *Environmental Assessment Reviewable Projects Regulation*, BC Reg. 276/95, Part 7, sections 47 to 51, as am. by BC Reg. 331/98.

[20] The *Law List Regulations*, SOR/94-636 lists section 5(1) of the *Navigable Waters Protection Act* and section 35(2) of the *Fisheries Act*.

[21] *Friends of the West Country Association* v. *Canada (Minister of Fisheries and Oceans)*, [2000] 2. Federal Court of Appeal (1999), available at http://www.fja.gc.ca/cf/2000/vol2/.

[22] For instance, Skytrain operating and debt servicing costs account for 37% of total lower mainland transit costs (excluding commuter rail) and 90% of debt servicing costs, but only 29% of passenger kilometres travelled are provided by skytrain: derived from Greater Vancouver Transit Authority, 1999 Program Plan.

[23] Neal Irwin, "Urban Transportation Indicators in Eight Canadian Urban Centres" Transport Association of Canada, Ottawa, April 1996.

[24] Greater Vancouver Regional District and Province of British Columbia, *Transport 2021-A Medium Range Transportation Plan for Greater Vancouver* (Vancouver: GVRD, 1993); Greater Vancouver Regional District and Province of British Columbia, *Transport 2021-A Long Range Transportation Plan for Greater Vancouver* (Vancouver: GVRD, 1993).

[25] Greater Vancouver Regional District, "Transportation Governance and Funding" 1997.

[26] Greater Vancouver Regional District and BC Transportation Financing Authority, *Greater Vancouver Regional Transportation Demand Management Project: Final Report* Vancouver: BCTFA and GVRD, 1996.

[27] Greater Vancouver Transportation Authority, *TransLink Strategic Transportation Plan, 2000-2005* (Burnaby: GVTA, April 2000) available at http://www.translink.bc.ca/stp, at pages 33 to 36.

[28] Surface Transportation Policy Project, *TEA-21 User's Guide: Making the Most of the New Transportation Bill*, "Washington: STTP, 1998." See also Natural Resources Defence Council "Is it a better cup of TEA?" August 1998, available at www.nrdc.org/nrdcpro/analys/trt21.html

CHAPTER 4
GREEN SPACE AND SMART GROWTH

THE SMART GROWTH GREEN SPACE CONNECTION

Among the many reasons why community green space should be protected, three stand out when considering smart growth.

1. Environmentally sensitive areas (ESAs) are often threatened by urban development. Coastal, agricultural and forest lands are all prime areas for conversion to residential or commercial development. Urban ecological conflicts are frequent because valleys that are ideal for settlement are also the most biologically productive lands, and provide critical habitat for other species.
2. Green space is an amenity for cities and adds value to the quality of life of urban residents.
3. Green space has significant economic value: it is prized by developers and land values are higher in areas that have preserved green space.

Green space has many roles: for recreation, contemplation, ecological integrity, habitat and for improved quality of life. Unmanaged growth can alter and damage green space in many ways. Preserving green space in urban areas is a critical component of smart growth. Decisions about planning, zoning, park and land acquisition, and permissible developments in or near environmentally sensitive areas all have a major impact on the protection of urban green space.

Local governments have many options available to them to protect green space, and may be elected on promises to preserve more open space. Smart growth advocates need to distinguish between green space that is protected for the benefit of the entire community, as opposed to green space provided by large single family lots, which does not provide the same community benefits.

CHOOSING THE MEANS TO ACHIEVE YOUR GOAL

Smart growth advocates may have a variety of goals they wish to achieve when deciding to protect green space. There are a variety of tools available to meet each goal. The chart below sets out some goals for green space, and the legal tools that can be used for these goals.

Goal	Legal Tools
Park Creation	• Reservation or Dedication of Land owned by Municipality • Re-dedication of Unused Highway Land • Development Cost Charges • Dedication upon Subdivision • Donation of Land • Petitions for Regional Park • Petition for Local Service Area Parks
Stormwater Management	• Drainage Bylaws • Liquid Waste Management Plans • Drainage Works and Services
Protection of Riparian Areas	• Riparian Buffer Zones in Zoning Bylaw • Designation of Riparian Zones as Development Permit Areas • Watercourse Protection Bylaw • Urban Referral System • Municipal or Regional Parks
Protection of Trees	• Tree Protection Bylaw (for municipalities only) • Conservation Covenants • Municipal or Regional Parks
Protection of Environmentally Sensitive Areas (ESAs)	• Designation of ESA as Development Permit Area • Use of Density Bonus to Protect Areas • Conservation Covenants • Municipal or Regional Parks
Creation of Greenways	• Conservation Covenants

STRATEGIC PROTECTION

Ideally, green space should be protected at the planning stages of land use. Certain legal tools are best suited to protect land at this early stage. Often, land in urban areas is already developed or is in the process of development or redevelopment. The same legal tools may be useful to protect green space in these cases, and additional different legal tools may also be required.

Smart growth advocates need to be proactive rather than reactive. It is better to establish an area as a development permit area (DPA) requiring careful consideration of each new development proposal rather than wait until a development threatens it. Mapping sensitive areas and developing tools to protect these areas is an important strategy. Comprehensive stewardship bylaws are another proactive method of protecting green space.

A major strategic protection tool is to advocate density levels that allow green space to be protected rather than be lost to sprawl. Increasing density in selected areas takes the pressure off undeveloped green space. In addition, density bonuses can be used to secure green space at the developer's cost in return for allowing greater densities for new or redevelopments.

IDENTIFYING AND DEVELOPING STRATEGIES FOR ENVIRONMENTALLY SENSITIVE AREAS

A number of municipalities have designated ESAs in their community plans.[1] Inventories of ESAs are an important first step in this process. The District of Saanich has created an Environmentally Sensitive Areas Atlas, available to all local residents.[2] Making this type of information available provides the certainty that developers and the community require for their land use plans.

Identification of ESAs should be followed by the development of requirements to protect these areas. The *Local Government Act* contains a number of tools to protect ESAs. All the tools described in this section can be tailored to protect ESAs.

CREATING DEVELOPMENT PERMIT AREAS FOR GREEN SPACE PROTECTION

Development permits (DPs) are one of the strongest legal tools for protection of urban green space.

Development permit areas (DPAs) are designated in an OCP and may set additional or different requirements than the zoning bylaw which otherwise applies in the area. The land cannot be subdivided or altered and no construction of, addition to or alteration of a building or structure can occur until a permit has been obtained from the local government. When a DP area is designated in an OCP, procedural requirements apply. DPAs must be adopted as OCP amendments, with all the procedural requirements that apply to that process. The OCP must describe why the DP area is being established, and set out guidelines for achieving the DP goals, s. 920 (1).

The DP designation may specify areas that must remain free from development. This is particularly valuable for protecting ecological features in urban areas such as riparian buffer zones, old growth forests, wetlands or habitat areas for rare or endangered species.

If a development permit is obtained, the land must be developed in strict accordance with the terms of the permit. The terms imposed by a development permit must be authorized by the *Local Government Act.* The DP designations most relevant for urban green space protection set out in s. 879 (1), are:

(a) protection of the natural environment, its ecosystems and biological diversity; and

(b) protection of development from hazardous conditions, a designation commonly used in floodplain areas.[3]

DPs that are designated to protect the natural environment may do one or more of the following:

(a) specify areas of land that must remain free of development, except in accordance with any conditions contained in the permit;

(b) require specified natural features or areas to be preserved, protected, restored or enhanced in accordance with the permit;

(c) require natural water courses to be dedicated;

(d) require works to be constructed to preserve, protect, restore or enhance natural water courses or other specified natural features of the environment;

(e) require protection measures, including that vegetation or trees be planted or retained in order to

(i) preserve, protect, restore or enhance fish habitat or riparian areas,

(ii) control drainage, or

(iii) control erosion or protect banks, s. 920 (7).

DPs that are designated to protect development from hazardous conditions may do one or more of the following:

(a) specify areas of land that may be subject to flooding, mud flows, torrents of debris, erosion, land slip, rock falls, subsidence, tsunami, avalanche or wildfire, or to another hazard if this other hazard is specified under section 879 (1) (b), as areas 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;

(c) in relation to wildlife hazard, include requirements respecting the character of the development, including landscaping, and the siting, form, exterior design and finish of buildings and structures; and

(d) in relation to wildlife hazard, establish restrictions on the type and placement of trees and other vegetation in proximity to the development, s. 920 (7.1).

DPAs with precise guidelines provide some assurance that sensitive habitat will be protected through site specific requirements. Nanaimo has designated all watercourse areas as DPAs and its Watercourse Protection Guidelines are applicable to all these areas. Many municipalities classify riparian areas as ESAs, and use the *Land Development Guidelines for the Protection of Aquatic Habitat* as the basis for their development permit conditions.

Municipalities have a broad discretion whether or not to issue development permits. The permits:

- Can only impose conditions that are in accordance with the guidelines applicable to the DPA.
- Can only impose conditions for the purposes for which the DPA was created. For instance, if a DPA is created to protect fish habitat but does not specify protection of other natural elements, municipalities cannot impose setbacks purely for some other purpose, e.g. protecting forests. On the other hand, a setback will be upheld if it is intended to protect forests for the purpose of protecting fish habitat.[4]

DPAs cannot be used to regulate logging on private land. The legislature gave local governments the ability to create DPAs to protect the natural environment, its ecosystems and biodiversity primarily to enhance their ability to protect fish habitat.[5]

PROTECTION BYLAWS

Stewardship bylaws protect urban green space in urban areas. Comprehensive stewardship bylaws are one option for local governments. In addition, more specific bylaws may be helpful in already developed areas, such as those designed to regulate tree cutting, protect watercourses, protect groundwater, regulate soil and fill deposit and removal, and control vegetation.

TREE PROTECTION BYLAWS

Different tree protection powers are available to municipalities and regional districts.

Municipalities may enact tree protection bylaws which can achieve a number of goals, including:

- prohibiting the cutting and removal of trees
- regulating the cutting and removal of trees
- requiring tree replacement
- identifying significant trees, e.g. heritage or landmark value or as wildlife habitat and generate standards for their protection

Municipal powers to protect trees are found in Division 2, Part 22 of the *Local Government Act*.

Regional districts have more limited tree protection powers. They may only use tree cutting permit powers in areas that a regional board considers subject to floods, erosion, landslide or avalanche. Sample wording for a tree protection bylaw is contained in the *Stewardship Bylaws Guide*.

WATERCOURSE PROTECTION BYLAWS

Watercourse protection is a significant aspect of green space protection in urban areas.

Watercourse protection bylaws may incorporate limits on impervious surfaces in zoning bylaws and development permit requirements. Watercourse protection bylaws can also perform a number of functions such as improving water quality, enforcing an open streams policy, preventing damming, managing stormwater, and protecting habitat, particularly fish habitat. A number of *Local Government Act* and *Land Title Act* provisions are relevant to watercourse protection bylaws. Information about the legal powers available to protect waterways and a sample watercourse protection bylaw is included in the *Guide to Stewardship Bylaws*.

Pavement kills

Watercourse productivity decreases as impervious surfaces exceed 7% of a watershed, and biological production may fall to unsustainable levels if impermeable surfaces (surfaces that don't allow rain water to enter the ground) exceed 15% of a watershed.[6] This is a good reason to limit new paving in communities. It is also a good argument for restricting off-street parking unless it is done on permeable gravel, and for not paving back alleys or laneways.

GROUNDWATER PROTECTION BYLAWS

A number of local governments around British Columbia have taken steps to protect aquifers from the effects of development. The Islands Trust's OCP for Salt Spring Island, adopted in 1998, includes a DPA provision to protect groundwater, for the capture zones of wells that supply community water systems.

The section on reasons for the DPA designation states: "This Development Permit Area is made up of the area that drains into wells used by community water systems. If not carefully managed, development in this Area could result in the degradation of drinking water quality for many homes. Prevention of water quality degradation is much less costly than remediating an aquifer after contamination has occurred." The Guidelines state that "all development that takes place within this Development Permit Area should be done in a way that minimizes the degradation of water quality in community water wells".

Other areas in the province have also considered using bylaws to protect groundwater. The Columbia-Shuswap Regional District (CSRD) has proposed Ranchero/Deep Creek Rural Land Use Bylaw No. 2700, which contains policy and regulations respecting hydro-geological assessments. The hydro-geological assessment provisions arose from a report that the CSRD commissioned at the request of some of the area's residents, who were concerned about

the potential for new development to diminish the availability of groundwater, upon which many of them rely.

The Cowichan Valley Regional District proposed the inclusion of several aquifer protection provisions in its 1995 Official Community Plan. The proposal became a local election issue that year, proving to be politically unpopular, and the provisions were not included in the OCP. Recent events have generated public support for similar measures, but as of this date there have been no moves to reintroduce aquifer protection provisions into the OCP.

SOIL DEPOSIT BYLAWS

These bylaws are discussed in the gravel pit chapter.

VEGETATION CONTROL – SCREENING AND LANDSCAPING BYLAWS

Local governments may, by bylaw, require vegetation to be retained for the preservation, protection, restoration and enhancement of the natural environment, s. 909. A zoning bylaw or a separate landscaping and screening bylaw may be used for this purpose. This provision also allows local governments to require vegetation to be planted in streamside areas.

What is stormwater?

Stormwater, or urban runoff, is rainfall that is channeled into ditches and storm sewers rather than infiltrating back into the soil. Stormwater is not treated and can contaminate natural water bodies.

STORMWATER MANAGEMENT AND DRAINAGE CONTROL

Many of the legal tools used to manage stormwater also have the effect of protecting green space.

Stormwater management includes protecting property from flooding and erosion, and protecting aquatic life and resources, wildlife and wildlife habitat and preventing pollution. Managing stormwater can provide economic, as well as environmental benefits. For example, the benefits of retaining vegetation and protecting the streamside corridor for one stream in District of North Vancouver are estimated at over $2.5 million.[7]

The GVRD has developed a *Best Management Practices Guide*, a *Regulatory Options Guide* and a *Proposed Watershed Classification System* to help local governments improve their stormwater management. These resources will help local governments and communities decide which regulatory tools suit their purposes. Some tools are better suited to "greenfield" or new developments, while others are more applicable to developing or redeveloping areas.[8] The type of stormwater management put in place during planning has significant implications for habitat and ecosystem functioning.

One of the main tools for stormwater management is drainage bylaws to regulate drainage. These bylaws may require landowners to manage the "ongoing" disposal of surface run-off and storm water and may also limit the proportion of a lot or other area of land that may be covered by an impermeable surface, s. 909.

There are many other legal tools that can be used to manage stormwater. The *Local Government Act* contains a number of these tools. A few of these tools are particularly relevant for green space protection, such as:

- tree cutting – s. 708-716, s. 923;
- soil deposit and removal – s. 723;
- development permit area – s.879 , s.920;
- development approval information area or circumstances – s. 879.1, s. 920.1;

- capital and regulatory programs of a local government must be consistent with the relevant plan – s. 884. OCP goals and the CEP can shape the hard infrastructure in a community; and
- zoning – s. 903-4.

An interesting and little known new section of the *Act* allows municipalities to pass bylaws to:

- require an owner of land who carries out construction of a paved area or roof area to manage surface runoff and storm water, and
- establish the maximum percentage of the area of land that can be covered by impermeable material – s. 907.

The *Waste Management Act* and its provisions for liquid waste management planning also provide regulatory requirements and tools for stormwater management.

MAPPING AND ENVIRONMENTALLY SENSITIVE AREAS

Currently, there is no requirement for communities to plan for the "green infrastructure" first. Planning development around the green infrastructure means conducting an inventory of the natural area first and then planning the location of any new infrastructure development such as roads or sewers.

Identifying and mapping environmentally sensitive areas is the first step. Then, development must be designed to avoid these areas altogether or to minimize impacts as much as possible. Prevention of harmful impacts avoids the costly, time consuming, and often ineffective, task of trying to recover what has been lost.

COMPREHENSIVE STEWARDSHIP BYLAWS

Comprehensive stewardship bylaws are an important legal tool to protect ecological functions. The *Stewardship Bylaws Guide* illustrates how local governments can use their land use regulation powers as part of a stewardship implementation strategy.[9]

The *Guide* provides sample wording for comprehensive stewardship bylaws. Since local conditions vary, it is important for a municipal government to draft a bylaw that accounts for the degree of development already present, the natural features and ecological sensitivity of the area, the specific activities that are affecting the area, and the resources required to enforce the bylaw.

The District of North Vancouver adopted a comprehensive Environmental Protection and Preservation Bylaw in 1990.[10] The bylaw is divided into four sections: soils, trees, aquatic areas, and sloping terrain. It incorporates the *Land Development Guidelines for the Protection of Aquatic Habitat*, discussed below. Before a developer is given a permit from the municipality allowing development to proceed, he or she must agree to comply with the bylaw. The permit requirement both educates developers about the need for the *Land Development Guidelines* and makes enforcement of the bylaw easier since violating the permit is an automatic infraction. If the bylaw is breached, the permit can be revoked and the developer can be found guilty of an offence.

OFFICIAL COMMUNITY PLANS AND REGIONAL GROWTH STRATEGIES

The *Local Government Act* gives local governments the authority to create urban green space protection policies[16] in both OCPs and RGS. Both a RGS and an OCP have some value as green space protection tools as they can designate Development Information Areas and

Threats to Green Space and Ecosystem Health in Urban Areas

- An average of 20-30% of the land surface in urban areas is paved and much of the remainder is covered by buildings.
- A 1996 provincial report identified the top threat to species at risk in British Columbia as urban/ agricultural development.[11]
- Native plant and animal species are often replaced with exotic or alien species during the development process.[12]
- About 120 streams in the Lower Fraser Valley have been lost due to paving, filling and culverting. A 1997 Department of Fisheries and Oceans report classified the remaining streams as follows: 61% are endangered, 24% are threatened and only 15% are listed as wild.[13]
- Rare ecosystems such as the Garry Oak ecosystem have been substantially reduced through development.
- Urban development has caused wetland conversion and loss in the Lower Mainland. About 30% of the natural lands that were developed from 1967 to 1982 were wetlands.[14]
- Almost all the first growth forest has been removed from BC's urban centres.
- In 1997, the Auditor General of Canada reported that the protection of fish habitat in urban areas was the Department of Fisheries and Oceans' most serious challenge in its efforts to maintain the genetic diversity of salmon and DFO estimated that loss of habitat probably accounted for 20 to 30% of the disappearance of small stocks of salmon in BC.[15]

Development Permit Guidelines. They are valuable even if very discretionary, and can be made less discretionary. RGS can set urban containment policies and say that there will be no regional servicing infrastructure that is inconsistent with their the RGS. This type of requirement is hard to vary.

An OCP can protect green space by establishing general environmental policies such as that found in the Campbell River OCP:

> "Prioritizing environmental protection at all stages of development and recognizing that environment encompasses and includes the urban form and is not separate from it."

GREENWAYS

Community greenways are linear green corridors that connect natural areas such as wildlife habitat areas or parks and recreation trails.[17] Different landowners, both public and private, may be involved. Greenways can be designated into a RGS, OCP and neighbourhood plan. Many different jurisdictions and laws may be involved in creating a greenway.

The *Greenways Guide* provides detailed directions for establishing greenways. Planning and implementation of a greenway will vary according to the community's objectives. For example, to create a trail system that connects the waterfront to the foothills, the *Greenways Guide* recommends defining the trail system components and then identifying how each municipality and the regional district can implement the system. Legal tools that can form part of this greenways strategy include:

- On large development sites, incentives will be given to dedicate and construct trails through comprehensive development and density bonus designations.
- On small development sites, the trail right-of-way can be gained by dedication as a "highway" with construction of the trail by volunteer or public funding.
- On non-development sites, the trail right-of-way will be purchased.
- On Agricultural Reserve Land, trails could be fenced and closed dawn to dusk, and located, where possible, to buffer urban development from active agricultural operations.
- On lands covered by the Forest Practices Code, FPC standards about recreation will apply to determine trail location.
- Trails should be located outside the riparian zone as defined in the zoning bylaw or development permit guidelines.
- Owners can be encouraged, on subdivision, for example, to donate statutory right-of-way for greenways if the OCP designates this land as potential greenways. Courts have upheld these provisions.[18]

Greenways may take the form of a system of interconnected trails such as the Capital Greenways program in Victoria or buffer zones beside the entire riparian area of a river, such as the Quesnel River Walk, a trail beside the Quesnel and Fraser Rivers that links parks, historic areas, residential areas and the downtown. Whistler's system of greenways provides a transportation and commuter route for residents, as well as space for recreation and wildlife corridors. Old railroad lines, utility corridors or highways are all prime candidates for greenways.

URBAN CONTAINMENT BOUNDARIES

Green space may be retained by establishing urban containment boundaries, beyond which development will not be permitted. This technique has been successfully used by Saanich and the Nanaimo Regional District.[19] Other communities have set servicing boundaries, and will not extend servicing to certain specified areas, such as above a set elevation level in the District of North Vancouver. Local governments can also influence urban boundaries by policies on pricing of services. In BC, the boundaries set by the Agricultural Land Commission (now renamed the Land Commission) have acted as urban containment boundaries.

ZONING

Zoning bylaws are a valuable tool for protecting urban green space. A common zoning designation is "parks, recreation and open space". Zoning requirements can also be used to cluster new development away from the ecologically sensitive portion of a site. Zoning bylaws may restrict development around ESAs, for example, through the use of buffer zones and/or setbacks. Local governments may designate development permit areas (discussed below) in its community plan for specific purposes, such as to protect biodiversity and the natural environment.

Comprehensive development zoning, or "spot zoning", may also be used to protect urban green space. This individually created zone can be tailored to meet the requirements of each individual site. An individually tailored ecological protection bylaw can regulate the density on a particular piece of property, the use of land including prohibiting many uses for an ESA, and siting of structures away from an ESA. The District of Highland, a rural area on Vancouver Island, uses spot zoning to custom design each site based on ecological features. In one development there, over 90% of the 190 hectare site was left in a natural state, and 26 new lots were created.[20] Local governments can negotiate directly with developers on a particular site for mixed commercial/residential developments, for example, and to obtain amenities such as green space and affordable housing.

In urban areas, clustering housing on one part of a site and placing a conservation covenant on the ecologically important areas of the site can achieve the goal of green space protection. Zoning bylaws alone are often not sufficient to protect green space: usually additional tools such as s. 219 covenants also must be registered on title to obtain protection. These legal tools are discussed in this chapter in the section on private land protection.

Protection of green space may involve changing zoning. The question of compensation for these changes may arise. Local governments have the authority to change zoning bylaws and no right to compensation exists unless the proper procedures have not been followed and/or the land has been converted to a public use. This issue is discussed in more detail in chapter 2.

DEVELOPMENT COST CHARGES

Development cost charges (DCCs) may be used to generate revenues for green space purchase. The *Local Government Act*, s. 933 (2) allows these charges to be established for a set list of municipal services, including parkland acquisition and improvement. DCCs are imposed by bylaw, and approval of the Inspector of Municipalities is required before a DCC bylaw may be adopted.[21]

Making OCPs Work for Green Space Protection and Smarter Growth

General policies have little legal force unless combined with other specific regulatory controls on development. General policies in the OCP can be strengthened by a more specific tool, such as a comprehensive development zone; density bonus zone; or development permit area, to provide stronger legal protection for green space. Clustering developments to minimize the footprint of buildings will maximize a community's ability to protect green space. Planning to allow denser development to occur in select areas designated in an OCP relieves the development pressure from other areas.

DENSITY BONUS ZONES

Municipalities can include density bonus provisions in their bylaws which create an incentive for developers to donate part of their land for green space in exchange for the ability to increase the density for the rest of the proposed development, s. 904. Density bonus bylaws set out basic densities for a given zone and alternative densities that will be granted if the developer provides amenities acceptable to the local government. One of the commonly used amenities is dedication of land as a park though the *Act* does not specifically list parkland as an amenity.

Density bonuses are voluntary. They allow both developers and communities to benefit from allowing developments with greater floor areas, which may bring increased tax revenues and community amenities such as green space. "Even with simple provisions, a community can secure significant public benefits without spending tax dollars or imposing fees."[22]

PROTECTING GREEN SPACE DURING DEVELOPMENT

During the development process, a local government (and smart growth advocates) have a number of levers to use to protect green space. These levers include many of the tools discussed in the sections above. Additional levers are:

- subdivision and development controls;
- environmental assessments; and
- habitat protection laws or guidelines involving senior levels of government.

Often these legal tools work together.

SUBDIVISION AND DEVELOPMENT CONTROLS

During subdivision of one parcel of land into multiple parcels, there are many opportunities to protect green space.

Approving officers should refuse any subdivision that is contrary to zoning bylaws. In addition, an approving officer can in some cases refuse to approve a subdivision that he or she believes would have unacceptable negative impacts on environmental features, such as a community watershed, for example. As described in Chapter 2, an approving officer may refuse to approve a subdivision on the grounds that the subdivision is "against the public interest", s. 85 (3). As described further in Chapter 2, this does not give the approving officer carte blanche to refuse subdivsions of green space, but allows the officer to act in circumstances such as where an OCP states that no further development will be allowed in a community watershed. Even if a subdivision application complies with the applicable zoning bylaw, refusal may occur if there are other indications, such as statements in an OCP, that show that subdivision is not in the public interest. The BC Court of Appeal has held that an approving officer may consider an OCP statement that no further intensification of land use will be permitted in a watershed area used for municipal water supply as a statement of the public interest.[23] Courts will not lightly interfere with an approving officer's decision.

Smart growth advocates can also protect green space by supporting increased densities in appropriate areas, which reduces the pressure to develop vacant land. Smart growth advocates should consider strategies such as, for example:

- advocating the legalization of existing secondary suites,
- clustering townhomes away from environmentally sensitive areas, and

- promoting infill development on large single family lots and publicly supporting development applications for new infill devlopment.

PARK DEDICATION AND FUNDING

Subdividers have a legal obligation to provide park land of up to 5% of the total area of subdivided land when they are subdividing. Alternatively, the owner of the land may provide cash in lieu of land, which can then be used to purchase other land for municipal green space. Section 941 of the *Local Government Act* provides that an owner must "provide, without compensation, park land of an amount and in a location acceptable to the local government," or "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". If the OCP or rural land use bylaw contains policies for future park acquisition, the local government has the option of deciding itself whether the subdivider must provide parkland or instead pay money.

The local government cannot legally require the owner to provide more than 5% of the land being subdivided for park purposes. But there is nothing to stop developers from voluntarily agreeing to donate more parkland than the 5% required by statute. Agreeing to donate more land or money may provide an added incentive for the subdivision proposal to be approved. In addition, conservation covenants can be used in developments to obtain protection for more than 5% of an area.

The park dedication requirement does not apply where fewer than three additional lots are created and where the lots that are created are greater than 2 hectares in size, s. 941 (5). In some cases, developers appear to have tried to make use of these exemptions by making low density subdivisions of greater than two hectares or carrying out a series of subdivisions. Zoning bylaws that impose a maximum two-hectare lot size for new lots can avoid this problem.

Dedicating Green Space

In one case, a developer agreed to donate more than the 5% parkland required by statute, but later withdrew this offer. The approving officer acted on the initial agreement and refused to approve the subdivision until the developer transferred the additional promised land to the district for nominal consideration. When the developer challenged the refusal in court, the court held that the approving officer was entitled to refuse the application based on the change in circumstances.[24] Voluntary offers to protect more land than the statutory minimums should be considered in new subdivision applications.

ENVIRONMENTAL ASSESSMENTS AND CREATING DEVELOPMENT APPROVAL INFORMATION AREAS

Environmental assessments (EAs) can be used to identify problems or make recommendations related to green space. EAs are an information gathering and/or recommendation making process that guides the issuance of permits or approvals. Assessments are designed to minimize environmental impacts, or, if it is not possible to minimize the impacts, to prevent a project from proceeding as designed. The following assessment processes may apply to some land developments:

- **Federal environmental assessment.** The *Canadian Environmental Assessment Act* applies to projects that impact on areas of federal jurisdiction. In the context of urban developments, federal environmental assessment is most likely to be triggered where a project affects fish habitat, crosses streams or rivers, involves transfers of federal land, is carried out with federal funding or is carried out by the federal government. Federal environmental assessment may apply even to relatively small projects, but can be a relatively cursory screening.[25]
- **Provincial Environmental Assessment.** The BC *Environmental Assessment Act* does not normally apply to residential developments, but the Minister of Environment, Lands and Parks has the discretion to order an assessment of any project. This power is rarely used but was used for a large proposed residential development at Bamberton on Vancouver Island. It is unlikely to be used except where a project is highly controversial. Recommendations of provincial environmental assessment approvals

Land Development Guidelines

To address the need for riparian protection standards when land development occurs, the *Land Development Guidelines for the Protection of Aquatic Habitat* were produced by the federal Department of Fisheries and Oceans and provincial Ministry of Environment, Lands and Parks.

Although the *Guidelines* are mainly aimed at protecting salmon, trout and char, they are broad in their application, and apply to the habitat of all fish species. They apply to development in or adjacent to waters containing fish or fish habitat, and include out-of-stream habitat features such as wetlands. The goal of the *Guidelines* is to "ensure that the quantity and quality of fish habitat are preserved and maintained at the productive level that existed prior to land development activities". Thus, projects may be subject to the following protective measures:

- leave strip protection and provision;
- erosion and sediment control and site development practice;
- storm water management;
- instream work controls;
- fish passage and culverts maintenance; and
- prevention of deleterious substance discharges.

are only binding to the extent they are included in approval certificates issues by the government. The Ministries of Municipal Affairs and Housing and Environment, Lands and Parks are developing a Memorandum of Understanding (MOU) which will set out the circumstances in which urban developments will be considered for discretionary provincial EA designation.[26]

- **Development Approval Information under section 920.1.** As noted in Chapter 2, bylaws can require applicants for re-zoning, development permits, or temporary commercial or industrial use permits to provide information on the natural environment of the area affected. This information can be used to guide the content of the permits or refuse re-zoning.
- **Referral System**. As discussed in more detail below, projects with potential environmental impacts are referred to senior levels of government for comment and recommendations. Municipal governments are not required to follow these recommendations.

HABITAT PROTECTION LAWS OR GUIDELINES

A number of other laws and processes may be useful to protect green space in urban areas. A few of these are discussed below. A full discussion of all habitat protection and green space laws is beyond the scope of this report. For more information on any of these laws, contact West Coast Environmental Law, other conservation groups or government agencies responsible for environmental protection.

Of particular relevance to urban green space protection are these habitat protection laws:

- the federal *Fisheries Act* and the joint federal provincial *Land Development Guidelines for the Protection of Aquatic Habitat*,
- the urban referral process, and
- the new provincial *Fish Protection Act*.

FISHERIES ACT LAND DEVELOPMENT GUIDELINES FOR THE PROTECTION OF AQUATIC HABITAT

The federal *Fisheries Act* is now the most significant statute protecting fish habitat. Unless specifically allowed in an authorization from the Department of Fisheries and Oceans, the *Act* prohibits harmful alteration, destruction of or damage to fish habitat, s. 35 (2). Fish habitat includes riparian areas along the side of streams that are important for maintaining the suitability of the stream for fish. Thus, the *Act* potentially provides very broad protection for fish habitat.

Unfortunately, the *Fisheries Act* suffers from two weaknesses: first, exactly what constitutes harm to fish habitat may be unclear to developers or landowners; second, like any regulatory statute, its effectiveness depends on the willingness of officials to prosecute violations.

The *Land Development Guidelines* have no legal force by themselves, but they can be brought into effect through various legal mechanisms:

- **Making prosecution decisions.** Federal officials consider the guidelines when deciding whether to prosecute developers for harmful alteration or destruction of fish habitat. This creates an incentive for developers to comply.
- **Incorporation into Bylaws.** Municipalities can incorporate the standards into their bylaws. Beyond applying set backs in zoning and use of development permits, as discussed below,[27] municipalities have a number of powers to pass bylaws to protect

fish habitat. The District of North Vancouver has done this. The City of Nanaimo also has bylaws to protect all its watercourses. These bylaws have been a successful method of protecting riparian zones. Smart growth advocates should press their local governments to incorporate the *Guidelines* into binding zoning bylaws.

- **Issuance of Authorizations.** When a developer asks for an authorization under the *Fisheries Act*, or a letter stating that no authorization is necessary, the guidelines help the government officials decide whether to issue the authorization, and decide the conditions of the authorization.

The case of *Wild Salmon Coalition v. City of North Vancouver*[28] demonstrates the weakness of the current system. In that case, council sold a parcel of land bordering Mosquito Creek, a fish-bearing creek, on the purchaser's condition that the land be re-zoned for industrial use. DFO objected to the re-zoning as the entire area of the proposed martial arts facility would be located within the 30-metre zone that the *Guidelines* say should be free from development. When the re-zoning was challenged in court, the court held that DFO's objections to the development were immaterial. The *Guidelines* could not be enforced. While developers in situations like this can be prosecuted should the development lead to damaged habitat, the damage may be irreparable. And successful prosecutions may not occur for a variety of reasons ranging from lack of resources for enforcement to evidentiary problems.

URBAN REFERRAL SYSTEM

Although voluntary, the urban referral system is one of the chief mechanisms used by governments to ensure that federal and provincial environment agencies have input into the decisions of local government. The referral process varies from region to region. Generally, the project proponent prepares a development application describing the proposed project. This is submitted to the "approving agency," i.e. the government official or agency that is the legal decision-maker. As shown below, the approving agency will vary depending on the type of project.

Approval of:	Approving Agency
Subdivision	Local government Approving officer
Building permit	Local government
Rezoning	Local government
Higher level planning initiatives, such as changes to an OCP	Local government
Works on marine foreshore	Department of Fisheries and Oceans
Applications under the *Water Act* for water licences and works in or about a stream.	Water Management Branch of MELP

The approving agency may refer the application to the senior environmental agencies – the Fish and Wildlife or Water Management Branch of MELP, or DFO which issue a response to the approving agency, who then issues the approval to the proponent with or without recommended conditions.

DFO and MELP may recommend conditions for a project's approval such as:

- fishery sensitive zone or riparian leave setbacks,
- sediment control,
- nonpoint source pollution requirements,
- vegetation/revegetation requirements,
- stormwater management requirements,
- construction practices, and
- mitigation measures, such as creating a streamside channel for fish.

The approving agency can decide to refuse the project, request further information, or approve the project with conditions of approval designed to mitigate damage to fish and fish habitat. Refusals must be based on legal authority. One of the strongest legal reasons for refusing a project application is that it will harmfully alter, damage or destroy fish habitat.[29] However, usually the project will not be refused and mitigation or compensation measures will be ordered instead. There is no equivalent legal protection for wildlife habitat under any provincial law which could result in refusal of a project application. A municipality can refuse a re-zoning or OCP change based on wildlife concerns.

Problems with the referral system include:

- Approving agencies do not always adopt the senior agency's recommendations in their final approval documents, and are not legally required to include these conditions. A recent study concluded that the effectiveness of the system was compromised by significant non-compliance with the approval conditions, and significant variation in the types and rigour in approval conditions,[30]
- Lack of resources to carry out monitoring procedure to determine if approval conditions are actually followed,
- Lack of resources to carry out the large number of referrals – DFO is asked to review approximately 15,000 referrals each year,[31] and
- Inconsistency.

There are no formal public participation opportunities in the urban referral process, but community groups aware of applications can provide information to agencies on their own initiative. They can also help monitor implementation.

FISH PROTECTION ACT

The *Fish Protection Act* is intended to protect fish habitat from new or redeveloped industrial, commercial and residential developments that take place beside streams. It does not apply to agriculture, mining, hydroelectric facilities or forestry activities as the government has decided that "these land uses will be subject to other streamside protection measures or voluntary guidelines".[32]

Under the *Act*, municipalities have authority to protect streamside areas, but there is no duty for this protection to take place. If a council chooses to ignore the guidance on streamside protection that has been provided by senior levels of government, such as the MELP-DFO *Land Development Guidelines for the Protection of Aquatic Habitat*, it is free to do so.

However, the province is expected to pass regulations that would change this situation. The Streamside Protection Regulation,[33] s. 12 of the *Act*, allows the government, by regulation, to establish "policy directives" for protecting and enhancing riparian areas the government considers are subject to residential, commercial or industrial development. These directives may only be established after consultation by the Minister of the Environment with representatives of the Union of BC Municipalities. The directives may establish minimum setbacks for riparian protection. The directives may be different for different parts of BC.

The directive may set a time limit for a local government to complete a review and, if necessary, amendment of its by-laws to conform with the directive. And a local government may request an extension of the time period for compliance with the directive from the Minister of the Environment.

If this regulation is passed, local governments will have to ensure that their bylaws and permits "provide a level of protection that, in the opinion of the local government, is comparable to or exceeds that established by the directive," s. 12 (4) (6).

The streamside protection directive defines riparian areas as those that link aquatic to terrestrial eco-systems and contribute directly to fish life processes and fish habitats by providing certain defined features, functions and conditions, such as, for example, large organic debris.

The regulation will require local governments when they exercise their powers for planning, regulating and approving residential, commercial and industrial development to "make provisions for" certain riparian area functions in defined "riparian management and enhancement areas". Local governments listed in a schedule to the regulations must make provisions for:

(a) protecting existing vegetation or replanting native vegetation;

(b) avoiding

  (i) removing existing vegetation;

  (ii) disturbing soils;

  (iii) creating impervious surfaces;

  (iv) creating conditions that may lead to ravines, slope failure or stream bank erosion;

  (v) altering and drainage patterns,

  (vi) placing or creating deleterious substances;

  (vii) polluting soils, surface water or ground water.

The draft regulation allows local governments a choice of methods to implement the regulation. Riparian setbacks are one possible implementation method. A site-specific approach is another possible method.

The regulation will apply to regional districts and municipalities listed in a schedule, including the most heavily populated areas of the problem. The Islands Trust is also included. Local governments must protect riparian areas within two years from the date of the enactment of the regulation.

PROTECTING URBAN GREEN SPACE IN DEVELOPED AREAS

In already developed urban areas, green space may be protected by using the tools already discussed above and by:

(a) creating parks;

(b) using legal tools to protect privately owned land; and

(c) ensuring densities that allow green space to continue to be available for legal protection in the public interest.

PROTECTION OF GREEN SPACE IN URBAN AREAS – PARKS

There is a wide range of legislation under which protected areas can be created.[34]

The main provincial statutes are the *Park Act* and the *Ecological Reserves Act*. This Guide does not address provincial or federal protected areas.[35] The focus of this section is on municipal and regional district parks.

MUNICIPAL PARKS

Municipalities may create parks in a number of ways:

- reservation of land owned by a municipality.

  The *Local Government Act* allows councils to reserve, or set aside, land that it owns for parks or other public purposes, s. 302. Reservation must be done by bylaw. A reservation may be removed by a bylaw adopted by an affirmative vote of at least 2/3 of the council members (more than the usual simple majority required to pass a bylaw). And before adopting a bylaw to remove the reservation of land, the council must provide the electors with a counter petition opportunity (see chapter on public participation).

- dedication of land owned by a municipality.

  A similar procedure may be used to dedicate land for a park, s. 303. The assent of the electors is required for dedication, with certain exceptions.

  Neither dedication nor reservation commit or authorize a local government to proceed with implementation of the purpose for which the property is reserved or dedicated. However, any bylaws or local government works directly affecting the reserved or dedicated land must be consistent with intended park purposes.

- rededication of highway land to parkland.

  This is a little known section in the *Local Government Act* which allows a council to convert land that had been used for highway purposes to parks, s. 304 (1). The rededication must be done by bylaw, after holding a public hearing. The highway or portion of a highway that is to be rededicated as parkland must be stopped up and closed to traffic. This is a particularly useful tool for the creation of urban greenways.

- dedication of 5% of the area of a subdivision when subdivision occurs.

  This legal tool, authorized by s. 941 of the *Local Government Act,* is described in the section on subdivision.

- donation of land for park purposes.

  Land may be donated to municipalities on trust conditions that the land be used for park purposes, and municipalities are authorized to accept this property, s. 314. There will be tax consequences of donations of land, usually (but not always) beneficial.[36]

- as a local improvement.

  Small parks with an area of not more than one hectare may be created as local improvements by petition from the electors or on the initiative of council, s. 623 (1).

REGIONAL PARKS

Regional parks may also be created in a variety of ways. A regional park is defined as a park created under the *Park (Regional) Act* or a municipal park transferred under section 7 of that *Act*.

The *Park (Regional) Act* allows two or more municipalities to petition the Lieutenant Governor in Council (Cabinet) to incorporate the area of land within the boundaries of the municipalities and its residents into a regional park district, s. 2 (1). Regional park districts have a number of powers to acquire land, and manage parkland property. Within 5 years of the formation of a regional parks board, the regional district must prepare a regional park plan by bylaw, which must be approved by the Minister of Environment, Lands and Parks, s. 16 (1). Regional park boards are eligible for grants for the purpose of acquiring or developing regional parks and regional trail from the Minister of Municipal Affairs, s.12 (1).

The GVRD regional park system has expanded through the Lower Mainland Nature Legacy and now includes 25 parks totalling 11,320 hectares. Regional parks are paid for by property taxes. Financial resources to manage all the GVRD's parks will require raising taxes, imposing user fees or other new funding mechanisms.

LOCAL SERVICE AREA PARKS

Under section 798 (1) of the *Local Government Act*, regional districts may, by bylaw, establish and operate various local services, including community parks. This is a way by which residents in a local area can take responsibility for protecting a local area even though the regional district is unwilling or unable to fund it through their park acquisition budget.

Under the *Local Government Act*, residents can petition for the establishment of a community park local service area. A petition does not guarantee that the bylaw will be passed. If the petition meets *Local Government Act* requirements and has been signed by at least two-thirds of the owners of the parcels within a proposed service area who represent at least half of the net taxable value of land and improvements within the proposed service area, the bylaw establishing the local service area does not need to be assented to by electors. If the petition does not meet those requirements, assent by a majority of voting electors is necessary. Once the bylaw is passed, the costs of providing the park service are paid by the local government and recovered through frontage, parcel or property value taxes levied on all property owners within the service area.

LANDOWNER INITIATED PRIVATE LAND PROTECTION – LEGAL TOOLS

Legal tools for landowners to protect their land are an increasingly critical piece of the regulatory structure for green space conservation. Many ecologically significant areas in and around urban areas are privately owned. As government funding to acquire and manage ESAs continues to decline, private land conservation will increase in importance. Once land has been acquired by a conservancy organization or individual, often it is secured through a conservation covenant, described below, or through another land title legal tool.

Conservation covenants are important legal tools for protecting green space such as a wildlife corridor, a wetland, or a buffer zone along a river or the coast

COVENANTS

Conservation covenants are commonly used to protect privately owned land, including green space. Covenants held by a government body can also now be held by conservation groups. These covenants are entered into under s. 219 of the *Land Title Act*.

Covenants have been used extensively by the provincial government to protect fish habitat. Many areas of critical fish habitat and other significant riparian and coastal areas are privately owned and vulnerable to degradation without some form of legal protection.

A s. 219 covenant is a written agreement between a landowner and one of the following parties:

- the Crown or a Crown corporation or agency,
- a municipality or regional district, or
- a local trust Committee under the *Islands Trust Act*.

These covenants can be required by government to protect ecologically sensitive land. Covenants held by a designated conservation organization are always voluntary unless a local government makes a covenant a condition of subdivision and allows the covenant to be held by a conservation organization.[37] Approximately 136 covenants have been registered in the province as of 1999.

In the covenant, the owner of the land promises to protect the land in specified ways. The covenant holder can enforce it, if necessary, against the owner. The covenant is filed in the BC Land Title Office. It is registered on title to the property, remaining on the property's title even if the land is subsequently sold to a new owner. These covenants are intended to last permanently and bind future owners of the land, not just the current landowner. The covenant can cover all or just a portion of the landowner's property.

A broad range of other provisions may be included in a covenant such as

- provisions describing the important habitat values of the land and the conservation objectives of the parties to the agreement,
- baseline information about important features of the property,
- provisions regarding ongoing management of the land (this could also be done by way of a separate document), or
- provisions dealing with monitoring of the provisions of the covenant and enforcement if there is a violation.

A model covenant and current information on best practices for using conservation covenants is available from West Coast Environmental Law.[38]

ECOLOGICAL GIFTS AND TAX CONSEQUENCES RELATED TO PRIVATE LAND PROTECTION.

Privately owned ecologically sensitive land may be donated to local or other levels of government, or to non-governmental conservancy organizations and the donors of the land will be eligible for tax benefits. New tax benefits introduced in 2000 make this a very important tool for green space protection.

Information about ecological land gifts is available in publications and on the web site of the Canadian Wildlife Service.[39] Certifying land as ecologically sensitive must be done through the federal Minister of the Environment or a person designated by the Minister. In BC, in addition to the Regional Director of Environment Canada, a number of provincial

authorities may designate land including the Directors of the Wildlife Branch, Resource Stewardship Branch, Fisheries Branch and Manager of the Habitat Conservation Trust Fund.

A new WCEL Guide contains information about the tax consequences related to a number of private land protection mechanisms, as well as case examples of how the tax will be calculated.[40]

WHAT YOU CAN DO

Actions that a citizen or community group can take to preserve green space:

1. Plan to protect green space in your community through a RGS, OCP or neighbourhood or local plan. Integrate land and green space protection with advocacy efforts to create more compact and sustainable urban forms.
2. Advocate for the adoption of greenways, ESAs mapping, comprehensive stewardship bylaws, or any of the other bylaws described in this chapter.
3. Learn if development permit areas are being used in your community. Advocate their use for ESAs.
4. The provincial Ministry of Environment, Lands and Parks has a number of services that a local government can use in designing an OCP or a bylaw to protect groundwater. One is the Well Protection Toolkit (http://www.elp.gov.bc.ca/wat/gws/well_protection/wellprotect.html), a set of guidelines for a six-step approach on how a community or water purveyor can develop and put into place a Water Protection Plan to prevent the contamination of well water supplies. The toolkit is the result of a joint monitoring program by several provincial ministries, and can be obtained by contacting the Groundwater Section of the Environment Ministry's Waste Management Branch at (250) 387-1115 or the Public Health Protection Branch of the Ministry of Health at (250) 952-1469. Aquifers in BC (http://www.elp.gov.bc.ca/wat/aquifers) is another of these services, through which one can view the results of an ongoing project to identify, map, and categorize aquifers throughout the province. Since 1994, the Ministry has mapped over 350 aquifers. Contact the Groundwater Section for information on the availability of aquifer maps.
5. If you are a landowner who wishes to protect land you own, find out more about covenants and other legal tools you could use to protect this land. Consult the WCEL report series on the protection of private land at www.wcel.org.

WHO TO CONTACT

DFO Habitat Enhancement Branch at http://www-heb.pac.dfo-mpo.gc.ca/default.htm

Ministry of Environment, Lands and Parks at http://www.gov.bc.ca/elp/

The Stewardship Centre at http://www.stewardshipcentre.org

The Land Centre at http://www.landcentre.ca/

The Land Conservancy of British Columbia at http://conservancy.bc.ca works to protect plants, animals and natural communities that represent the diversity of life on Earth, by protecting the lands and waters they need to survive. TLC also protects areas of scientific, historical, cultural, scenic or compatible recreational value.

Sierra Club of BC at http://www.sierraclub.ca/bc

Steelhead Society of BC at http://www.steelheadsociety.com, British Columbia's oldest salmonid conservation organization.

Western Canada Wilderness Committee at http://www.wildernesscommittee.org

Land Trust Alliance at http://www.lta.org

Stewardship Series at http://www-heb.pac.dfo-mpo.gc.ca/PSkF/resources/s-series.html

Information for Conservation – WCEL interactive information system on private land protection, at http://www.wcel.org/ppl

GOVERNMENT SITES

Fisheries and Oceans Canada at http://dfo-mpo.gc.ca

Environment Canada at http://www.ec.gc.ca

BC Ministry of Environment, Lands & Parks at http://www.env.gov.bc.ca

CivicNet at http://www.civicnet.gov.bc.ca

CivicNet provides a single window access to and for local Governments in British Columbia.

Land Use Coordination Office at http://www.luco.gov.bc.ca

Strategic land use plans in BC, protected area strategies

BC Environmental Assessment Office at http://www.eao.gov.bc.ca

Includes a project registry of projects being reviewed under the *Environmental Assessment Act* and a guide to the assessment process.

BC Government Information at http://www.gov.bc.ca

This web site has links to other BC government web sites.

NOTES

1. *Protection of Aquatic and Riparian Habitat by Local Governments – An Inventory of Measures Adopted in the Lower Fraser Valley*, 1995, DFO, 1995.
2. Deborah Curran and May Leung, *Smart Growth: A Primer* (Victoria: University of Victoria, 2000).
3. Other DP designations are used to control building design and heritage preservation and are described in the chapter on the built environment.
4. *Bignell Enterprises v. Campbell River* (July 11, 1996), Courtenay Registry S3957 (BCSC).
5. Denman Island Local Trust Committee v. 4064 Investments Ltd., 2000 BCSC 1618.
6. *Stewardship Bylaws: A Guide for Local Government* (Victoria: Ministry of Environment, Lands and Parks, 1996), page 52.
7. Gary Holman and Linda Adams, *Multiple Accounts Assessment of proposed Streamside protection Measures under the Fish Protection Act* (BC MELP), May 1998.
8. *Options for Municipal Stormwater Management Governance – Bylaws, Permits and Other Regulations*, GVRD, April 1998.
9. *Stewardship Bylaws – A Guide for Local Government*, part of the Stewardship Series (Victoria: Ministry of Environment, Lands and Parks, 1997).

[10] The bylaw is available on the District's web site, at http://www.district.north-van.bc.ca.

[11] B.C. Ministry of Environment, Lands and Parks, *Species at Risk in British Columbia*, Environmental Indicator Series, June 1996.

[12] Valentin Schaefer, "Urban Biodiversity" in L. Harding, ed. *Biodiversity in B.C.*, (Canadian Wildlife Service, MELP, 1996) at 307.

[13] Department of Fisheries & Oceans, Wild, Threatened, Endangered and Lost Streams of the Lower Fraser Valley, Summary Report, 1997.

[14] Paul Pilon and M.A. Kerr, Land Use Change on Wetlands in the Southwestern Fraser Lowland, British Columbia, Working Paper No. 34, Environment Canada Lands Directorate (Vancouver: 1984) 9.

[15] Auditor General of Canada, Dec. 1997, p 28-10, 28-12.

[16] OCPs may contain policies relating to the preservation, protection, restoration and enhancement of the natural environment, its ecosystems and biological diversity, s. 878 (1) (d). Preserving, creating and linking urban and rural open space including parks and recreation areas is an explicit goal of regional growth strategies, s. 849 (l).

[17] An excellent resource on greenways in BC is the *Community Greenways Guide – Linking Communities to Country and People to Nature*, part of the *Stewardship Series*, (Victoria: Ministry of Environment, Lands and Parks and Department of Fisheries and Oceans, 1995).

[18] *Metchosin (District) v. Metchosin (District) Board of Variance* (1993) 81 BCLR (2d) 156 (C.A.).

[19] Deborah Curran, *Environmental Stewardship and Complete Communities: A Report on Municipal Environmental Inititaives in British Columbia 1999*, (Victoria: Eco-Research Chair, University of Victoria, 1999), 25.

[20] Deborah Curran, *Environmental Stewardship and Complete Communities: A Report on Municipal Environmental Initiatives in British Columbia 1999*, (Victoria: Eco-Research Chair, University of Victoria, 1999), 25.

[21] For more information, see BC Ministry of Municipal Affairs, *Development Cost Charge – Best Practices Guide*, July 1997.

[22] *Density Bonusing: A Guide and Model Bylaw*, (Victoria: Ministry of Municipal Affairs and Housing, March 1997) available online at http://www.sdes.gov.bc.ca/housing/BONUSDN/.

[23] *Cole v. Campbell River (District) Approving Officer*, (1995), 27 MPLR (2d) 56 (BCCA).

[24] *Island View Estates v. Central Saanich*, (26 July 1999), Victoria No. 991813 (BCSC).

[25] For more information on federal environmental assessment, see The Citizen's Guide available on the federal government web site at http://www.ceaa.gc.ca.

[26] For more information on provincial environmental assessment, see the Guide to the British Columbia Environmental Assessment Process, available on the provincial web site at http://www.eao.gov.bc.ca.

[27] See discussion of provincial directives on streamside protection, page 112.

[28] (1996) 34 M.P.L.R. (2d) 122.

[29] See *Fisheries Act* Land Development Guidelines for the Protection of Aquatic Habitat, page 108.

[30] Coast River Environmental Services, *Urban Referral Evaluation – An Assessment of the Effectiveness of the Referral Process for Protecting Fish Habitat (1985-1995)*, Department of Fisheries and Oceans, Fraser River Action Plan, Urban Initiatives Series 10, March 1997.

[31] BC Fish Habitat Protection Council, July 18, 1996 meeting, information from David Griggs, DFO Pacific Region.

[32] Ministry of Environment, Lands and Parks, Streamside Protection under the *Fish Protection Act*, A Discussion Paper, Victoria, BC 1998, 10.

[33] The regulation is still under development. This discussion is based on a Discussion Draft dated January 25, 2000.

[34] Federal laws are the *National Park Act; Wildlife Act* (National Wildlife Areas)*; Migratory Bird Convention Act* (Migratory Bird Sanctuaries); and *Oceans Ac*t (for marine protected areas). Provincial laws include the *Regional Park Act; Heritage Conservation Act; Islands Trust Act* and *Local Government Act.*

[35] For more information on the provincial protected areas system, see PAS Update, Land Use Coordination Office, available online at http://www.Inco.gov.bc.ca. On the federal system, contact the department of Canadian Heritage, Parks Division. The Canadian Parks and Wilderness Society is also a good source of information.

[36] Ann Hillyer and Judy Atkins, *Giving It Away – Tax Implications of Gifts to Protect Private Land* (Vancouver: WCELRF, 2000).

[37] Amendments in 1994 to the *Land Title Act* significantly expanded the potential to use conservation covenants for protecting private land in BC. Prior to the change in the *Act*, a conservation covenant to protect ecological features of land could be held by a provincial or local government body, but not by a private conservation organization. A conservation covenant now can be held by "any person designated by the Minister of Environment, Lands and Parks on terms and conditions he or she thinks proper".

[38] See the WCEL web site at http://www.wcel.org under the heading Private Land Protection. Ann Hillyer and Judy Atkins, *Greening Your Title – A Guide to Best Practices for Conservation Covenants*, (Vancouver: WCELRF, 2000).

[39] The web site is http://www.cws-scf.ec.gc.ca/ecogifts/eng/index_e.htm.

[40] Ann Hillyer and Judy Atkins, *Giving It Away – Tax Implications of Gifts to Protect Private Land* (Vancouver: WCELRF, 2000).

CHAPTER 5

THE BUILT ENVIRONMENT

The appearance and layout of buildings shape the urban experience. Vibrant communities share certain characteristics. They are *compact communities* – easy to get around in, by walking or public transit. Car use is diminished and traffic and commuter frustration lessened.

These "walk, work, live" communities, with good transit connections to other communities, are among the most popular in a town or city. *Nodal Development* promotes compact communities. Growth is concentrated around major hubs or nodes, such as transit stations and urban centres. *Mixed or integrated land uses* are common. Residential, commercial, recreational and industrial activities take place side by side. They include a *mix of housing types*, including single family, multifamily, non-market housing, coops, and innovative new housing types. *Heritage preservation* policies and *design guidelines* guard the historic and aesthetic quality of neighbourhoods. *Sprawl* is avoided. *Affordable housing* and *a range of housing types* are readily available.

The challenge for smart growth advocates is to work with local governments and developers to achieve innovative designs that benefit everyone. Developers seek opportunities to maximize a property's value. Local governments pursue a number of goals, traditionally concentrating on maximizing economic activity and tax revenues. Residents must keep these needs in mind in their efforts to control the form and location of new developments and obtain liveable healthy communities. Demonstrating the economic benefits of alternative development standards, (which can cost half as much as traditional low-density developments) and ensuring that all costs of development are fully accounted for are strategies that can work.[1] Active engagement with local government and developers at an early stage of new proposals is another successful strategy.

This chapter provides an overview of building regulation; discusses *Local Government Act* provisions on building; *Land Title Act* controls on development; alternative development standards, heritage conservation, and affordable housing strategies.

HOW BUILDINGS ARE REGULATED

Buildings are regulated in a number of ways. Actual construction is covered by Part 21 of the *Local Government Act* which gives the Minister authority to establish a provincial Building Code governing standards for the construction and demolition of buildings. The Building Code applies to all local governments and has the same force and effect as a validly enacted bylaw of the municipality. If a municipal bylaw is inconsistent with the Code or other regulations, it is of no force and effect and is deemed to be repealed, s. 692. The BC Building Code is based on the 1995 National Building Code.[2] To receive a building permit from a local government, the proposed building must conform to the Code. Local governments may also have building bylaws governing construction.

The National Energy Codes for Building and Houses also affect building. These Codes establish flexible standards for energy efficiency appropriate for different regions of Canada. They have not yet been adopted in BC.

Building location and design are primarily determined by the planning and development controls imposed by the *Local Government Act* and by OCPs and other associated plans (such as Neighbourhood Plans or Local Area Plans) established by each local government. The regulations that have the most impact on building density, location and design are zoning bylaws.

GROWTH MANAGEMENT STRATEGIES

One of the purposes of a RGS 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", s. 849 (1). Additionally, a RGS is to work towards "avoiding urban sprawl" and towards "settlement patterns that minimize the use of automobiles and encourage walking, bicycling and the efficient use of public transit", s. 849 (2) (a), (b). A RGS also should contain an affordable housing strategy for the region. These key components of a RGS have the potential to encourage the type of compact communities that smart growth advocates promote. For example, the GVRD Liveable Region Strategic Plan, which is the region's RGS, sets a "Growth Concentration Area" (GCA) in which new developments are encouraged. The Plan seeks to accommodate about 70 per cent of GVRD growth in the GCA. In 1998, 63% of the region's population growth fell within the GCA.[3]

New regional infrastructure developments should conform to the RGS since all bylaws adopted and all works and services undertaken by a regional district board must be consistent with the RGS, s. 865. The location of infrastructure determines where new buildings will be built.

Municipalities have minimal legal obligations to carry out the specific intent of a RGS by amending their OCP or bylaws. Though a municipality must adopt a regional context statement in its OCP, stating how the OCP is to be made consistent with the RGS over time, there are no clear consequences for municipal inaction (though a regional district could refuse to service a new area) and few avenues for citizen efforts to enforce these requirements, s. 866.

OFFICIAL COMMUNITY PLANS

OCPs will have an impact on where buildings are located and how they look. OCPs must show the approximate location and type of different land uses, and must include housing policies, s. 877. Many OCPs are general statements, supplemented by more specific standards

contained in zoning bylaws, guidelines for development permit areas, and comprehensive development areas.

An example of this type of policy statement in an OCP for housing is: "Residential developments shall be sited and designed, wherever possible, in a manner which takes advantage of and preserves special site features such as mature vegetation, landscaping, topography, adjacent development and view sheds and provides for safe, convenient and separate pedestrian and vehicular routes on collector or arterial corridors." (Salmon Arm).[4] The practical effect of these policy statements is limited.

ZONING BYLAWS

Zoning bylaws have the most direct impact on how buildings in a community look and how much space they will occupy. Zoning and development control bylaws are the "key measure which frustrates or facilitates any housing type".[5] Zoning bylaws typically set:

- the density for an area (how many buildings of what size may be built),
- setbacks for each building from its lot lines,
- maximum building height,
- parking requirements,
- fencing requirements, and
- landscaping requirements.

Each municipality may have a number of different zones set out in its zoning bylaw. For example, Burnaby has fifteen different types of zones, for small lot, family and row housing, infill townhouses, multiple housing, ground oriented townhouses, and high-rise apartments.

The legal effect of a zoning bylaw is that all buildings erected after the bylaw is adopted and all uses of the land affected by the zoning bylaw must conform to the bylaw requirements. Buildings and uses which lawfully existed before the bylaw was adopted may legally continue as "non-conforming uses."

To obtain a change of use or density in any particular zone set out in a zoning bylaw, a developer must apply for a site specific re-zoning. Whether or not the re-zoning will be granted depends on land use designations in the OCP or area plan guides. Often, however, if the proposed re-zoning does not fit with the OCP designation, both the OCP will be amended and the re-zoning granted at the same time. An alternative to re-zoning is to obtain a permit allowing the development despite its failure to adhere to the zoning bylaw. Types of permits that may authorize deviations from otherwise applicable zoning bylaws include development variance permits; temporary commercial and industrial permits; and in some cases, development permits, discussed in chapter 2.

ZONING AND USES OF LAND

Usually, a zoning bylaw includes a list of permitted uses and states that no other uses are permitted in the area. It is important to read the definitions section of the bylaw to see if the allowable uses are defined. For example, allowable uses may include "Convenience Store". If the definition of "Convenience Store" states that these are retail businesses with a floor area of less than "x" square feet, then a proposed retail store bigger than the maximum allowable area would not be permitted.[6]

ZONING AND DENSITY

Zoning bylaws establish the density for a given area. Density may be regulated by dwellings per area or lot; minimum or maximum lot sizes restricted to one house per lot; or by floor space ratio or floor area ratio.

Generally speaking, higher densities are more appropriate for built up urban areas, and lower densities for surrounding natural areas. Smart growth advocates have a dual role: to advocate for increased density in the already built up areas while at the same time arguing against increased densities in outlying undeveloped areas, which could contribute to urban sprawl. On the other hand, where development in undeveloped areas is inevitable, smart growth advocates may want to concentrate the development in smaller areas, while maintaining the remainder as farmland, forest land, parks or private green space. This can be done through a number of mechanisms.

Local governments must use careful wording in zoning to achieve the level of density that they want. Bylaws that are not specific may be challenged. For example, in a case on Jervis Inlet in the Sunshine Coast, an applicant applied to develop a "hunting and fishing camp" on the grounds that this was a permitted use in the relevant zoning bylaw. The zoning bylaw did not define the term "hunting and fishing camp". The applicant proposed to construct 58 free standing cabins which could be used for hunting or fishing purposes. The permitted density in the bylaw restricted the number of dwelling units on a parcel the size of the applicant's to 3 per parcel. Accordingly, the regional district refused to allow the development proposal. On an application for judicial review, the court held that the development application was properly refused since it clearly far exceeded the allowable density.[7] In this case, a rural area discouraged higher density through its zoning bylaw. Communities that wish to promote higher densities in select areas must also use carefully worded bylaws.

GROUND-ORIENTED MEDIUM-DENSITY HOUSING (GOMDH)

To achieve greater density in already developed urban areas, new housing strategies are often required. In the Greater Vancouver Region, the liveable region strategic plan has the objective of encouraging the production of additional ground-oriented medium-density housing (GOMDH). The strategic plan sets out target populations and numbers of households for areas in the Greater Vancouver Region. Some municipalities in the region are concerned that they cannot meet both the population increase targets for their municipality as well as their residents' desire for ground-oriented (rather than high-rise) housing. Ground-oriented medium-density housing is needed to meet the regional growth strategy goals of population increases in the "growth concentration areas." It is also needed to avoid urban sprawl, further expansion of development at low densities.

COMPREHENSIVE DEVELOPMENT ZONING

A comprehensive development zone, or "spot zone" can be used to tailor zoning requirements to meet the particular needs of one new development. This individual zone responds to specific needs for a site. Vancouver has over 300 comprehensive zones, established to address special site conditions as well as provide guarantees about design and site development to adjacent residents. Parksville has had success with comprehensive development zoning by planning for a mixture of housing types, open spaces, neighbourhood commercial facilities and has required that ten percent of new housing be affordable.[8]

DEVELOPMENT PERMITS

DPs are another key control on the built environment. In areas designated as development permit areas (DPAs), development cannot occur until the DP has been obtained. DPAs must be designated in a local government's official community plan. Two of the purposes for DPAs relate to the built environment under section 879 (1) of the *Local Government Act*: (d) revitalisation of an area in which a commercial use is permitted; (e) establishment of objectives and the provision of guidelines for the form and character of commercial, industrial or multifamily residential development.

When DPAs are designated, the OCP must also describe the special conditions or objectives that justify the designation and specify guidelines respecting the manner by which these special conditions or objectives will be addressed. DPs are restricted by these requirements. They must be:

- established for certain specific reasons,
- justified by objectives set out in the OCP, and
- issued subject to guidelines established in the OCP.

In addition, development permits must not vary the use or density of the land from that permitted in the zoning bylaw that would otherwise apply in the area, s. 920 (4).

DPs to revitalize commercial areas or to control the form and character of commercial, industrial or multifamily residential development may only include requirements respecting the general character of the development, e.g. landscaping, exterior design, siting, but not the particulars of landscapting, exterior design or finish.

In some cases, local governments may be granted greater control over form and character of development. For example, the resort municipality of Whistler has additional permit powers than those set out in the *Local Government Act*. New developments in Whistler may include requirements about the particulars of the exterior design or finish of the development.[10]

LEGAL EFFECT OF PERMIT AREA DESIGNATION

Once a DPA has been designated in an OCP, there are a number of restrictions on how the land can be used. Land within a DPA must not be subdivided and construction of, addition to, or alteration of a building or structure must not be started without a DP.

Council must follow the requirements of the *Local Government Act* when deciding whether or not to issue a development permit. It does not have absolute discretion whether or not to issue the permit but must follow the guidelines set out in the OCP. So, for example, in a Saanich case, the council refused to issue a development permit because it believed that the applicant planned to operate a retail operation, rather than the wholesale operations that the zoning bylaw allowed. The applicant went to court, and the court found that council had acted outside its statutory authority by considering irrelevant or improper matters such as the "perceived use of the land". As the applicant had complied with all of the guidelines set out in the OCP, the judge ordered the development permit to be issued.

Often, development permit decisions (as well as a host of other planning and land use decisions) are based on reports prepared by planning staff which are submitted to council. Council is not bound by the recommendations of its planning staff. Its discretion is limited by the *Local Government Act*, the OCP, and guidelines established in the OCP.

The Selkirk Waterfront: Revitalizing Victoria

When the 24 acre Selkirk sawmill site near downtown Victoria was listed for sale in the early 1990's, the last thing neighbourhood residents wanted was a retail mega-store. However, after one offer from a retail giant, the community worked with a local developer to design a mixed-use urban project. The result is a diverse development that includes industrial, commercial, office, residential, and institutional uses. The industrial tenant, Centra Gas, buffers the site from adjacent industries uses. Government and other offices fill several buildings with retail stores on the first floor. Residential options range from townhouses to three-storey apartments. Other amenities include a Montessori school and daycare, the Gorge Rowing Club, and access to the Galloping Goose Regional Trail. The developer chose mixed-use for the site because having a variety of tenants means the development can more effectively withstand market ups and downs. The crime rate is also lower because people are present and activities occur at all hours.[9]

Big Box Stores

Many communities are opposed to big box stores, and want more information on how their local governments can prevent these stores from locating in their neighbourhoods. Zoning restrictions and design standards are two tools that can be used. Some jurisdictions have passed laws forbidding big box stores, such as Vermont.

"Big Box Stores" are typically characterized by their large size – from 65,000 to over 250,000 square feet of floor space. Because of their huge size, they are often located in previously undeveloped areas and are inaccessible by foot to the large numbers of shoppers required to make these stores viable. Car access necessitates large parking lots to support these retail giants, which further contributes to the land area consumed. Municipal councils can use their legal tools to limit the proliferation of big box stores:

- *Zoning Bylaws*. Local governments can pass zoning bylaws that effectively eliminate big box stores. For example, municipalities can place limits on building size (e.g., restricting floor space of retail units), prohibit retail activity or the type of retail activity within a zone, or limit the size of permissible parking lots (making a big box store unfeasible). An example of a municipality using its zoning powers to stop a big box store took place in February 2000. The City of Surrey voted down a re-zoning application put forth by developers who wanted to build a Wal-Mart store. The city decided not to amend a zoning bylaw to allow the 101,840 square

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DENSITY BONUSING

Density bonusing is a statutory scheme which allows developers to increase density on one part of site in exchange for the provision of an amenity to the community. The term "amenity" is not defined by the *Act*. It may include affordable housing or preservation of green space or ecologically sensitive areas. In the City of Vancouver, density bonusing has been a backbone of the zoning and development permit process for years. More municipalities are now using this tool. It is a good way to ensure that affordable housing is integrated into new and redevelopments.

In addition to the statutory scheme, developers can negotiate with local governments to provide public benefits if land is re-zoned. This can have an effect on the shape of the built community. Development agreements may give effect to this type of arrangement without invoking the *Local Government Act*. It is important to note that any agreement cannot fetter the discretion of local government and the local government cannot bind itself in an agreement to conclusively agree to any re-zoning proposal. However, developers can commit themselves to particular action. Development agreements may involve community benefits such as financial contributions for upgrading or enlarging community facilities such as community centres, park land and highway dedications in excess of those required by statute, water course dedication in excess of that required by statute, covenants under section 219 of the *Land Title Act* to conserve land, statutory building schemes and others.[11]

DEVELOPMENT COST CHARGES

DCCs will also have an impact on the form of the built environment. Development cost charges are used to pay for certain types of infrastructure required by new developments, and may also involve payment for new community amenities.

A DCC, (sections 932 through 937 of the *Local Government Act)* assists local governments in paying the capital costs of installing certain municipal services, the installation of which is directly or indirectly affected by the development of lands and/or the alteration/extension of buildings (section 933 (1) and (2)). DCCs can be specified according to different zones or specified areas as they relate to different classes and amount of development, but charges should be similar for all developments that impose similar capital cost burdens on a municipality (section 934 (2) and (3)). At present, the *Local Government Act* permits DCCs to be established for providing, constructing, altering, or expanding facilities related only to the following municipal services:

- highways, other than off-street parking;
- sewage;
- water;
- drainage; and
- parkland acquisition and improvement (section 933 (2)).

DCCs are payable by parties obtaining an approval of subdivision or a building permit, as the case may be (section 933 (1) and (5)).[12] Many local governments do not implement DCCs to the full extent which means that existing taxpayers often subsidize new development.

TRANSFER OF DEVELOPMENT RIGHTS

There is no statutory provision allowing the transfer of "development rights" from one parcel of land to another in the *Local Government Act*.

The City of Vancouver Charter does allow transfer of development rights for heritage designations. This legal tool has been used in several high profile cases such as the Cathedral Place development, in which an old cathedral was preserved by transferring its development rights to an adjoining high-rise development, which was granted additional density in exchange for a payment to the cathedral. It has also been used in the City of Victoria.

No legal restrictions preclude developers and local governments from arranging for transfer of development rights by contractual arrangement. The caveat that council must always keep in mind is that it cannot fetter its discretion and pre-decide an issue before discussion at public hearing or before the other statutory requirements for re-zoning or OCP changes have been complied with.

DESIGN STANDARDS

Design standards are primarily set by the applicable zoning bylaw as well as guidelines applicable to particular neighbourhoods. For example, the City of Victoria has design guidelines for a number of neighbourhoods: Bayside Village, Centennial Square, Chinatown, Cook Street Village, Dockside, Oak Bay Avenue, Quadra Village, as well a specific blocks of streets, such as the 700 block of Yates Street.[13] Advisory Planning Commissions may be asked to give advice on whether proposed new developments adhere to design guidelines.

SUBDIVISION

Design controls may be a condition of approval for new subdivisions. If the applicable OCP and zoning bylaws set design standards, an approving officer has to ensure that these standards are met in subdivision proposals.

The approving officer for new subdivisions has the power to affect building design and layout by withholding approval unless all relevant plans and standards have been complied with.

Bylaws establishing service requirements for new subdivisions will affect the built environment. These bylaws may set conditions for highways, boulevards, boulevard crossings, transit bays, street lighting and underground wiring, water systems, fire hydrants, sewage collection and disposal systems and drainage collection and disposal systems. Connection to community water, sewer or drainage systems can be required.

ALTERNATIVE DEVELOPMENT STANDARDS

Development standards established by zoning or building bylaws, or by subdivision or building servicing requirements may in some cases work against smart growth. Status quo development standards have created many low density, car dependent, sprawling neighbourhoods. Alternative development standards allow urban design to work with, rather than against, ecosystem functioning. See the discussion on alternative development standards in Chapter 2.

HERITAGE PRESERVATION

Both the province and local governments can protect heritage property. The *Heritage Conservation Act* is the provincial statute that allows both personal and real property to

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foot store and its accompanying 600-car parking lot. Neighbourhood groups lobbied local council to turn down the application based on concerns about neighbourhood identity, increased traffic, aesthetics, and safety.

- *Development Permits*. If a large retail development doesn't meet specific guidelines given for a DP area (e.g., guidelines regarding impacts to neighbours or the environment), municipal council can reject a development permit application.
- *Capital Expenditure Plans*. A municipality can limit its own expenditure on infrastructure (e.g., roads, sewers, etc.) to service areas proposed for development by big box retailers. If big box stores have to pay for their own infrastructure, these developments could become less appealing, or the developers might choose to build in more compact ways to save infrastructure costs.

receive heritage protection. This chapter discusses local government designation of heritage property.

Local governments may protect heritage property by:

- designating heritage areas in their OCPs,
- adopting heritage designation protection bylaws, and/or
- preventing or delaying alternation or demolition of heritage buildings or structures by using temporary controls such as protection orders or by withholding approvals.

OFFICIAL COMMUNITY PLAN DESIGNATION

Heritage conservation areas may be designated in an OCP pursuant to section 880(1) of the *Local Government Act*. If a local government has designated this type of area, heritage alternation permits are required before undertaking work in the area, unless the proposed new development or subdivision meets the conditions set out in the OCP, section 971. If a heritage conservation area is designated, the OCP must describe what heritage features of the property or area warrant preservation and how the objectives of this designation will be accomplished.

HERITAGE PROTECTION BYLAWS

The *Local Government Act* authorizes local governments to pass heritage protection bylaws for property that has "heritage value" (defined to mean historical, cultural, aesthetic, scientific or educational worth or usefulness of property or an area) or "heritage character" (defined to mean "the overall affect produced by traits or features which give property or an area a distinctive quality or appearance").

Bylaws may also be passed to protect heritage if designation of property is necessary or desirable for conservation of protected heritage property. All persons who have registered interest in the property must be given notice and a public hearing must be held before a heritage protection bylaw is adopted, section 968 of the *Local Government Act*. A report justifying the designation must be prepared and presented prior to the meeting. Section 968 of the *Act* contains minimum requirements for the contents of this report. At least 10 days advance notice must be given before the hearing is held and the report from local government must be made available at least 10 days before the hearing as well. Compensation will be payable to affected property owners when a heritage designation bylaw is passed, section 969 of the *Local Government Act*.

TEMPORARY PROTECTION CONTROLS

Local governments have powers to protect heritage property even if they have not designated heritage conservation areas or passed heritage protection bylaws. These include:

- making temporary protection orders under section 965 of the *Local Government Act*, and
- withholding building permits, development permits or other permits or approval which could result in alternation to "protected heritage property" section 960.

LIMITS TO HERITAGE PRESERVATION POWERS

Heritage preservation powers may not be used to restrict forest management activities or harvesting in forest reserve land under the *Forest Land Reserve Act* or on other managed forest land. Similarly heritage protection may not be used to prevent uses of real property

permitted by the applicable zoning bylaws or prevent development of land to densities allowed under applicable zoning bylaws, section 948 (2) (3), unless the property has been designated by a bylaw or subject to a temporary protection order.

HERITAGE REVITALIZATION AGREEMENTS

Local governments also have powers to enter into heritage revitalization agreements with owners of heritage property, section 966, *Local Government Act*. These are voluntary agreements and may cover a wide range of subjects.

There are significant enforcement options available for alteration or damage to heritage property without a heritage alternation permit; failure to comply with the requirements of these permits or altering property in contravention of a heritage revitalization agreement. Fines of up to $50,000 or imprisonment for a term up to two years for such an offence are available, and for corporations a maximum fine of $1,000,000 may be imposed, section 981.

WHAT YOU CAN DO

Actions that a citizen or community group can take on developments:

1) Become involved: learn the rules for development approval and participate through development permit procedures, bylaw adoption or Advisory Planning Commissions;
2) Learn about alternative development standards and promote adoption of these standards to local government; and
3) Use informal processes to shape the form of development, such as design charrettes. See Chapter 10 on public participation for more details.

WHO TO CONTACT

Relevant government and non-governmental contacts

Ministry of Municipal Affairs, at http://www.marh.gov.bc.ca

Ministry of Social Development and Economic Security, at http://www.sdes.gov.bc.ca

James Taylor, Chair in Landscape and Liveable Developments at School of landscape Architecture, UBC, at http://www.agsci.ubc.ca/JamesTaylorchair/html

James Taylor, Chair in Landscape Architecture, UBC, web site

FOR ADDITIONAL INFORMATION

Smart Growth BC at http://www.smartgrowth.bc.ca.

Smart Growth Network at http://www.smartgrowth.org.

Sustainable Communities Network at http://www.sustainable.org.

Sierra Club (US) Sprawl Solutions Campaign at http://www.sierraclub.org/sprawl.

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Carrots: Methods for Local Government to Give Assistance to Heritage Property Owners in British Columbia (Victoria: Minister of Municipal Affairs, 1991).

Heritage Planning: A Guide for Local Government (Victoria: Minister of Municipal Affairs, 1992).

Density Bonus Provisions of the Local Government Act: A Guide and a Model Bylaw (Victoria: Minister of Municipal Affairs, 1997).

Patrick Condon, ed., *Alternative Development Standards for Sustainable Communities* (Vancouver: UBC Press, 2000).

NOTES

[1] Deborah Curran and May Leung, Smart Growth: A Primer (Victoria: University of Victoria Eco-Research Chair, 2000).

[2] The 1998 BC Building Code is available online at: http://www.sdes.gov.bc.ca/building/bldgcode.html.

[3] Liveable Region Strategic Plan, 1999 Annual Report, GVRD, at 23. The GVRD's GCA includes Vancouver, Burnaby, New Westminster, Coquitlam, Port Moody, Port Coquitlam, and northern parts of Surrey and Delta.

[4] *Planning for Housing: An Overview of Municipal Initiatives in British Columbia* (Victoria: Ministry of Municipal Affairs, 1997).

[5] City Spaces, *The Regulatory Environment for Ground-Oriented, Medium Density Housing in Greater Vancouver*, (Vancouver: GVRD, March 1998) 2.

[6] Paul Wilson, "Re-zoning under the BC Local Government Act System" in *Rezoning – Strategies and Procedures for Getting Results* (Toronto: Canadian Institute, 1992), 9.

[7] 557058 BC Ltd. v Sunshine Coast Regional District BCSC 99/2200, November 3, 1999.

[8] *Planning for Housing: An Overview of Municipal Initiatives in British Columbia* (Victoria: Ministry of Municipal Affairs, 1997).

[9] Deborah Curran and May Leung, Smart Growth: A Primer (Victoria: university of Victoria Eco-Research Chair, 2000).

[10] Application Modification Regulation No. 3, BC Reg. 139/86 (section 1).

[11] *British Columbia Real Estate Development Practice Manual* (Continuing Legal Education Society of BC; Vancouver), 5-56.

[12] Inclusion of soft services such as childcare, employee housing, fire protection, police, etc. as a part of DCCs is not permissible under the *Local Government Act*. Both the *Vancouver Charter* and the *Resort Municipality of Whistler Act* allow these two municipalities to establish similar charges for certain soft services. This information is from the Ministry of Municipal Affairs 1997 *Development Cost Charges – Best Practices Guide*, available online at http://www.marh.gov.bc.ca/GROWTH/PUBLICATIONS/DCCGUIDE/bestpr1.html#Relationship to Other Municipal Documents

[13] See City of Victoria's web site at http://www.city.victoria.bc.ca/depts/planning/publist.htm#GUIDELINES

CHAPTER 6

PROTECTING AGRICULTURAL LAND

INTRODUCTION

A healthy agricultural economy is an important part of complete communities. Agricultural land contributes to food security habitat, aesthetic values and the feeling of open space near urban areas.

This chapter examines the reasons for protecting agricultural land and threats to this resource. It discusses provincial and municipal regulatory tools to address these threats. It explains the roles of different decision-making bodies (such as the Land Reserve Commission, and the Farm Practices Board). It suggests avenues for smart growth advocacy to protect agricultural areas.

In BC, fertile land is a valuable, scarce resource. Only 5% of the province is suitable for agriculture; and only 1% of the province is prime agricultural land.[1] Prime areas such as the Lower Mainland, Southeast Vancouver Island, and the Okanagan Valley, contain some of the highest quality agricultural land in Canada. These areas are also highly populated.

In BC, fertile land is a valuable, scarce resource. Only 5% of the province is suitable for agriculture; and only 1% of the province is prime agricultural land.[1] Prime areas such as the Lower Mainland, Southeast Vancouver Island, and the Okanagan Valley, contain some of the highest quality agricultural land in Canada. These areas are also highly populated. They are also highly populated. Seventy-nine percent of British Columbians live in or adjacent to the agricultural areas responsible for 78% of BC's farm receipts.[2] The Province's agriculture sector supplies more than half of BC's food requirements.[3] To ensure that urban growth does not damage or destroy agricultural land, a strong regulatory framework is required. The statutory Agricultural Land Reserve system has worked well to preserve agricultural land.

Agricultural land preservation has many benefits for society. Yet, agricultural land faces many threats: ranging from residential, recreational or commercial development pressure to unsustainable agricultural practices. Maintaining a secure agricultural land base provides British Columbians with numerous benefits:

- food security as agricultural land declines world-wide due to urbanization, desertification, soil erosion, and salinization;
- soils and arable land is a form of natural capital responsible for life-support functions of the ecosphere;[4]
- local food supply options (including small scale agriculture and niche markets such as organic produce);

- local economic opportunities; and
- wildlife habitat, amenity and cultural values including green space, visually pleasing landscapes, recreational opportunities, agricultural heritage and other cultural values;

Agricultural areas are vitally important to the provincial agricultural industry and local economies. Over 230,000 people are directly employed in agriculture in BC, and the industry as a whole is worth $12 million in BC.[5]

Despite these benefits, agricultural land is threatened by urban sprawl, incompatible land uses, land speculation, and, in some cases, unsustainable agricultural practices.

As BC's population grows, so too do the land requirements for housing people as well as the need for schools, industrial and commercial facilities and a host of other related land uses. But population growth also equals mouths to feed. In the period between 1971 and 1996, BC's population grew, on average, by 171 persons each day, or over 62,000 people per year – an amount greater than a new Chilliwack[6] each year for the last 25 years. Historically, urban centres have expanded into surrounding agricultural areas.

Urban sprawl, created by poorly planned subdivisions, transportation corridors, and industrial and commercial operations permanently remove land from agricultural production.

Rather than choosing urban expansion, communities can decide to re-zone for increased density and housing capacity, infill and brownfield redevelopment.[7]

Edge conflicts occur when land adjacent to agricultural land is developed in a way that threatens the practice of agriculture, e.g. conflicts over farm odours and machinery noise may occur when a residential subdivision is located next to farming operations. Buffers between land areas of different uses can help solve this problem. It is important that planning along the agricultural interface be undertaken from the perspective of a "shared responsibility," in which means to contribute to compatibility are considered on both the farm and non-farm sides of the edge. Planning for permanent buffers to enhance the compatibility of land uses can be done at the local government level, through the *Land Title Act* and *Local Government Act*.[8] In addition, through their decision-making powers, the Land Reserve Commission and Farm Practices Board can also reduce land use conflicts.

The demand for land fuels land speculation. Speculators often buy land in the anticipation that it might one day be removed from the ALR. This speculation increases the cost of agricultural land with the following results: it becomes more lucrative for a farmer to sell his or her land than to farm it; and it becomes more difficult for farmers to purchase additional agricultural land. In Delta, this has led to a situation where six out of ten acres of farmland are leased, many on a year-to-year basis.[9] This places a constant shadow of uncertainty regarding the question of tenure and the continued access of farmers to agricultural land.

Land use planning for agricultural land involves a combination of statutes, primarily:

- the *Land Commission Act*, which created the Agricultural Land Reserve (ALR) and acts both as the primary legal tool for agricultural land preservation and as the chief barrier to urban sprawl in areas like the mushrooming Lower Mainland of BC (the *Act* was later renamed the *Agricultural Land Commission Act* and is now the *Land Reserve Commission Act*),
- the *Local Government Act*, regulating agricultural use of land and applying land use planning tools to agricultural land, and
- the *Farm Practices Protection Act* which protects the right to farm in farming areas.

PROVINCIAL REGULATION OF AGRICULTURAL LAND

The two chief laws governing land use planning for agricultural land are *the Land Reserve Commission Act (LRC Act)* and the *Local Government Act*. Other laws, such as the *Farm Practices Protection (Right to Farm) Act*, the *Soil Conservation Act* and the *Land Title Act*, also affect agricultural land in BC. Each of these laws is discussed below.

THE LAND RESERVE COMMISSION AND AGRICULTURAL LAND RESERVE

The Agricultural Land Reserve (ALR) was created to preserve agricultural land in British Columbia, and to encourage agricultural uses of land within the reserve. The preservation of land in the ALR has significantly decreased the rate of conversion of agricultural land to urban uses. Before the creation of the ALR, up to 6,000 hectares/year of prime agricultural land was being lost to urban use. Today this figure is about 300 hectares of prime farmland/ year.[10]

The ALR was originally approved by the Provincial Cabinet and designated by the Agricultural Land Commission. Today lands become designated as part of the agricultural land reserve, or excluded from the reserve, by the Agricultural Land Commission under the *Land Reserve Commission Act* without any involvement of Cabinet. Both private and public (Crown) land may be designated. There are over 4.7 million hectares of land in the reserve in British Columbia, only about 5% of BC's total land mass.

The majority of land in the reserve was designated in between 1974 and 1976, following passage of the legislation in 1973. The process of ALR designation began with input from the then Department of Agriculture which produced a first draft set of ALR maps based upon the overall knowledge of farming in the province, land in farm use and lands with an agricultural capability rating clearly suggesting a potential for agricultural use.

The draft maps were then forwarded to all regional districts for their consideration. The regional districts consulted with their member municipalities and public hearings to consider the proposed ALR were conducted. The regional districts were then required to adopt a land reserve plan by bylaw and file it with the Commission. When advising on the ALR, local governments took into account on-going public works projects and planned development that was 'in-stream' and the Commission advised local governments to ensure that sufficient land was available to accommodate five years of future urban growth in order to allow for a period of transition.

Regional Districts filed their proposals to the Commission, which subsequently reviewed and suggested amendments to the draft ALR maps. In turn, other government ministries and agencies commented on the ALR maps with the Environment and Land Use Committee of Cabinet having final consideration prior to Cabinet approval, with the Commission designating the ALR on a regional district-by-regional district basis.

Following passage of the *Act* in 1973 and until the ALR was established, all land within a municipality or regional district that was zoned for agricultural or farm use under a bylaw passed before December 21, 1972, was deemed to be in the reserve, s. 13 (3). Thereafter, land could be excluded from the ALR included into the reserve or subdivision or non-farm uses allowed within the ALR only through an application process and approval by the Commission.

HOW ARE LANDOWNERS AFFECTED BY THE ALR?

The primary intent of the ALR is to provide a permanent land base for farming purposes. Non-farm uses are generally not allowed unless permitted by the legislation, regulations or order of the Commission. Some forested land is included in the agricultural land reserve because of its soil type and growing potential. However, growing and harvesting crops of trees is considered a permissible use of agricultural land as well.

HOW ARE LOCAL GOVERNMENTS AFFECTED BY THE ALR?

The *Land Reserve Commission Act* affects local governments in a number of ways. A municipality or regional district may not permit land in an ALR to be used for other than farm purposes or as permitted by the *Act* or regulations. Also, approving officers may not approve subdivision of land in the ALR and a board of variance may not permit uses in the reserve except farm uses, s. 18.

Municipalities and regional districts must ensure that any land use bylaw is consistent with the *LRC Act*, regulations and orders of the Commission, s. 47 (2). While the *LRC Act* does not invalidate local government bylaws, that portion of the bylaw that is inconsistent with the *Act* is of no force or effect, s. 47 (3) and (4). More specifically, a bylaw that allows a use not permitted by the *LRC Act*, regulations or an order of the Commission or contemplates a use of land that is contrary to the intent of the *Act*, is deemed inconsistent with the *Act*. However, a bylaw that provides restrictions on farm use in addition to those provided by the *LRC Act* and regulations, is not, for this reason alone, inconsistent, s. 47 (5) and (6).

In addition, if an OCP applies to land in the ALR, the plan must be referred to the Land Reserve Commission for comment after first reading and prior to adoption, s. 882 (3) (c). In practice, the Commission has worked closely with local governments on plans and bylaws affecting the ALR for many years. Normally consultation occurs at an early stage in the plan or bylaw development process. Since implementation of the *Farm Practices Protection (Right-to-Farm) Act* in 1996, the Commission and Ministry of Agriculture, Food and Fisheries have worked together with local governments to provide assistance on the development of the agricultural components of plans and bylaws.

WHAT LAND USES ARE PERMITTED ON ALR LAND?

All land that is located in the ALR is subject to the *LRC Act*. Farming is encouraged on this land, and non-agricultural uses are regulated. Landowners must comply with the following rules:

- one single family dwelling per land registry parcel is permitted (exceptions may be allowed for additional dwellings required for farm help, or temporary mobile homes for relatives or farm staff); and
- legal parcels of land which were less than 2 acres (0.8 hectares) and had their own Certificate of Title prior to 1972 are exempt from the restrictions placed on ALR land (i.e., these small parcels can be developed subject to local government zoning bylaws and other pertinent regulations).

Permissible uses of land in the reserve are set out in the *Agricultural Land Commission Subdivision and Land Use Regulation* and include:

(a) storage and sale of agricultural products produced on the individual farm on which the storage or sale is taking place;

(b) construction of buildings or structures necessary for a purpose referred to in paragraph (a);

(c) construction of one single family dwelling unit and outbuildings per land registry parcel;

(d) harvesting of trees and the carrying out of all silvicultural and forest protection practices;

(e) ecological reserves established under the *Ecological Reserve Act*;

(f) a reserve or area of land or habitat set apart for wildlife;

(g) parks and recreation reserves, subject to some size limits;

(h) fish farms;

(i) minor highway, road or railway operations and construction;

(j) expanding the workings of an existing gravel pit to a certain size;

(k) construction and maintenance of dykes and related pumphouses and ancillary works, including construction and maintenance of access roads and facilities made necessary by the threat of flooding; and

(l) land development works including clearing, draining, irrigating and construction of reservoirs and ancillary works, where the works are required for farm use of the property on which the works are located.[11]

Property owners may apply to the Commission to have their land removed from the agricultural land reserve. Likewise, applications may be made to include land in the reserve. Additionally, property owners may apply for approval from the Commission to subdivide their land or uses it for a non-farm purpose.

JOINT PLANNING OF AGRICULTURAL LAND – LOCAL GOVERNMENTS AND THE PROVINCE

Local governments and the LRC are jointly responsible for land use planning in the agricultural land reserve. The approval of the Commission is required for many land use decisions in the ALR, such as applications to exclude land, and approvals for non-farm uses or subdivision. As the senior level of government, the LRC has precedence, but as the discussion below illustrates, in practice, planning is done jointly.

The *LRC Act* and regulations ensure local governments have the opportunity to be aware of and directly involved in applications concerning the ALR and to provide advice to the Commission. Almost all applications concerning the ALR are first filed with the local government and where this is not the case, the Commission informs the local government of the application to allow opportunity for comment.[12] The regulations also require local governments to provide recommendations on exclusion applications[13] but the Commission encourages local governments to make recommendations on all types of applications.

In the case of land subject to an exclusion, non-farm use and subdivision application, where a local government bylaw permits farming or requires an amendment to an official plan, rural land use or zoning bylaw, the local government must first authorize, by resolution, the application to proceed to the Commission, s. 15 (4) and 22 (2). This, in effect, provides a veto power to local governments over ALR applications that are contrary to local plans and bylaws, thus ensuring the integrity of these documents. Moreover, in cases where the Commission approves an application for subdivision or non-farm use under the *LRC Act*, approval of the local government and/or other authority may also be required. In all cases,

these further approvals are necessary. Thus, an approval by the Commission does not imply or necessitate approval by the local government of the proposed non-farm use or subdivision.

REGIONAL GROWTH STRATEGIES

One of the purposes of a RGS is to "maintain the integrity of a secure and productive resource base including the agricultural and forest land reserves, s. 849 (2) (e), *Local Government Act*. Each RGS should include specific mechanisms to preserve agricultural lands for the region.

OFFICIAL COMMUNITY PLANS

An OCP is required to contain map designations and statements about agricultural land use, s. 877 (1) (b) *Local Government Act*. It is optional for an OCP to include other more general policies respecting the maintenance and enhancement of farming, s. 878 (1) (c) *Local Government Act*.

An OCP that will affect land in the ALR must be forwarded to the Land Reserve Commission for review and comment before adoption to ensure consistency with the *ALR Act*, s. 882 (3) (c) *Local Government Act*.

Development proposals, or official community plan and zoning changes on land adjacent to ALR areas may be considered by the LRC on request by a municipality or on the Commission's own motion. For example, the LRC commented upon development proposals for non-ALR upland areas of Pitt Polder and suggested that the proposed bylaws would create an "urban island" within an important agricultural area.[14]

DEVELOPMENT PERMIT AREAS

Separating Farming and Residential Areas

In Surrey, a development permit area for the protection of farming of 300m in width on the urban side of urban/farm interface is in place. DPA guidelines separate suburban uses from agricultural land through the use of 30 metre setbacks and landscaping buffers.[16]

DPAs may be used to protect farming, requiring developers to provide building setbacks and screening on their land (rather than putting the onus on the farmer) s.879 (1) (c). Most municipalities have not designated DPAs for this purpose. If a DPA has been designated to protect farming, the development permits issued for the area may include requirements for screening, landscaping, fencing and siting of buildings or structures, in order to provide for the buffering or separation of development from farming on adjoining or reasonably adjacent land, s. 920 (10).

DPAs for farming have the potential to improve compatibility between agriculture and other land uses; apply buffer zones at the time of development; minimize nuisance complaints as well as provide direction to approving officers considering subdivision near farming areas.[15]

AGRICULTURAL AREA PLANS

More localized plans may more readily provide the detail necessary to address local agricultural issues. These sub-area plans are like neighbourhood plans for agricultural areas, and have been used in communities such as Langley, Kelowna, Pitt Meadows, Surrey and are currently being prepared in Richmond and North Cowichan.[17]

The process of developing an agricultural area plan is at the discretion of the local government but adoption procedures are similar to an official community plan. The plans may be developed by an Agricultural Advisory Committee, as was the case in Surrey, or by a specially appointed Agricultural Area Plan Working Group, composed of staff from local government, the LRC, the MAF, MELP or MOTH, as well as representatives from agricultural

producers. The plans can focus on strategies to encourage and enhance agriculture, on edge planning to reduce agricultural/urban conflicts, best design practices, and the bylaws required to implement these plans.[18]

ZONING AND RURAL LAND USE BYLAWS

Prior to a regulation being in place under s. 918 of the *Local Government Act*, intensive agriculture (s. 915) is a permitted use within the ALR, despite a rural land use or zoning bylaw. Once a regulation is passed under s. 918, a local government must receive approval from the minister responsible for *the Farm Practices Protection Act*[19] to use a rural land use or zoning bylaw to prohibit or restrict the use of land for a farm business in a farm area, s. 887 (8) or 903 (5). Once approval of the bylaw has been received, section 915 of the *Local Government Act* (intensive agriculture) no longer applies to the bylaw area.

With passage of a regulation under s. 918 of the *Local Government Act*, a review of the applicable zoning or rural land use bylaw is required. Section 919 outlines the process. In general, local governments must undertake the review within a three-year period in order to identify any inconsistencies between the bylaw and the minister's standards as provided for under s. 916 of the *Local Government Act*. The *Guide for Bylaw Development in Farming Areas* contains bylaw standards and other relevant information to assist local governments in the review and development of zoning and rural land use bylaws that affect farming areas. Standards can also be developed for farm bylaws, which are currently in the development stages.

Local government bylaws may apply to land in the ALR, but, as previously outlined, they must be consistent with the *Agricultural Land Commission Act* or the inconsistent portions have no force or effect, s. 47.

FARM BYLAWS

The farm bylaw is a new regulatory tool. Local governments, under s. 917 of the *Local Government Act*, can create farm bylaws, but in all cases the Minister of Agriculture, Food and Fisheries must approve the bylaw prior to adoption. This type of bylaw can deal with farm operational matters aimed at enhancing land use compatibility, promoting environmentally sound practices, and generally supporting the agriculture industry's long term sustainability. In addition, farm bylaws may provide for the prohibition of particular farm operations in specific areas or circumstances.

Along an agricultural interface farm bylaws may be used as a "farm side counterparts" to development permit areas, which are primarily an urban tool, and include elements such as setbacks, siting and other buffering requirements.

Farm bylaws may address a variety of subjects:

(a) the conduct of farm operations as part of a farm business;

(b) types of buildings, structures, facilities, machinery and equipment that are prerequisite to conducting farm operations specified by the local government and that must be utilized by farmers conducting the specified farm operations;

(c) the siting of stored materials, waste facilities and stationary equipment; and

(d) prohibiting specified farm operations, s. 917 (1).

The bylaws may be different for different sizes or types of farms; different types of farm operations; different site conditions; different uses of adjoining land; and different areas.

As of 1999, farm bylaws were in use only in two jurisdictions which reported that they were a very effective tool, likely since they can be tailor made to suit each individual situation.[20]

ALR APPLICATIONS

Applications exclude land from the ALR, include land into the ALR, subdivide or otherwise develop land in the reserve for non-agricultural uses, must be approved by the Land Reserve Commission. Following is a brief explanation of these processes. Each year, the LRC receives over 600 applications from landowners to remove land from the ALR, subdivide, or use ALR land for non-agricultural purposes.[21] Most landowners apply through their local governments, which refer the applications to the LRC for ruling. Applicants can also apply directly to the Commission for certain special case uses.

The Commission considers how these proposals benefit agriculture, any negative impacts on neighbouring agricultural lands, and the relevance of the application to the Commission's mandate of preserving agricultural land.[22]

APPLICATIONS TO EXCLUDE LAND FROM THE ALR

Applications to exclude land are made pursuant to the ALR Procedure Regulation. An application for exclusion must be approved by the LRC. The local government must authorize the application to be forwarded to the Commission, s. 18 (4), *LRC Act*. In effect, both levels of government must approve the proposed exclusion. In cases where a local government chooses not to authorize the application, it has the effect of denying the application. Courts will generally defer to the Council's discretionary decision whether or not to give permission to property owners to make applications to the LRC to remove land from the reserve.[23]

THE "PROVINCIAL INTEREST" – SUBSTITUTING CABINET AS THE DECISION-MAKER FOR ALR REMOVAL APPLICATIONS

Where Cabinet considers it to be in the "provincial interest," Cabinet may remove the decision-making powers from the Commission on a number of matters and refer them to the Environmental Assessment Board (EAB) for the purpose of a public hearing (or, until a board is appointed, to an independent commissioner of inquiry). On receiving the Board's report, Cabinet may make a final decision on the application in the place of the Commission.

After a controversial decision was made to exclude the Six Mile Ranch land from the ALR in 1998, the government amended the legislation, and narrowed the definition of what is in the "provincial interest," in terms of land removals from the ALR.

This procedure was used in the Six Mile Ranch case in 1998. The government asked a commission of inquiry to make recommendations on a controversial application to exclude ranch land from the ALR to allow construction of a golf course and resort. After conducting public hearings around the province, the commissioner recommended allowing the exclusion. He also recommended clarifying the legislation to elaborate on what factors should be considered when the government decided a question of "provincial interest" in relation to the ALR.[24]

The government responded by amending the legislation. The factors that Cabinet must consider when making a decision in the "provincial interest" to remove a decision from the LRC are:

(a) the public interest that all British Columbians have in the preservation of agricultural land as a scarce and important Provincial asset,

(b) the potential long term consequences of failing to preserve agricultural land, and

(c) the province-wide context of the matter. [25]

The legislation gives additional guidance about the "balancing test" that must be carried out by a Commissioner or EAB (if one is appointed).

To determine whether or not a proposal is in the public interest, the board or a Commissioner must give weight to the following values in descending order of priority:

(a) agricultural values, including the preservation of agricultural land and the promotion of agricultural purposes;

(b) environmental and heritage values, but only if

(i) those values cannot be replaced or relocated to land other than agricultural land, or

(ii) giving weight to those values results in no net loss to the agricultural capabilities of the area; and

(c) economic, cultural and social values, s. 43.1, *LRC Amendment Act*.

As well, public hearings must be held in six different regions of the province when public input is sought to determine the public interest.

APPLICATIONS FOR INCLUSION

Land owners, local governments and the Land Reserve Commission may make application to include land into the ALR, s. 13 (4), (5), (6) and (7). An application for inclusion must be undertaken in accordance with the ALR Procedure Regulation and in the case of an application made by a local government or the Commission, a public hearing is required.

APPLICATIONS FOR NON-FARM USE

Non-farm use may be permitted without removing land from the ALR, if both the LRC and the local government authorize the use, s. 22 *ALR Act*. Under s. 23 of the *LRC Act*, the Commission may delegate its powers to decide on non-farm use applications or subdivisions to a municipality or regional district.

SUBDIVISION OF ALR LAND

Subdivision of land in the ALR is restricted. Section 20 of the *Land Reserve Commission Act* states that no subdivision plan can be deposited in a land title office for land within an agricultural land reserve subject to some limited exceptions.

Except as permitted by the *LRC Act*, an approving officer may not approve a subdivision of agricultural land under the *Land Title Act*, the *Condominium Act* or the *Local Government Act*, s.18 (1) (b).

Subdivision is authorized by the regulations if the proposed subdivision consolidates two or more parcels or does not increase the number of parcels, allows for the more efficient use of agricultural land or buildings, and does not allow the lot size to go below a certain minimum size.[26]

Approving officers have additional grounds to refuse subdivisions if they have reason to believe that the anticipated development of the subdivision would unreasonably interfere with farming operations on adjoining or reasonably adjacent properties, due to inadequate buffering or separation of the development from the farm, or if the extent or location of highways and highway allowances shown on the proposed plan of subdivision is such that it would unreasonably or unnecessarily increase access to land in an agricultural land reserve.[27]

The LRC and MAF have produced a guide for approving officers entitled *Subdivision near Agriculture*, which explains buffering techniques that can be used to reduce edge conflicts.[28]

IMPACT ASSESSMENT REVIEW PROCESS

For major new developments that have the potential to negatively impact agricultural land or operations, local government may designate the area adjacent to the ALR as a development permit area, and require development approval information to be provided by the developer (see Chapter 2 for a discussion of development permit areas). Information on transportation patterns including traffic flow, ad natural environment will be relevant to reducing conflicts with developers.

THE FARM PRACTICES PROTECTION (RIGHT TO FARM) ACT (1995)

The *Farm Practices Protection (Right to Farm) Act* was introduced in 1995 to protect legitimate farm operations from nuisance lawsuits and court injunctions. If "normal farm practices" annoy nearby residents or landowners, this law confirms that the farmer has a right to continue farming. Additionally, the protection extends to farms in the ALR, zoned for farm use and aquaculture areas providing the farms are not in contravention of the *Health Act*, *Pesticide Control Act*, *Waste Management Act* and land use regulations, s. 2 (2) (c).

If a farmer is found not to be using normal farm practices, then that farmer would not be protected from enforcement of local bylaws, and nuisance lawsuits.

The *Act* also provides mechanisms to mediate conflicts over what is considered normal. Concerns about farm practices are first dealt with informally, usually by Ministry of Agriculture and Food (MAFF) staff. Ministry staff can provide explanations about farm practices, or call upon peer advisors to help clarify farm practices and the rational behind them. When possible, neighbourhood level solutions to problems are sought.[29]

The Farm Practices Board is established by the *Act* to resolve disputes and it has authority to say whether or not a farm practice is considered normal. Complaints can be made to the Board in writing accompanied by a processing fee. If a person is aggrieved by an odour, noise, dust or other disturbance resulting from a farm operation conducted as part of a farm business, the person may apply to the board for a determination as to whether the odour, noise, dust or other disturbance results from a normal farm practice, s. 3 (1).

In determining what is considered to be a normal farm practice, resolving or ruling on a complaint, the Board may:

- use a settlement process including the use of the farmer that is the subject of the complaint, ministry experts, peer advisors, mediators, and/or other knowledgeable people;
- dismiss a trivial, frivolous or vexatious complaint or a complaint in which the complainant does not have a "sufficient personal interest"; or
- invoke a formal hearing in which three board members (appointed by the chair) hear the complaint and decide whether or not the farm practice is normal. This panel can order a farmer to stop or modify a practice, which is judged not to be normal, s. 4-7.

OTHER PROVINCIAL LEGISLATION

THE SOIL CONSERVATION ACT

The *Soil Conservation Act* restricts the placement of fill on and removal of soil from land in the ALR and defines which activities require a permit. To place fill or remove soil, both commission approval and a permit from a local authority are required. Fill is defined as any material brought onto land in the ALR. The LRC applies a broad definition of fill, including soil material, vegetative refuse, construction debris, concrete, asphalt, metal, etc. The *Agricultural Land Reserve Permit Regulation* under that *Act* states (in section 3) that a permit must not be issued if the placing of fill would (a) cause danger to adjacent land, (b) foul or impede the flow of any watercourse, unless the applicant holds a permit under the *Water Act*, (c) make the land unsuitable for agriculture, or (d) adversely affect farming on adjacent land.

FISH PROTECTION ACT

The streamside protection regulations of the *Fish Protection Ac*t (FPA) do not apply to agricultural land. There has been public misconception about this issue, so this *Act* will be briefly referred to here. The streamside protection regulation (still in draft form) will apply only to new industrial, commercial and residential development that takes place adjacent to streams.

OTHER RIPARIAN GUIDES

The Partnership Committee on Agriculture and the Environment have initiated a process that outlines agricultural requirements in riparian areas. Farmers must still adhere to the general prohibition against harmful alteration of, damage or destruction of fish habitat contained in the federal *Fisheries Act*.

A *Farmers' Guide to Stream Stewardship* produced jointly by the federal and provincial governments stresses the importance of maintenance of healthy streams for agriculture. Excess erosion due to human activities can lead to increased deposition of sediment in streams which in turn can choke the stream, inhibit water flow, decrease drainage, trap sediment and limit fish migration. Drainage problems can lead to crop loss, or valuable farm land becoming unfarmable. One of the most important questions to ask about stream health is whether there is an adequate riparian zone or green strip along the stream.

CHANNEL MAINTENANCE

Agricultural Ditch Maintenance Policy Guidelines have been tested as a pilot project for the Lower Fraser Valley by the Department of Fisheries and Oceans;, Ministry of Environment, Lands and Parks and Ministry of Agriculture and Food.[30]

WHAT YOU CAN DO

Smart growth advocates have many opportunities to participate in agricultural land protection.

(1) "Smart growth" advocates can encourage agriculture-friendly land use decisions through participation in decision-making processes affecting agricultural land. Examples of these decision-making processes include the following:

- Reviews of the ALR Applications. The Agricultural Land Commission (ALC), which recently merged into the new Land Reserve Commission (LRC), rules on applications to remove land from the ALR, include land into the Reserve and for permission to subdivide ALR land or use it for non-farm.[31] A new strategic plan has been developed and will address the operational changes and strategic priorities of the new commission.[32]
- Municipal By-laws. Local governments have the authority to pass by-laws affecting agricultural land and, with the approval of the Minister of Agriculture, Food and Fisheries, the new farm bylaws.
- Agricultural Area Plans. These special sub-area land use plans may be developed by municipalities to provide for agriculturally supportive policy developed focused on farm areas.

Smart growth advocates can also

(2) provide comment to the LRC in its consideration of applications to remove/subdivide agricultural land or use it for non-agricultural purposes. Different procedures apply to each type of application related to ALR land. For example, for applications by a municipality, regional district or the Commission to remove land from the ALR, a public hearing is required and at the hearing "all persons shall be afforded an opportunity to be heard on matters related to the proposed application".[33] In the case of applications for exclusion by landowners, a notice of the application must be posted in a local newspaper, a notification sign must be placed on the subject property, and adjacent property owners must be notified.[34] These provisions provide opportunity to submit comment on the application to the local government or LRC. For other applications, public information meetings may be required. Check with the planning department of the local government or the LRC to find out opportunities for public participation.

(3) recommend land for inclusion in the ALR. For example, following completion of the Prince George LRMP, the Punchaw Cattlemen's Association requested the inclusion of 20, 000 ha to the ALR in the Punchaw, Chilako River area.[35] The Commission followed-up with a public hearing process, and recently included the land into the ALR.

(4) find out if your municipality has an agricultural area plan. Encourage the development of these plans before development proposals for agricultural areas are considered.

(5) take similar action with respect to farm bylaws.

(6) buy local or BC agricultural products and support direct, on-farm markets whenever possible.

(7) encourage local councils and regional boards to appoint an Agricultural Advisory Committee where they don't otherwise exist.

(8) if not otherwise adopted, encourage regional districts to develop regional growth strategies that set clear limits to urban growth, include a 'food strategy', foster protection of the farm land resource and enhance farming opportunities. Agricultural land should be designated in a regional growth strategy to remain free from development.

WHO TO CONTACT

The Provincial Land Reserve Commission
133 – 4940 Canada Way
Burnaby, BC V5G 4K6
Phone: (604) 660-7000
Fax: (604) 660-7033
http://www.landcommission.gov.bc.ca

Ministry of Agriculture, Food and Fisheries
Resource Management Branch
Phone: (604) 556-3100
Fax: (604) 556-3099
or contact your local office, see the blue pages of your telephone book.
http://www.agf.gov.bc.ca

The Farm Practices Board
Victoria, BC
Phone: (250) 356-8946
Fax: (250) 356-5131
http://www.agf.gov.bc.ca/resmgmt/fppa

Municipal Planners or Councillors
Check the blue pages in the telephone book or the local municipal office.

AGRICULTURAL ORGANIZATIONS

British Columbia Agriculture Council
Kelowna, BC
Phone: (250) 763-9790
Fax: (250) 717-0370
http://www.bcac.bc.ca

British Columbia Agriculture Awareness
http://www.agaware.bc.ca

Agricultural Workforce Policy Board (AWPB)
The Agricultural Workforce Policy Board (AWPB) is a unique partnership of public and private sector groups and organizations in BC that have an interest in agriculture and its workforce.

Agricultural Workforce Policy Board
2795 Grafton Avenue,
Qualicum Beach, BC, V9K 1W8
Phone: (250) 752-1564
Fax: (250) 752-5403
e-mail: awpb@island.net

Farm Folk/City Folk
106 – 131 Water St.
Vancouver, BC, V6B 4M3
Phone: (604) 730-0450
Fax: (604) 730-0451
http://www.ffcf.bc.ca
e-mail: sustain@ffcf.bc.ca

Canadian Organic Growers
P.O. Box 6408, Station J
Ottawa, Ontario, K2A 3Y6
Phone: (613) 291-9047
e-mail: info@cog.ca
http://www.cog.ca

To find out whether or not a piece of land is included within the ALR, contact either your local government (and provide them with the legal description of the property in question), or contact the Provincial Land Reserve Commission Office.

NOTES

[1] Smith, Barry E., 1998, *Planning for Agriculture.* (Vancouver: Provincial Agricultural Land Commission, 1998).

[2] Smith, Barry E., 1998, *Planning for Agriculture.* (Vancouver: Provincial Agricultural Land Commission, 1998).

[3] http://www.landcommission.gov.bc.ca/LRC

[4] Rees, W.E., *Why Preserve Agricultural Land?*, a paper prepared for a Symposium on Urban Growth and the Agricultural Land Reserve: Up not Out, February 1993.

[5] http://www.landcommission.gov.bc.ca/LRC 10/28/99

[6] The population of the District of Chilliwack in 1996 was 60,186.

[7] Baxter, David, 1998, *Demographic trends and the future of the Agricultural Land Reserve in British Columbia.* A Discussion Paper prepared for the Agricultural Land Commission. http://www.landcommission.gov.bc.ca/LRC/Strategic_Plan/visionpaperdavid.htm

[8] In the case of the *Land Title Act*, Section 86 (1) (x) and (xi), approving officers have the authority to refuse plans of subdivision next to farm areas where the subdivision would unreasonably interfere with farm operations due to inadequate buffering or separation of the development from the farm or where there is considered to be an unnecessary increase in road access into the ALR. The *Local Government Act*, Sections 879(1)(c) and 920(10) provides for the designation in an OCP of Development Permit Areas for the protection of farming to allow for buffering and other techniques to enhance compatibility.

[9] Klohn Leonoff Ltd., 1992,*Delta Agricultural Study*. Agri-food Regional Development Subsidiary Agreement, BC Ministry of Agriculture, Fisheries and Food, Agriculture Canada, BC Agricultural Land Commission, Delta Farmers Institute, The Corporation of Delta.

[10] http://www.landcommission.gov.bc.ca 10/28/99.

[11] B.C. Reg. 7/81.

[12] See BC Regulation 452/98 – Agricultural Land Reserve Procedure Regulation.

[13] BC Regulation 452/98 s. 13.

[14] LRC correspondence quoted in *Pitt Polder Preservation Society v. District of Pitt Meadows*, BCSC, A991615, July 1999.

[15] Smith, Barry E., 1998, *Planning for Agriculture.* (Vancouver: Provincial Agricultural Land Commission, 1998), www.landcommission.gov.bc.ca/LRC.

[16] Deborah Curran, *Environmental Stewardship and Complete Communities: A Report on Municipal Environmental Initiatives in British Columbia 1999*, (University of Victoria: Victoria, 1999), 45.

[17] S. Smith, Barry E., 1998, *Planning for Agriculture.* (Vancouver: Provincial Agricultural Land Commission, 1998), http://www.landcommission.gov.bc.ca/LRC.

[18] Smith, Barry E., 1998, *Planning for Agriculture.* (Vancouver: Provincial Agricultural Land Commission, 1998) at 29-39 has a fuller discussion of these types of plan.

[19] Currently the Minister of Agriculture, Food and Fisheries.

[20] *Tools of the Trade – Local Government Planning in BC*, Ministry of Municipal Affairs, 1999.

[21] http://www.landcommission.gov.bc.ca/LRC 11/4/99.

[22] http://www.landcommission.gov.bc.ca/LRC 11/4/99.

[23] *Davison v. Maple Ridge (District)* (1991), 6 MPLR(221) (BCCA) and *Marcin Kovic v. Saanich (District)* (1994), 22MPLR (280) (BCSC).

[24] Perry Commission Report, February 1993, at 53-54.

[25] s. 40 (3) *Agricultural Land Commission Act*, 1999, BILL 70 – 1999.

[26] Regulation 7/81, Agricultural Land Commission Subdivision and Land Use , s. 1.

[27] s. 86 (1) (c) (x) (xi), *Land Title Act*, RSBC 1996, c.250.

[28] Contact either the LRC or MAF for information on obtaining this publication.

[29] http://www.agr.gov.bc.ca/resmgmt/fppa/factsheets/fppa3.htm.

[30] These *Guidelines* are available on line at http://www.agf.gov.bc.ca/resmgmt/ditchpol/ditchguid.htm.

[31] Recent legislative changes changed the name of the *Act* to the *Agricultural Land Reserve Act*, and placed responsibility for administering the agricultural land reserve in the hands of a new body called the Land Reserve Commission. This chapter will use the new terms to describe the revised *Act* and new Commission.

[32] "Farms and Forests for the Future" 1999, *ALR Advisory, FLR News*, February 2000, Vol. 7, No. 3.

[33] Agriculture Land Reserve Procedure Regulation B.C. Reg. 313/78.

[34] Agriculture Land Reserve Procedure Regulation B.C. Reg. 313/78, s 8.

[35] Agricultural Land Commission News Release. "Agricultural Land Commission Considers Adding Land to the ALR," October 19, 1999.

CHAPTER 7
REGULATING GRAVEL PITS

INTRODUCTION

Aggregate resources such as sand, gravel and crushed stone are essential raw materials for maintaining and developing new buildings, roads and other infrastructure required by urban areas. Meeting this basic need sometimes requires location of gravel pits close to urban areas in order to avoid the high cost of transporting aggregate. Moreover, the potential locations for gravel pits are limited by the simple existence of aggregate deposits.

While aggregate is a basic need for urban areas, the development of gravel pits and quarries in populated rural areas is a frequent cause of concern for communities, neighbourhoods and environmentalists. Gravel production may not mix well with other community needs. Quarries can have an adverse effect on both the quality of life of the local residents and on sensitive ecosystems in the area, and the expansion of this industry to meet the needs of urban growth has resulted in gravel pits becoming a common concern for municipalities. Gravel pits are disruptive in that they involve extensive construction and noise. Extraction in and near fish streams is particularly problematic as it can result in adverse impacts to fish and their habitat. Other impacts can include migration blockages, channel widening, increased bank erosion and loss or degradation of riparian habitat.

Given the conflict between a needed resource and community needs, the best approach is for regions to examine their aggregate needs, examine their potential aggregate resources, analyse the extent to which exploitation of particular deposits will lead to community conflicts or environmental problems, and decide on a plan that will protect community and environmental needs while meeting the need for aggregate. Unfortunately, failure to determine and implement such plans often leads to unneccessary conflicts.

An understanding of the various laws and processes associated with gravel pits can be helpful when groups are attempting to voice an opinion on such developments in their community. This chapter discusses what community groups can do at the local level with their regional and municipal governments as well as referring to some of the provincial and federal laws and processes that may apply to gravel pits. The following topics are discussed:

- Municipal regulation of where gravel pits can operate.
- Municipal regulation of how gravel pits can operate.
- Provincial mining regulations.

- Federal and provincial environmental assessment laws and policies.
- Federal laws protecting fish habitat.

LOCAL GOVERNMENT REGULATION OF WHERE GRAVEL PITS CAN OPERATE

For most industries, local governments can, by passing zoning bylaws, regulate where industries locate their operations. Zoning bylaws can, for instance, prohibit all industry or all heavy industry from areas zoned as rural, agricultural. An exception to this general power exists for gravel pits. The courts have held that gravel removal is not a land use, and thus municipalities cannot regulate gravel removal through their zoning power (which is a power to regulate land use, siting of buildings and lot sizes.).[1]

However, municipalities are far from powerless when it comes to regulating gravel pits. They can:

- Pass soil removal bylaws that prohibit gravel removal in some zones.
- Pass zoning bylaws that regulate activities that are often associated with gravel pits, e.g. rock crushing or ready-mix cement plants.
- Restrict gravel pits operations through the establishment of development permits to protect a particular area.

MUNICIPAL SOIL REMOVAL BYLAWS

While municipalities cannot use their zoning powers to prohibit gravel pits, there is a specific power to regulate and prohibit soil removal (including removal of sand, gravel, or rock) in particular zones, s. 723. The difference between this power and the zoning power is that bylaws prohibiting the removal of soil need to be approved by the provincial Minister of Municipal Affairs with the concurrence of the provincial minister responsible for mines (currently the Minister of Energy and Mines).

A range of factors is taken into consideration by provincial ministries when deciding whether or not to approve bylaws. Blanket prohibitions have been allowed in certain areas that have been identified under land use planning designations. The approval process takes a number of considerations into account, including whether or not the bylaw:

(a) is comprehensive;

(b) reduces land-use conflicts;

(c) clarifies and increases certainty for both industry and local residents;

(d) reduces duplication with other regulatory frameworks;

(e) ensures flexibility; and

(f) adequately considers the interests of the industry as well as those of local communities.[2]

Thus, bylaws are more likely to be approved if there has been an inventory of aggregate deposits in the region, and if they are part of a regional or municipal plan that ensures that the supply of aggregate is sufficient to meet demand. Inventories of sand and gravel resources may be developed in the context of regional growth strategies, with the strategies including provisions ensuring a continued supply of sand and gravel. Municipal restrictions on development of gravel pits are likely to be approved if consistent with such regional plans. In the absence of a regional plan, they are more likely to be accepted if part of a municipal plan that ensures sufficient supply for the municipality. (OCPs are required to designate the location of gravel and sand deposits, but they do not necessarily consider demand or

the extent of supply at identified locations). Approval is least likely if a bylaw imposes a blanket prohibition on gravel pit development throughout a municipality, and there is no plan for meeting demand from other municipalities.

SOIL REMOVAL BYLAWS – UNINCORPORATED AREAS

Regional districts can pass soil removal bylaws in the same manner as municipalities, but generally cannot pass soil removal bylaws applicable inside municipalities unless they have been granted special letters patent from the province, s. 803, 799.[3] For electoral areas (those parts of a regional district not included in a municipality), regional districts will only have the power to regulate soil removal if they have the assent of the electors or have been petitioned to provide the service.[4]

ZONING BYLAWS

While local governments cannot use their zoning powers to regulate gravel removal per se, they can use zoning bylaws to prohibit activities associated with gravel pits. These zoning restrictions do not need government approval, and are even effective if *Mines Act* permits expressly allow the activity. Courts have said that local governments' zoning powers still include a power to restrict land-uses such as rock crushing or ready mix gravel plants.[5] (Courts may not allow zoning bylaws that restrict activities associated with gravel removal in all circumstances. Where the activity (e.g. truck loading) is an integral part of soil removal, bylaws may be ineffective. Similarly, there may be more of a question as to whether the activity can be banned by zoning bylaws if it does not involve any permanent buildings or structures).

The existence of restrictions on activities associated with soil removal may influence aggregate operators to locate elsewhere. However, bylaws might be challenged if the bylaw is an indirect attempt to regulate soil removal. There is a general rule that municipal and governmental powers will not be used for improper purposes, including doing something that a municipality does not have the power to do directly.[6]

DEVELOPMENT PERMITS FOR ENVIRONMENTALLY SENSITIVE AREAS

Finally, local governments can – without the approval of the Minister of Mines – pass provisions in their OCP that establish environmentally sensitive areas as development permit areas and virtually prohibit gravel extraction in at least some areas. For instance, an OCP might designate areas within a certain distances from streams or buffer zones around parks as environmentally sensitive areas, and include guidelines that require preservation of natural features. This restriction could be incompatible with gravel pit development. However, these bylaws cannot be specifically aimed at aggregate operations and would restrict many types of development.

MUNICIPAL REGULATION OF HOW GRAVEL PITS OPERATE

In addition, bylaws regulating gravel pits (but not prohibiting soil removal generally or in a particular zone) can be passed my municipalities without the approval of provincial ministries. There are several government publications that describe provisions that can be included in soil removal bylaws and which will help protect the community and the environment. These provisions include:

- Noise limits;
- Requirements for berms to buffer noise;

- Restrictions on hours of operation;
- Requirements for professionally certified erosion control plans;
- Requirements for design and construction (e.g. requiring sedimentation ponds);
- Requiring bonds from gravel pit operators (to ensure money for reclamation if the operator goes bankrupt);
- Special buffers for environmentally sensitive areas;
- Maximum areas that can be disturbed at any time; and
- Requirements for provision of plans.

Some of these issues may be covered under *Mines Act* permits, but municipalities may impose stricter limits or choose to enforce more rigorously than the Mines Ministry.

PROVINCIAL MINING REGULATIONS

Sand and gravel pits and quarries are regulated as mines under the BC *Mines Act*. Permits are required for these operations. The *Mines Act* clearly regulates worker and public safety and environmental impacts, but the Ministry of Mines interprets the *Mines Act* as not allowing them to address land use concerns (e.g. the whether to have a gravel pit questions). Thus, this process is focused on how a gravel pit should be operated.

There are no provisions for the public to appeal *Mines Act* permit provisions on the basis that they do not provide adequate environmental protection. (Occasionally, there may be a legal basis for challenging a permit on the basis of administrative law, but these grounds seldom focus on the substantive issue of what permit provisions would be best.)

The main means the public can influence the content of *Mines Act* permits is by lobbying the appropriate officials. See below under "What You Can Do".

FEDERAL FISHERIES

Gravel pit operations can adversely impact fish habitat, and gravel pit operators have been prosecuted under the federal *fisheries act* for harmfully altering fish habitat, s. 36. The *Fisheries Act* also prohibits the deposit of substances deleterious to fish into fish bearing waters, s. 35. These provisions only come into effect after the fact. They cannot be used to proactively stop an operation before it damages fish habitat or pollutes a stream.

Moreover, there is a history of failed prosecutions against gravel pit operators. The burden of proving an environmental crime and a number of technical defences can make the *Fisheries Act* prosecutions an ineffective way to ensure against harm to fish and their habitat.

Nevertheless, the issuance of authorizations under the *Fisheries Act* may encourage improved environmental behaviour by gravel pit operators. Authorizations are not mandatory, but the authorization will protect the operator from prosecution for harmful alteration of fish habitat so long as the operator meets the conditions included in the authorization. If the authorization is granted the conditions may encourage the operator to take appropriate action.

ENVIRONMENTAL ASSESSMENT

Environmental assessments are required under both federal[7] and provincial[8] legislation. Environmental assessments consider environmental and socio-economic impacts of developments. New sand and gravel pits will trigger assessment under provincial laws if

the pit will have a production capacity of 500,000 tonnes or more of sand and/or gravel per year, or will produce over 1,000,000 tonnes in a period of four years or less.[9] Most new pits fall far under this threshold, and as a result no gravel pits have been assessed since the legislation came into force.

Federal environmental assessment is only triggered in limited circumstances. A federal environmental assessment may be triggered where there is any federal land involved (including military reserves, Indian Reserves etc.), where the federal government has issued any authorizations or permits related to the project (e.g. authorizations under the *Fisheries Act)*, where the federal government is the proponent, or where federal money is involved in paying for the project.

WHAT YOU CAN DO

There are a number of steps community groups or individuals can take to avoid inappropriate gravel pit development or to ensure appropriate regulation of existing operations.

NEW OR EXPANDED GRAVEL OPERATIONS

- **Be proactive. Help ensure the existence of legally binding soil removal bylaws.** Ensure that regional aggregate plans are developed so that their municipality can get approval for restrictions on gravel pit operation. Groups will need to marshal evidence, arguments and political interest as to why they their area is an inappropriate source of aggregate. Ideally bylaws should include both clear restrictions on where aggregate operations can locate and rules as to how they operate.
- **Be proactive. Identify environmentally sensitive areas and lobby for the establishment of development permit areas.** Ensure that OCP guidelines for issuance of development permits ensure that gravel pits or other inappropriate developments cannot be located in environmentally sensitive areas.
- **If soil removal bylaws cannot be passed and approved in time, consider other options to avoid inappropriate developments.** It may be possible to pass zoning bylaws restricting crushing or other ancillary activities. Such zoning bylaws will need to be in place before an activity commences or expands; otherwise, it continuation will be permitted as a non-complying use.
- **Encourage *Fisheries Act* authorizations.** Where smart growth advocates are concerned about the potential impacts of a gravel pit on fish habitat they may want to ensure that the operator seeks an authorization from the Department of Fisheries and Oceans. Moreover, applying for an authorization may trigger a federal environmental assessment.
- **Check for the application of environmental assessment laws.** Find out whether a proposed gravel pit exceeds provincial environmental assessment thresholds. Contact West Coast Environmental Law regarding application of federal environmental assessment.
- **Work toward strong *Mines Act* permit requirements.** The *Mines Act* permitting process potentially includes processes for public input and referrals to other government agencies, such as the Ministry of Environment, Lands and Parks and local government. Gravel pits are treated as small mines, and the Ministry of Mines will only refer these to Regional Mine Development Review Committee for consultation where there is some reason for concern. Smart growth proponents may want to raise concerns with the Ministry of Mines and speak to members of their local Regional Mine Development

Review Committee regarding what conditions they think should be included in the permit.

EXISTING OPERATIONS

- **Ensure compliance with existing regulations, laws and bylaws.** Find out the terms of *Mines Act* permits, environmental assessment approvals, and soil removal bylaws. See if the operation is abiding by these laws. Has there been any damage to fish habitat or release of harmful silt into fish bearing streams? If there is a possible legal violation, contact West Coast Environmental Law for further advice.
- **Work towards new or improved soil Removal bylaws.** Soil removal bylaws apply to both existing and new aggregate operations. These bylaws could impose conditions on the operation of a gravel pit or could even prohibit a gravel pit from expanding into new areas. While the non-conforming use provisions of the *Local Government Act*[10] do not apply to Soil Removal Bylaws (i.e. a Soil Removal Bylaw could theoretically prohibit continuation of a gravel pit), the Ministry of Energy and Mines is unlikely to approve such a bylaw expect in very unusual circumstances.

FOR MORE INFORMATION

Smart growth advocates interested in ensuring that a gravel pit is designed in a manner that minimizes harm to the environment and disruption of the local community should review the following publications:

- *Stewardship Bylaws: A Guide for Local Government – Updated*, (1999). This guide is available from the Department of Fisheries and Oceans, Communications Branch, 555 West Hastings, Vancouver, BC, V6B 5G3, Tel: (604) 666-0384.
- *A Guide to the Development of Soil Removal and Deposit Bylaws*, (1998). Union of BC Municipalities and BC Ministry of Energy and Mines. This guide is available from the Mines Branch, Ministry of Energy and Mines, P.O. Box 9320 Stn Prov. Govt, Victoria, BC, V8W 9N3, Tel: (250) 952-0510.

If smart growth advocates think that an assessment may be triggered, they are advised to contact West Coast Environmental Law for summary advice on the application of environmental assessment laws. They may also want to consult:

- *Canadian Environmental Assessment Process, A Citizen's Guide* by the Canadian Environmental Assessment Agency.
- *Guide to the British Columbia Environmental Assessment Process* by the BC Environmental Assessment Office. Available at http://www.eao.gov.bc.ca/GUIDE/Home.htm.

For more information on Ministry of Energy Mines Permit Application Requirements see:

- Ministry of Energy and Mines website: http://www.em.gov.bc.ca/Mining/MinePer/permreq.htm

NOTES

[1] The Ontario Court reasoned that use of land is distinct from consumption of the land or extraction from the land. See *Township of Pickering v. Godfrey* (1958), 14 D.L.R. (2d) 520 (Ont. C.A.) This reasoning was adopted by BC courts in *Vernon (City) v. Okanagan Excavating (1993) Ltd.* (1993), 84 B.C.L.R. (2d) 130 (S.C.) aff'd (1995), 9 B.C.L.R. (3d) 331 (C.A.).

[2] BC Ministry of Energy and Mines and Union of British Columbia Municipalities, "Guide to Development of Soil Removal and Deposit Bylaws" (February, 1998) at 7.

[3] Letters patent are the legal document issued by the Lieutenant-Governor which establish regional districts and give them special powers.

[4] Regulating soil removal is considered an extended service. There are three alternatives for approval of a extended services by regional districts: assent of the electors by voting (see sections 808 and 159); assent of electors by counter petition (this allows regional districts to pass bylaws without voting, so long as no more than five percent of electors petition against the bylaw (see section 809); or by petition for services signed by 2/3 of land owners in the "service area" covered by the soil removal bylaw, representing at least 50% of the tax base for that service area (see sections 811 and 812).

[5] *Pitt River Quarries Ltd. v. Dewdney-Alouette (Regional District)* (1995), 27 M.P.L.R. (2d) 257 (B.C.S.C.).

[6] See for instance, *Central Saanich (District)* v. *Amaryllis Enterprises Inc.* (1991), 7 M.P.L.R. (2d) 264 (BCSC). In that case, the court stopped a municipality from using its business licensing authority to stop a legal non-conforming use.

[7] *Canadian Environmental Assessment Act*, S.C. 1992, c.37.

[8] *Environmental Assessment Act*, RSBC 1996, Ch.119.

[9] *Environmental Assessment Reviewable Projects Regulation*, BC Reg. 276/95, section 21.

[10] See Chapter 2.

CHAPTER 8

PROTECTING FOREST LAND

Both urban and rural residents value forests and want to ensure that land use planning protects forests, whether they are located on privately owned or on Crown land. The *Forest Practices Code* answered part of the need for public participation in forest decision making. A host of other laws govern forest and land use planning.[1]

Paving the way to a new suburban subdivision in what was once forest land.

This chapter discusses one aspect of forest land use law: the forest land reserve system and its relationship to municipal land use planning. The forest land reserve was designed to protect forest land by minimizing development impacts. First, the chapter describes the forest land reserve and the Land Reserve Commission. Second, it discusses municipal land use planning and the forest land reserve. An explanatory guide usefully explains the interaction between local government land use planning and the new restrictions imposed by the forest land reserve system.[2] Finally, it outlines the management standards for private forest land.

FOREST LAND RESERVE

The benefits of maintaining a forest land reserve for smart growth include:

- FLR designated land can act as containment boundary;
- Forests provide valuable ecological services, open space, and intangible values; and
- Forestry is a key economic activity for many communities.

Yet forest land, particularly in areas of high growth, faces many threats. In some parts of the province, such as the Gulf islands, large parcels of private forest land owned by forest companies are being subdivided and sold as residential real estate after years of enjoying preferential property tax rates based on dedication of the land to forest management.

The *Forest Land Reserve Act* became law on July 8, 1994. It created a Forest Land Reserve Commission, which has the responsibility of administering the newly created forest land reserve. Changes to the *Forest Land Reserve Act* will place this responsibility in the hands of a new Land Reserve Commission (LRC) that will administer both the forest land reserve and the agricultural land reserve. This chapter will refer to the Forest Land Reserve Commission by its new name, the Land Reserve Commission.

The forest land reserve concept is similar to the agricultural land reserve, in that land in the reserve may only be used for specified purposes consistent with forestry, unless otherwise approved by the Commission.

Privately-owned forest land is minimally regulated, and development is usually more profitable than leaving the land as forest. Forests are rapidly being converted to other uses.

The reserve consists of both private and public land. Province wide, there are currently 920 000 hectares of private land and approximately 15,000,000 hectares of public land in the forest land reserve.

The majority of the private lands are on Vancouver Island (70%) and in the Kootenays (25%). Crown lands are often designated as forest reserves after the conclusion of regional land use plans, and presently include the provincial forests of Vancouver Island, the Kootenays and the Cariboo.

The intent of the *Forest Land Reserve Act* is to protect the commercial forest land base of British Columbia, and to minimize the impact of urban development and rural area settlement on that land base. The objects of the Commission include encouraging responsible forest management practices and promoting "conditions favourable for investment in private land forest management".

WHO MANAGES THE FOREST LAND RESERVE

Administrative matters under the *Forest Land Reserve Act* are managed by the Land Reserve Commission.

Administrative decisions made by the Commission include ruling on four types of applications:

- designation, or addition of land to the reserve;
- subdivision of land within the reserve;
- special use of land within the reserve; and
- requests for removal of land from the reserve.

The Commission works with local governments to administer the *Act*, particularly in the case of applications for the removal of private land from the reserve. Local governments must require the publication of notice of an application to remove land from the reserve, and may require that a public hearing be held. While certain factors must be considered, criteria for determining whether to support an application is left to the local government, but must be communicated to the Commission with the recommendations and comments. Removals of Crown land from the forest land reserve are decisions of the provincial Cabinet, on the advice of the Commission.

The jurisdiction of the Commission is restricted to private FLR lands not in a tree Farm licence. The administration of public land and private land within a tree farm licence falls to the responsible government agency, even though it may be within the forest land reserve. For example, forest tenures are administered by the Ministry of Forests, and mineral tenures are administered by the Ministry of Energy and Mines.

WHAT USES ARE PERMITTED WITHIN THE FOREST LAND RESERVE

Land within the Forest Land Reserve can be used for:

- timber production;
- forage production and livestock grazing;
- forest or wilderness oriented recreation, scenery and wilderness purposes;

- water, fisheries, wildlife, biological diversity, and cultural heritage purposes;
- approved mineral exploration and mining;
- construction of one single family dwelling;
- botanical forest products harvesting and use;
- portable sawmills;
- research and education related to above purposes;
- uses relating to Crown granted interests to coal or minerals; and
- other non-conforming uses permitted by the Commission.

All other land uses, subdivision and withdrawal of private land from the reserve must be approved by the Commission.

WHO MANAGES FOREST PRACTICES IN THE FOREST LAND RESERVE

The *Forest Practices Code of British Columbia Act* and its regulations apply to all public land within the reserve and private land within a tree farm licence, woodlot licence or community forest agreement area. The *Code* is administered primarily by the Ministry of Forests, in some matters also by designated officials from the Ministry of Environment, Lands and Parks.

The *Forest Land Reserve Amendment Act, 1999,* establishes a new framework for regulating forest practices on private land. The new Land Reserve Commission will be responsible for administering the new regulatory framework for private forest land, rather than the usual government agencies of forests and environment. This framework applies to "identified land". Identified land includes forest reserve land and agricultural reserve land that is classified as managed forest land for tax purposes. However, it does not include forest reserve land in a tree farm licence, woodlot licence, or community forest.

Owners of identified land must comply with the *Private Land Forest Practices Regulation* which has requirements and constraints respecting "(a) soil conservation; (b) management of water quality and fish habitat; (c) management of critical wildlife habitat". Owners of identified land also have reforestation obligations.

The requirements of the *Private Land Forest Practices Regulation* are weaker than the *Forest Practices Code* (the statute that applies to Crown land and private land in tree farm licences.). For example, large fish-bearing streams do not receive a "no-harvest" zone along their banks. Instead, the regulation requires that a certain number of trees must be left behind every 200 metres on each side of the stream. For fish-bearing streams, at least 3.0 metres wide, owners must leave forty trees every 200 metres on either bank, and for fish-bearing streams 1.5 to 3.0 metres wide, only twenty trees. Streams that are smaller than 1.5 metres, outside a community watershed, or are not fish-bearing, do not receive this protection.[3]

HOW LAND IS INCLUDED IN THE FOREST LAND RESERVE

There are three ways in which land becomes designated as part of the forest land reserve:

- automatically when the *Act* came into force;
- by application to the Commission for the inclusion; and
- for public land, by order of Cabinet.

Private land that was classified under the *Assessment Act* as managed forest land in the 1993 taxation year was automatically included in the reserve when the *Forest Land Reserve Act* came into force on July 8, 1994. There were some exceptions to this, such as if the managed forest land was already within the agricultural land reserve. In addition to managed forest land, private land which is subject to a tree farm licence under the *Forest Act* as of July 8, 1994, is also automatically part of the forest land reserve.

The second way in which private land may be included in the forest land reserve is through designation by the Forest Land Reserve Commission after receiving an application for inclusion by a landowner. Applications must be referred by the Commission to local governments, and the landowner must submit a "management commitment" that, among other things, contains the long term forest management objectives for the owner's land and the strategies to achieve them. If the land also happens to be within the agricultural land reserve, the Land Reserve Commission must approve the designation.

The third component of the forest land reserve involves public Crown land. This land comprises over 90% of the reserve. Cabinet may designate Crown land in a provincial forest as part of the forest land reserve.

HOW LAND IS REMOVED FROM THE FOREST LAND RESERVE

How land is removed from the forest land reserve depends on whether it is private land or public land.

Private landowners may apply to the Commission to have land removed from the forest land reserve. Applications must be referred to local government for review and comment. The local government may hold a public hearing on the issue. For land near urban areas, the local government must consider issues relating to the proximity of the property to existing urban development, the availability of public services and whether the land is appropriate for growth under the official community plan of the urban area. For land in rural areas, the local government must consider the significance of its rural or recreational characteristics.

Decision-making lies with the Commission. The *Act* specifies the criteria which the Commission must consider for removal applications. The Commission must conclude that removal is in the public interest. In making the public interest decision, the commission must consider the input of local government, the suitability of the land for tree growing, and the effect removal might have on adjacent forest reserve land. The Commission may also consider the social and economic impact of the proposed removal. Smart growth advocates should be aware of this criteria, as well as the information contained on the Commission's website.[4]

For public or Crown lands, removal is by order of the provincial Cabinet, after receiving the comments and recommendations of the Commission.

MUNICIPAL PLANNING ON FOREST LAND

The forest land reserve system imposes some limitations on the ability of local governments to control land use through plans and bylaws, similar to the restrictions imposed by the agricultural land reserve system on agricultural land. Generally, land use planning for forest reserve land will be done jointly by both the Commission and the applicable local government. As the senior level of government, the Land Reserve Commission has precedence over local government authorities. In practice, the two levels of government will work together.

The main restrictions on local government land use planning relate to permitted uses of FLR lands subdivision and the issuance of bylaws and permits that would restrict forest management activity.

SUBDIVISION

Private forest reserve land must not be not be subdivided unless permitted by the regulations without the approval of the Commission, or approval by the Commission in conjunction with removal of the land from the forest land reserve, section 16 of *FLR Act*. There are currently no regulations specifying conditions under which subdivision would be permitted without the necessity of the Commission's approval.

RESTRICTIONS ON BYLAWS OR PERMITS THAT LIMIT FOREST MANAGEMENT ACTIVITIES

Local governments are restricted from adopting bylaws or issuing permits that would restrict, directly or indirectly, forest management activity relating to timber production or harvesting on land that is forest reserve land, section 17 of *FLR Act*. This part of the law applies only to bylaws adopted after the date on which the *Forest Land Reserve Act* came into force, July 8, 1994. This general prohibition is explained in some detail in the *Guide*. The guidelines are related to different aspects of municipal planning, as set out below.

The lands required for long term forestry uses should be protected from urban encroachment. This applies in particular to areas designated as future Residential Neighbourhoods which are adjacent to the working forest land use base. The reduction of potential conflict should be addressed by treating the edge conditions of future urban development, in particular, the location and design of roads. The preferred methods of addressing these edge conditions are through sub-area plans or as part of the rezoning process. This also applies to any removal of land from the FLR.[6]

REGIONAL GROWTH STRATEGIES

As with agricultural land, a RGS is to work toward many goals, one of which is to maintain the integrity of a secure and productive resource base including the agricultural and forest land reserves, section 849 (2) (e). RGS do not have to be approved or even forwarded to the Land Reserve Commission. A RGS should, but is not legally required to, respect the FLR and direct urban and rural growth away from the reserve and crown forest lands.[5]

OFFICIAL COMMUNITY PLANS

Unlike the agricultural land reserve system, there is no requirement for a local government to forward an OCP to the Land Reserve Commission for approval. However, the guide recommends that local governments adopt policies on forest use recognizing the designation of FLR lands in their jurisdiction and supporting timber production, harvesting and other forest values. Examples of this type of OCP policy are included in the guide. One example is from the district of Squamish OCP.

ZONING BYLAWS

Zoning bylaws must not designate lands within the FLR for any uses not authorized by the *FLR Act*.

The Forest Land Reserve Commission itself does not apply minimum parcel sizes. Zoning bylaws which include lands in the FLR may have a minimum parcel size. The Commission favours large minimum lot sizes to discourage further requests for subdivision.[7]

Other bylaws also must be reviewed carefully to see whether they will offend section 17 of the *FLR Act* and therefore be void and unenforceable. In particular, bylaws related to tree cutting; sand, gravel and soil removal and deposit; noise control and nuisance all may have the effect of restricting forest management activities related to timber production or harvesting on FLR land.

EDGE PLANNING

Land adjacent to the FLR also must be zoned and used in ways that would not offend section 17 of the *Act*. The *Guide to Plans and Bylaws Adjacent to the Forest Land Reserve* available on the Land Reserve Commission web site suggests guidelines for adjacent uses that are considered compatible, compatible with mitigation, and not generally compatible with the FLR. A number of other suggestions are also made for sensitive site planning along the FLR boundary. These address obvious issues such as not allowing road endings at the edge of the FLR (similar to recommendations for the ALR) and less obvious recommendations such as to provide onsite water retention and control of storm and natural runoff from developed areas to reduce negative drainage impacts on forest land.

The Commission has produced an additional guide with suggestions for planning and development approval tools to manage urban growth and rural settlement near the FLR.[8]

WHAT YOU CAN DO

- Ask councils to pass bylaws, or include in OCPs, or RGS, policies regarding the removal of lands from the forest land reserve.
- Communities interested in preserving forest land and forest buffer zones should develop working relationships with forest landowners whose activities may affect a community's liveability. There may be informal opportunities to review the written management commitments that landowners must submit to the Commission to obtain tax benefits. However, the public has no legal right to review this commitment, request an audit or appeal decisions made by the Commission or its officers.

WHO TO CONTACT

Legislation: *Forest Land Reserve Act*, RSBC 1996, c.158.

Forest Land Reserve Amendment Act, 1999, SBC 1999, c. 11 (in force April 1, 2000).

Land Reserve Commission Act, SBC 1999.

Regulation: *Forest Land Reserve Use Regulation*, BC Reg. 222/96.

Private Land Forest Practices Regulation, BC Reg. 318/99.

OTHER

Guide to Forest land Use Planning, WCEL, 1998; online at http://www.wcel.org under "Forests" heading – see also other publications related to Forests.

Land Reserve Commission web site : http://www.lrc.gov.bc.ca.

Annual Reports of the Forest Land Reserve Commission.

Forest Land Reserve News (publication of the Forest Land Reserve Commission).

Forest Land Commission Initial Strategic Plan.

Plans and Bylaws in an Adjacent to Forest Land Reserve: A Working Guide for Local Governments, available on line at the Land Reserve Commission website at http://www.lrc.gov.bc.ca/flc/publications/plansbylaws/index.html.

NOTES

[1] See Mark Haddock and Jessica Clogg, *Guide to Forest Land Use Planning* (WCLERF: Vancouver, 1999), for a comprehensive survey of forest law. Most of this chapter is based on the Guide, and on other work by West Coast Environmental Law forestry lawyer, Jessica Clogg. The Guide is available on-line on the West Coast Environmental Law website at http://www.wcel.org/frbc.

[2] *Plans and Bylaws in an Adjacent to Forest Land Reserve: A Working Guide for Local Governments*, available on line at the Land Reserve Commission website at http://www.lrc.gov.bc.ca/flc/publications/plansbylaws/index.html, the *Guide*.

[3] For more information on private land forest standards, contact West Coast Environmental Law or consult the *Guide to Forest Land Use Planning* at http://www.wcel.org/frbc or the description of the standards on the Land Reserve Commission's web site at http://www.lrc.gov.bc.ca.

[4] See "How does the Commission make a decision?" at http://www.lrc.gov.bc.ca/lrc/flr/flr_applications.htm.

[5] *Plans and Bylaws in an Adjacent to Forest Land Reserve: A Working Guide for Local Governments*, available on line at the Land Reserve Commission website at http://www.lrc.gov.bc.ca/flc/publications/plansbylaws/index.html.

[6] *Plans and Bylaws in an Adjacent to Forest Land Reserve: A Working Guide for Local Governments*, available on line at the Land Reserve Commission website at http://www.lrc.gov.bc.ca/flc/publications/plansbylaws/index.html.

[7] *Plans and Bylaws in an Adjacent to Forest Land Reserve: A Working Guide for Local Governments*, available on line at the Land Reserve Commmission website at http://www.lrc.gov.bc.ca/flc/publications/plansbylaws/index.html.

[8] *Settlement Issues in the Working Forest* (Vancouver: Forest Land Reserve Commmission, 1997).

CHAPTER 9
PROTECTING COASTAL LAND

INTRODUCTION

Like fish, birds and other wildlife, people concentrate in coastal areas. In British Columbia, over three-quarters of the population lives on or near the coast, which consists of 27,000 km of coastline and more than 6,500 coastal islands.[1] The province's population is concentrated in the coastal cities of Vancouver and Victoria and in the rapidly growing communities on the east coast of Vancouver Island. The Georgia Basin has grown from 1.2 million to 2.7 million people in the last 25 years, and population growth is not slowing down.[2] Loss or degradation of coastal habitat has been identified as the chief threat to the health of the shared marine waters of British Columbia and Washington because the impacts are irreversible, the potential harm to the environment is great, and habitat losses are highly preventable. Scientists have urged governments to take immediate action to prevent coastal and estuarine habitat losses.[3]

There are no laws in British Columbia designed specifically to protect the coastal zone, as in the United States, which has a federal *Act*, the *Coastal Zone Management Act* and many strong state laws, such as Washington's *Shoreline Management Act* and California's *Coastal Act*.

The shoreline amenities that coastal land provide can be lost and damaged in a number of ways, ranging from physical alteration of the shoreline itself to water quality degradation. Coastal lands in BC often have heritage value, and provide a wide variety of recreational uses. They are also key ecological areas. Estuaries are one of the most biologically productive types of ecosystems on earth. Historically, the primary causes of coastal habitat loss were dyking and draining for agriculture and urban development.[4] Dredging, port and harbour development, log storage, and degradation from pollution such as dioxin contamination are prime causes of habitat loss in the Georgia Basin.[5] Urban development also affects coastal land.

There are no laws in British Columbia designed specifically to protect the coastal zone, as in the United States, which has a federal *Act*, the *Coastal Zone Management Act* and many strong state laws, such as Washington's *Shoreline Management Act* and California's *Coastal Act*. [6]

As many BC coastal zone studies conducted over the years have noted, coastal land is subject to competing demands from a myriad of activities such as industrial use; aquaculture; tourism; transportation; resource extraction, and residential development. The laws that regulate these activities are not integrated, do not take an ecosystem approach and do not account for the cumulative impact of all the combined activities that take place in the coastal zone.

The decline in coastal and estuarine habitat is fueled each time an individual permit is issued for a new home, dock or marina; each time an authorization to damage or destroy fish habitat is made; and each time a lease for Crown land is approved. Each decision is made in isolation, without consideration for the cumulative impact of many individual small decisions. While construction of a bulkhead or seawall, known as shoreline armouring, "may have little measurable ecological effect, incremental increases in the number of small projects within an embayment would be expected to result in significant effects to the bay ecosystem".[7] The incremental loss of habitat will continue until the project specific approval and mitigation process is done in the context of broader rules on coastal land protection.

Coastal land has many values for communities. Coasts and estuaries have high ecological value. Scenic, recreational, and spiritual values are also present. Often protected coastal land produces higher land values for a community. Public access to beaches, shorelines and the ocean are valued by residents. Expanding public access to coastal land is a key goal for smart growth advocates. Other goals are ecologically sensitive development, allowing marine dependent industries to operate and preserving the heritage values of older ports and coastal villages.

This chapter discusses the ways that coastal land use planning differs from other municipal land use planning. First, it explains jurisdiction over coastal land, and the different laws regulating this type of land. Then, it discusses municipal land use planning on coastal land.

JURISDICTION OVER COASTAL LAND

Most of the land (about 93%) in BC is provincial Crown land. The provincial government is the primary regulator of land use activities in the coastal zone due to its ownership of the land, and exercises this jurisdiction through the *Land Act*.

Coastal land use activities are regulated by all three levels of government, and by intergovernmental programs and processes. The coastal planning system is even more complex, because of federal jurisdiction over issues like fisheries, migratory birds, harbours, and marine waters and federal ownership of ports.

Most of the land (about 93%) in BC is provincial Crown land.[8] The provincial government is the primary regulator of land use activities in the coastal zone due to its ownership of the land, and exercises this jurisdiction through the *Land Act*. The province of BC holds the legal title to the foreshore of tidal waters, the area between the high and low water-line which is exposed at low tide. The province also owns the beds of bodies of water "within the jaws of the land", such as the Strait of Georgia, the Strait of Juan de Fuca and Johnstone Strait. The fact that these inland seas come under provincial jurisdiction is not widely known. National harbours, national parks and defence land is owned by the federal government. First Nations have aboriginal title to many areas of BC, and the ongoing land claims and treaty process will likely alter the regulation of Crown land. Coastal areas above the high water line in the Georgia Basin are often privately owned.

Federal jurisdiction comes from the federal powers over fisheries and navigable waters, and the primary statutes of the *Fisheries Act* and the *Navigable Waters Protection Act*. Any physical alteration of land which qualifies as fish habitat is subject to the federal *Fisheries Act*, which prohibits harmful alteration, destruction of or damage to fish habitat, s. 35 (2). Projects that could impede the right of navigation require a permit under the *Navigable Waters Protection Act*.

Local governments regulate coastal land use through the *Local Government Act* zoning and development approval processes.

MUNICIPAL PLANNING AND COASTAL LAND

Conversion of undeveloped coastal habitat to residential or industrial use is a prime cause of habitat loss in the Georgia Basin. The *Local Government Act* and *Land Title Act* govern land use planning in urban coastal areas, and are supplemented by laws concerning ports and provincial Crown land; and guidelines on foreshore development.

OFFICIAL COMMUNITY PLANS

Municipal environmental controls, such as those contained in OCPs, are relatively weak legal tools for protecting coastal lands. For example, in one case involving a court challenge to construction of a hotel on a beach headland in close proximity to the shoreline, although the OCP specified that construction would be subject to "appropriate setbacks" the court found that council was free to establish the setbacks at its discretion.[9]

SUBDIVISION

Increased public access to coastal land can be secured through the *Land Title Act* requirement to dedicate a specified amount of public access to the water when waterfront land is being subdivided, s. 75.

Dedication of a shoreline right-of-way does not give rise to a right of compensation. Courts view the dedication as a public interest and as part of a healthy community. A landowner in a recent BC case refused to dedicate a 3 metre wide right-of-way for a walkway beside the waterfront. One argument she made to oppose this requirement was based on expropriation. The judge rejected the argument and said:

"I do not consider that the dedication of the three metre right of way to be expropriation without compensation as submitted by the appellant. It is the cost demanded by the applicable legislation in return for subdivision approval with the goal of ensuring satisfaction of the public's interest in access through certain lands and providing a healthy environment for the community as a whole."[10]

PORTS

The Canada *Marine Act* gives Port Authorities such as the Vancouver Port Corporation (VPC) the power to grant licences which permit use of the harbour for construction of wharves. The VPC has historically sought the consent of municipalities bordering the Port for foreshore and harbour uses, including wharves, but it is under no legal obligation to do so. The remedy of landowners aggrieved by a decision not to approve construction of a dock or wharf is against the VPC, rather than the individual municipality.[11] Zoning bylaws do not generally apply to federally owned lands such as ports and harbours.

PROVINCIAL CROWN LAND LAW – THE ***LAND ACT***

The provincial law used to regulate and manage the use and disposition of all Crown land, including Crown coastal land, is the *Land Act*, s. 11. This *Act* provides that, except by order of the Lt. Governor in Council, Crown land below the natural boundary of a body of water must not be disposed of by Crown grant, s. 18. There is no separate policy for Crown shorelines or coastal areas. Although construction on the foreshore requires the approval of a foreshore engineer in the Crown Lands department, breakwaters and sea walls are often built without approval. The Department of Fisheries and Oceans may be asked for advice about foreshore construction that has the potential to harm fish habitat.

The provincial *Land Act* allows land managers wide discretion to allocate and manage coastal land with few constraints. For example, no regulatory guidelines are currently in place for foreshore development in general or more specifically for marinas, docks or floating fishing lodges.

The *Land Act* gives the province wide discretion to dispose of Crown land through sales, licences to occupy, easements, or leases. Foreshore leases are used for activities such as finfish aqua-culture; shellfish harvesting; aquatic plant harvesting; marinas; docks and other structures and log handling and storage. These activities are also subject to other regulatory controls to minimize their impact on habitat. For example, shellfish and aquatic plant harvesting require licences from the Department of Fisheries and Oceans. DFO has developed guidelines for dredging, marina development and boat painting. Log handling and storage are the subject of a host of regulatory controls.[12] Despite the other regulatory controls, the initial decision on whether to allow any new or continuing activity on coastal land is significant, and so the *Land Act* procedures are a key component of the regulatory framework for coastal habitat.

GUIDELINES

A number of non-binding guidelines now exist or are being developed to control land development that affects coastal habitat. The *Land Development Guidelines for the Protection of Aquatic Habitat* are discussed in chapter 3, protecting urban green space. *Foreshore Development Guidelines* are being prepared as a complement to the *Land Development Guidelines* and may include shoreline setbacks, vegetation management requirements and shoreline alteration provisions.[13]

OTHER COASTAL LAND USE PLANNING PROGRAMS

ISLANDS TRUST

In 1974, the Government of British Columbia enacted the *Islands Trust Act* in order to protect the unique character and environment of the islands of the Georgia Strait, s. 4. The Trust Area includes the 13 major and more than 450 smaller Gulf Islands with the exception of lands and waters within adjacent municipal boundaries and boundaries of Indian Reserves.[14]

The *Islands Trust Act* establishes the Islands Trust Council and local trust committees to conduct land use planning for the trust area. Each of the largest Gulf Islands has its own local trust committee. When carrying out their land planning duties, the trustees act for both the residents of the Trust Area and the province generally, due to the conservation mandate established by the *Act*. There is a Council made up of all the trustees, and a trust committee for each local trust area. Planning is done by the three member local trust committees, composed of two locally elected trustees, and one Executive Committee member from the Council. Each committee is responsible for land use planning and regulation for its area of jurisdiction, including preparation and adoption of OCPs, rural land use bylaws, zoning and subdivision bylaws, regulation of soil removal and deposit, and authorization of any land use planning permits, such as development permits.

The Trust Council establishes general policies for carrying out the object of the Trust, such as the Islands Trust Policy Statement. The policy statement provides a framework for land

use planning in the Trust Area, and guarantees compatibility between plans for the various local areas. All local trust committee bylaws and all OCPs and amendments must comply with the Policy Statement, which promotes:

- preservation and protection of ecosystems,
- stewardship of resources, and
- sustainable communities.

The Islands Trust Fund, established by the *Islands Trust Act*, administers and manages the real and personal property assets of the trust fund. The Fund acquires and holds land and interests in land for the protection of special areas and features of the islands and waters of the Strait of Georgia and Howe Sound.

FRASER RIVER ESTUARY MANAGEMENT PROGRAM

The Fraser River Estuary Management Program (FREMP) is a co-operative effort between federal, provincial and municipal governments.[15] It aims to co-ordinate planning and decision-making in the Fraser Estuary. FREMP was authorized by a provincial Order in Council. An environmental impact assessment is required for any development or improvement of land in designated areas, or approval of a subdivision. Since FREMP has no enforcement powers, it is up to representatives from the relevant department or agency to enforce any terms or conditions imposed by the Project Review Process.

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The FREMP Management Plan was finalized in August 1994. It lists the current procedures used to conserve habitat such as the DFO Policy for the Management of Fish Habitat, the federal Wetlands Policy, and the FREMP Log Storage Guidelines. The two key features of the FREMP habitat program are the habitat coding system and Area Designation Agreements. Each area of shoreline is classified and colour-coded red, yellow or green, loosely translated as stop, proceed with caution or go. However, the codes are revised periodically and in May 1996, the red code was revised: development may now occur in red areas provided that mitigation is applied to avoid impacts on habitat features of the area. Area Designation Agreements are entered into between municipalities and FREMP member agencies and define the intended uses of the foreshore.[16] The "single window" project review process, which is a co-ordinated approval procedure, is also meant to protect habitat. Any project that has the potential to affect the environment in the FREMP area will be reviewed by the Environment Review Committee.

Other estuary management plans in the province are located in the Squamish and Cowichan estuaries. Similar plans are under development in Courtenay and Campbell River.

PRIVATE LAND CONSERVATION

Private land conservation also plays a role in coastal land use planning and habitat preservation. The BC Land Conservancy, a nongovernmental organization, was instrumental in acquiring South Winchelsea Island, an ecologically significant property. Jedediah Island was acquired through a legacy from a well-known climber. The Waterbird Watch Collective on Saltspring Island has established the McFadden Heron Colony through private fundraising efforts.

Acquisition programs are often used to secure more coastal habitat protection. The Pacific Marine Heritage Legacy is a five-year federal/provincial program to acquire coastal properties in the Gulf Islands for future designation as national and/or provincial marine parks. The Pacific Estuary Conservation Program is another major acquisition program. The Pacific Estuary Conservation Program is the acquisition arm of the Pacific Coast Joint Venture. The Pacific Estuary Conservation Program is a co-operative plan to acquire, reserve and enhance wetland habitat essential to wildlife populations on the BC Coast. Begun in 1987, the program stems from an agreement between the provincial Ministry of Environment, Lands and Parks' Habitat Conservation Fund, the Crown Land Allocation Branch of that Ministry, DFO, the Canadian Wildlife Service, Ducks Unlimited Canada, Wildlife Habitat Canada and the Nature Trust of BC. Since 1987, the PECP has acquired 1,612 hectares of private land on and around wetlands, and has arranged the transfer and designation of 54,736 hectares of Crown lands for wildlife habitat.[17]

WHAT YOU CAN DO

Actions that a citizen or community group can take on developments on coastal land:

1. Ensure that coastal land use bylaws maintain a shoreline buffer zone in which development is prohibited.
2. Participate in land use conservation and acquisition programs for sensitive coastal areas.
3. One option for more integrated planning which would account for the cumulative impact of development decisions in the Georgia Basin would be a foreshore plan for the entire region. This plan could be modelled on the FREMP planning process and could identify red, green and yellow areas where development would be prohibited outright or allowed. Smart growth advocates can press governments to adopt this type of planning process.

WHO TO CONTACT

Islands Trust http://www.islandstrust.bc.ca

BC Ministry of Environment, Lands and Parks, Land Use Coordination Office, LUCO, http://www.luco.gov.bc.ca

Department of Fisheries and Oceans, Pacific Region, http://www.pac.dfo-mpo.gc.ca/

BC Land Conservancy, http://www.conservancy.bc.ca/

NOTES

[1] This chapter is based on a report by Linda Nowlan, *Preserving British Columbia's Coast: A Regulatory review* – Background Report by West Coast Environmental Law for the BC Near Shore Habitat Loss Work Group, Puget Sound/Georgia Basin International Task Force (WCELRF: Vancouver, 1998), available online at www.wcel.org.

[2] Province of BC, *Coastal Zone Position Paper*, June 1998, at 9.

[3] *The Shared Marine Waters of British Columbia and Washington: A Scientific Assessment of Current Status and Future Trends in Resource Abundance and Environmental Quality in the Strait of Juan de Fuca, Strait of Georgia and Puget Sound*, Report to the British Columbia

and Washington Environmental Cooperation Council by the British Columbia and Washington Marine Science Panel, August 1994.

[4] In addition to the Levings and Thom review noted below, another survey records that 70% of original wetlands in Fraser River Delta have been altered by dyking and draining schemes. *State of Environment for Lower Fraser River Basin*, (Ottawa: Environment Canada, 1992).

[5] Colin Levings and R.M. Thom, "Habitat Changes in Georgia Basin: Implications for Resource Management and Restoration" in R. C. H. Wilson et al., eds. *Review of the Marine Environment and Biota of the Strait of Georgia, Puget Sound and Juan de Fuca Strait, Proceedings of the BC/Washington Symposium on the Marine Environment*, Canadian Technical Report of Fisheries and Aquatic Sciences No. 1948, (Vancouver: Environment Canada, 1994), 334.

[6] *Washington Shoreline Management Act*, RCW90.58; Ca. Coastal Act, Public Resources Cods, Division 20.

[7] Schreffler, D.K., R.M. Thom and K.B. MacDonald, 1995 "Shoreline armouring effects on biological resources and coastal ecology in Puget Sound." Puget Sound Research '95: Proceedings 1:121-131, cited in Ginny Broadhurst, Puget Sound Coastal Habitat Regulatory Perspective: A Review of Issues and Obstacles, Puget Sound/Georgia Basin Environmental Report Series: Number 7, January 1998.

[8] Ministry of Environment, Lands and Parks, BC Land Statistics 1996.

[9] *Striegel v. Tofino (District)* (1994), 20 M.P.L.R. (2d) 218 (BCSC).

[10] Date: 19971022 Docket: A972311 Registry: Vancouver In the Supreme Court of British Columbia Between: Alicia Burns, Appellant and Helen Dale, Approving Officer for the Town of Comox and Tim Hall, Deputy Approving Officer for the Town of Comox Respondents.

[11] *Weston v. Village of Belcarra*, BCSC A991199, Vancouver Registry.

[12] The *British Columbia Logging Order* regulates placing, driving, towing, booming and releasing of logs into come BC waters. The prohibitions are specifically tailored to the individual water bodies mentioned in the *Fisheries Act* regulation. If a log storage area falls within the area managed by a federal government Harbour Commission, a log storage area must obtain a foreshore and mid-channel lease and a use/occupy permit. A lease secures tenure for an applicant but is not an approval for structures, which must be approved by the appropriate Harbour Commission. Intergovernmental approvals may also be involved: log storage in the Fraser River comes under the management authority of the Fraser River Estuary Management Plan (FREMP). FREMP has prepared log storage guidelines which increase the availability of habitat previously damaged by the grounding of logs at low tide.

[13] Karen Calla, Department of Fisheries and Oceans, "Objectives of Foreshore Development Guidelines", Draft April 8, 1998.

[14] A map of the Trust area and more information about the Islands trust can be found on their web site at http://www.islandstrust.bc.ca/.

[15] FREMP is a co-operative agreement managed by representatives from Environment Canada; DFO; MELP; North Fraser River Harbour Commission; Fraser River Harbour Commission and the Greater Vancouver Regional District.

[16] FREMP, *A Living Working River*, New Westminster: Fraser River Estuary Management Program, 1994, at 30-32.

[17] Geoff Gilliard, Environment Canada, "The Pacific Estuary Conservation Program" 1999 at http://ramsar.org/key_awards99_interview_pecp.htm.

CHAPTER 10

PUBLIC PARTICIPATION: OPPORTUNITIES INDIVIDUALS HAVE TO INFLUENCE MUNICIPAL LAND USE PLANNING

> *Representative democracies recognize the general right of citizens to participate meaningfully in government decisions in which they have a significant interest.*[1]

Smart growth advocates can make change happen through participation in local government decisions and effective advocacy. Participation in official processes, media advocacy and community organization are all different aspects of the same basic activities: ensuring that the voices of smart growth advocates are heard by decision makers, and ensuring that those voices are as compelling as possible.

Being an effective advocate requires understanding both the public participation process and the legal rules governing participation. The first part of this chapter discusses some of the formal venues for public participation and the rules surrounding public participation. This is not supposed to be a substitute for legal advice, but a basic understanding of the rules can help increase the credibility of smart growth advocates in their discussions with municipal officials and politicians.

Sometimes informal processes for participation are more important than the formal processes laid out in the *Local Government Act*. Design charettes, informal pre-hearing conferences and processes for referring development proposals to interested groups have in many cases been very effective venues for participation. They can be a less adversarial, more solutions focused alternative that allows meaningful discussion. Informal processes work best where community groups are willing to talk to developers to find mutually agreeable solutions and where municipal councils insist on support from the community before approving a development. These processes are discussed in the second part of this chapter.

In some cases, affecting decisions require politically astute organising and advocacy. Swaying public opinion through the media, lobbying politicians, mobilising diverse groups to speak

out on an issue and sometimes making compromises to gain support or reduce opposition to a proposal are all part the game. The last part of this report provides a brief introduction to basic advocacy skills.

Before deciding whether to spend your time in design charrettes, organising presentations at a public hearing or talking to a reporter it is worth doing some homework and trying to find out some basic information:

- Who do you need to convince? Are they supportive of the smart growth option? Do they have all the information? Will they be influenced by logic, emotions or displays of public support or opposition?
- Who are your allies? Can you count on them to keep on supporting the smart growth option? Will they take positive steps to support smart growth? Who can you recruit to support the smart growth option?
- Who is opposing the smart growth options? Can they be persuaded to support smart growth? Can their concerns be accommodated? Is there a risk that their numbers will grow as an issue gains profile?
- Are there legal options available and do they achieve any purpose?

If you are not sure who your allies and opponents are, talk to the municipal planners, developers and politicians, and listen to their responses and concerns. Think about those responses and develop a strategy.

LEGAL RIGHTS TO PARTICIPATE

Public participation is a well-recognized right in Canadian law. In the local government context, there are both formal and informal opportunities to participate. Many of the formal opportunities are discretionary: the local government can decide whether or not to hear from the public. More importantly, governments recognize that better decisions are made when the public is involved.

The statutory procedural requirements of the *Local Government Act* and the common law (i.e. judge-made) rights to procedural fairness are significant for smart growth proponents. Generally courts will not interfere with a bylaw or municipal decision simply because it is bad policy or contrary to smart growth interests. Courts are not allowed to substitute their opinion for that of municipal council's simply because the council has made a questionable policy decision. However, courts will interfere to protect procedural rights of individuals. If a council fails to strictly follow the procedural requirements, such as for notices and public hearings, its decision may be invalidated.

It should be noted that, in many cases, decisions that are invalidated on procedural grounds can be remedied through council following the correct procedure on a second round. However, in highly contested decisions, delay can allow smart growth advocates to muster support or change municipal councils in elections.

This section discusses rights of public participation in municipal land use decisions, and answers several common legal questions about local government procedure.

COUNCILLORS

Municipal councillors are elected for three-year terms and make decisions for the municipality.

MUST A COUNCILLOR HAVE AN OPEN MIND ON MUNICIPAL AFFAIRS?

Often disputes arise as to whether councillors or electoral area representatives are biased, and whether they should be allowed to vote on an issue. Council members are elected, in part, to carry out the wishes of the electors, and also to fulfil campaign promises. While they cannot have a personal (for example, financial) interest in a decision they will help to make, the law is clear that they are free to express opinions, even strong opinions, on issues they will later vote on. The legal test is whether an individual councillor is "amenable to persuasion." For example, if a councillor said repeatedly in the press in advance of a council meeting: "Nothing anyone can say will make me change my mind on this subject", that is evidence that s/he is not amenable to persuasion.

WHEN WILL A COUNCILLOR BE IN A CONFLICT OF INTEREST?

If councillors have a financial interest in the decision that must be made, either directly (such as owning property that will be affected) or indirectly (such as having a family member or business associate who will be affected), the councillor will be in a conflict of interest position and disqualified from voting. This is a complicated area of law. Accusations of conflict of interest should not be lightly made.

COUNCIL MEETINGS

CAN THE PUBLIC ATTEND COUNCIL MEETINGS?

There is a statutory right for members of the public to attend "regular" council meetings, and no one may be excluded except for "improper conduct", s. 195 (1). For example, interrupting a meeting with a bullhorn has been considered by the courts to be improper conduct.[2] There is no right to participate in a council meeting, unlike a public hearing. However, often council will invite comments on the issues before them.

CAN COUNCIL HOLD MEETINGS THAT ARE CLOSED TO THE PUBLIC ("IN CAMERA" MEETINGS)?

The general principle is that "All meetings must be open to the public except for specific situations where the need for confidentiality or privacy outweighs the need for openness".[3] Council must state by resolution that a meeting is to be closed and what part of section 242.2 council is using to authorize excluding the public, s. 242.3. Meetings may be closed to the public if any of the following subjects are on the agenda:

- personal information about an identifiable individual holding or being considered for employment with the local government, or being considered for an award, or making an anonymous gift;
- labour or employee negotiations;
- security of property;
- land disposition, acquisition or expropriation;
- law enforcement;
- consideration of whether the public should be excluded in relation to a land or law enforcement matter;
- litigation;
- solicitor-client privilege, which relates to advice given by a lawyer to his/her client;

- information that may not be released under the *Freedom of Information and Protection of Privacy Act*;
- a matter that under some other statute is such that the public may be excluded; and
- other subjects Cabinet decides should be confidential.

WHAT PROCEDURES MUST BE FOLLOWED AT COUNCIL MEETINGS?

Each council must pass a bylaw to regulate council meetings and their procedure, s. 205. Generally, if council fails to follow the procedural requirements for its meetings contained in its bylaws, there are no grounds for public complaint. However, if the breach of procedure limits the public's right to know (for example, if the council fails to follow notice requirements or make documents available), it may be possible to void the council's decision.

ADVISORY COMMISSIONS

Councils may establish different public bodies to provide advice on specialized issues. No municipality has to create these bodies. Their effectiveness likely varies from municipality to municipality. Examples of these advisory bodies are:

- Advisory Planning Commission, s. 898;
- Parks Commission, s. 615;
- Civic Properties Commission, s. 616**;**
- Athletic Commission, s. 617;
- Recreation Commission, s. 618;
- Joint Commissions, s. 619; and
- Environmental Advisory Committee.

WHAT DOES AN ADVISORY COMMISSION OR COMMITTEE DO?

Local governments may, by bylaw, establish Advisory Commissions to review land use issues and make recommendations on those issues which are directed to the commission. Members of the Commission are not paid. There are often local residency requirements to participate on a Commission or Committee. For example, at least 2/3 of the members of an advisory planning commission must be residents of the municipality or the electoral area.

The recommendations of these bodies are not binding and do not in any way restrict Council's decision-making powers.

The applicant whose proposal is being considered by the Commission has the right to attend the meetings.

PUBLIC HEARINGS

WHAT DECISIONS OF LOCAL GOVERNMENT REQUIRE A PUBLIC HEARING TO BE HELD BEFORE A DECISION IS MADE?

Unless the statute says so, it is not necessary for council to give to persons affected the opportunity of a hearing.[4] So, for example, there is no duty to hold a public hearing for the adoption of a road plan, since the *Local Government Act* does not require such a hearing.[5] Public hearings are generally required for the following types of bylaw changes:

- community plan bylaw,
- rural land use bylaw, or
- zoning bylaw.

The public hearing must be held after first reading of the bylaw and before the third reading of the bylaw, s. 890 (2).

WHEN CAN A LOCAL GOVERNMENT WAIVE, CANCEL OR ADJOURN A PUBLIC HEARING?

A local government may waive the requirement to hold a public hearing on a bylaw if an OCP is in effect for the area for which the bylaw is proposed and the proposed zoning bylaw is consistent with the OCP, s. 890 (4). The local government must still comply with the notification procedures for adoption of the bylaw. The reason behind allowing a hearing to be waived is that the public process of adopting the OCP provided the opportunity for public input. This provision is infrequently used.

Councils are free to cancel public hearings. Nothing in the *Local Government Act* requires a hearing to be held after a bylaw has been given first reading. The only requirement is that a public hearing must be held prior to third reading of a bylaw.[6]

A public hearing may be adjourned and no further notice of the hearing is necessary if the time and place for resumption of the hearing is stated to those present at the time the hearing is adjourned.

WHAT PROCEDURES MUST A LOCAL GOVERNMENT FOLLOW FOR PUBLIC HEARINGS?

As with all its procedures, the local government must follow its procedures bylaw when conducting public hearings.

A written report of each public hearing containing a summary of the nature of representations respecting the bylaws that were made at the hearing must be prepared and maintained as a public record. This report must be certified by the municipal clerk as being fair and accurate.

WHO MAY SPEAK AT A PUBLIC HEARING?

At the public hearing all persons that believe that their interest in property is affected by the proposed bylaw must be afforded a reasonable opportunity to be heard or to present written submissions respecting matters contained in the bylaw that is the subject of the hearing, s. 890 (3). This is the key section allowing public input.

WHAT RIGHTS DO THE PUBLIC HAVE TO MAKE PRESENTATIONS AT PUBLIC HEARINGS?

The *Local Government Act* requires that a local government give members of the public a "reasonable opportunity" to be heard or to present written submissions. The chair of the public hearing may limit the public input by, for example, refusing to allow representations about matters irrelevant to the proposed by bylaw, setting reasonable time limits on presentations or refusing to allow repetitive presentations.

"Simply put, the council is there to hear the public's views. Council is there to gain input from the public before it makes its decision. Council is not there to debate the issues,

respond to those views or state whether individual council members are for or against the particular amendment or development."[7]

HOW MUST THE LOCAL GOVERNMENT NOTIFY THE PUBLIC ABOUT THE PUBLIC HEARING?

The notice requirements constitute a code of procedure which must be followed to pass or amend a zoning bylaw. Council must follow the procedure strictly and without deviation. It is not important whether or not anyone is prejudiced by an error in procedure. Section 892 of the *Local Government Act* contains the requirements for notice of public hearings.

The notice must state:

(a) the time and date of the hearing;

(b) the place of the hearing;

(c) in general terms, the purpose of the bylaw;

(d) the land or lands that are the subject of the bylaw; and

(e) the place where and the times and dates when copies of the bylaw may be inspected, s. 892 (2).

The notice must be published in at least two consecutive issues of a newspaper, the last publication to appear not less than 3 and not more than 10 days before the public hearing, s. 892 (3). There are other notice requirements in the *Local Government Act* to notify owners in an area where the use or density is being changed.

Where smart growth advocates are concerned about the validity of a bylaw, it is worthwhile carefully monitoring local governments to ensure that they meet the above requirements regarding notice. If the notice requirements for a public hearing are not met, any bylaw adopted following the hearing will be void.

Are there special requirements to disclose environmental information?

Disclosure of environmental information

When deciding whether failure to disclose information is sufficient reason to invalidate a bylaw, courts will look at whether the public was prejudiced as a result of non-disclosure.[8] Whether non-disclosure is prejudicial will depend on the circumstances. In some cases, courts have been very sympathetic to the public's desire for the dissemination of all environmentally related information. For example, in the case of *Norman v. Port Moody (City),* the Court found that a bylaw to amend the Port Moody OCP which could have allowed development on a small, sensitive wetland area was invalid as a result of the city's failure to disclose all relevant information to the public.

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INFORMATION DISCLOSURE AT PUBLIC HEARINGS

WHAT INFORMATION MUST BE PROVIDED TO THE PUBLIC BEFORE THE PUBLIC HEARING?

A municipality must disclose all relevant information before a public hearing is held on a bylaw or on an amendment to the OCP. The public must have an opportunity to inspect the material that Council will consider before the public hearing. There is no obligation for the municipality to make available at the public hearing a handout of the material.

The documents that a municipality must provide include documents:

- pertinent to matters contained in the bylaw;
- considered by Council in its determinations whether to adopt the bylaw; and
- which materially add to the public understanding of the issues considered by Council.

AFTER THE PUBLIC HEARING

WHAT MATERIAL CAN A COUNCIL CONSIDER AFTER A BYLAW HAS BEEN INTRODUCED BUT BEFORE IT HAS BEEN PASSED?

Generally speaking, councils may not hear from advocates from any side after a bylaw has been introduced. A council's decision may be invalidated if it does receive a submission or

holds a meeting with an advocate. This rule does not apply to its own staff who it is always free to hear from at any stage of the bylaw development.[11]

But a council may address concerns raised at a public hearing by consulting with the proponents of a development since otherwise a council could never address concerns raised at a public meeting without having a further public meeting. For example, in the case of a proposed golf course development on sensitive waterfowl habitat in Boundary Bay in Delta, at council's request, following a public hearing, the developer agreed to design the golf course in consultation with the Canadian Wildlife Service and the Ministry of Environment, Lands and Parks. These discussions with the developer about whether it would agree to these conditions did not constitute receiving further submissions from one side to the exclusion of the other.[12]

WHAT CHANGES CAN A COUNCIL MAKE TO A BYLAW AFTER A PUBLIC HEARING HAS BEEN HELD BUT BEFORE THE BYLAW HAS BEEN PASSED?

The *Local Government Act*, s. 894, permits a council to alter and then pass a bylaw after a public hearing provided that land use is not altered or densities changed in any areas affected by the bylaw. As use and density are the primary issues regulated by a zoning bylaw, it will be rare to have any zoning bylaw changed after the public hearing, except for minor alterations. Other bylaws not dealing with use or density may be changed after the public hearing.

JUDICIAL REVIEW OF LOCAL GOVERNMENT DECISIONS – PARTICIPATION THROUGH COURT REVIEW OF LOCAL GOVERNMENT DECISIONS

Smart growth advocates may want to appeal local government decisions to the courts in some cases. Municipal bylaws and decisions are subject to judicial scrutiny, and courts may look behind the face of a bylaw to discover its true purpose.[13] Courts have the power to review local government decisions to determine if the rules of natural justice or procedural fairness have been followed, and also to see if the local government acted outside its powers.

HOW CAN A BYLAW OR DECISION OF COUNCIL BE CHALLENGED IN COURT?

Local government decisions can be appealed by:

- using the statutory appeal powers in the *Local Government Act*, or
- seeking a judicial review of the decision.

WHAT IS A STATUTORY APPEAL?

There are statutory provisions allowing an appeal of certain local government decisions to be made to Supreme Court. For example, s. 262 of the *Local Government Act* permits "an elector of a municipality" or a "person interested in a bylaw" to apply to Supreme Court to set aside a bylaw for illegality. The Supreme Court may set aside all or part of the bylaw, and may award costs for or against the municipality according to the result of the application.

The application must be heard within 2 months after the adoption of the bylaw. There are strict notice requirements which must be adhered to if this procedure is followed.

WHAT IS JUDICIAL REVIEW?

The courts, or judiciary, also have the power to review the decisions of local governments to ensure that they conform to general legal requirements. In BC, the *Judicial Review Procedure*

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The city failed to include an adequate map or description of a small wetland area that would not be protected by the amendment. The judge in that case said:

> Public hearings that involve a reflection on environmental issues involve special procedural considerations. Given that a land use decision with a significant impact on the environment affects all the members of a community, it is incumbent upon an elected Council to attempt to disclose as much information as possible to voice their opinions. It is a first step to commission an environmental assessment. Council must also ensure that vital information in the assessment is properly disseminated at the public hearing.[9]

However, the courts may choose not to invalidate a bylaw where the information in one report is sufficiently digested in other publicly available documents, or where the public has had the opportunity to access the material before a meeting.[10] The adequacy of disclosure will be judged according to the circumstances of each case.

Act may be used to challenge a local government decision or bylaw in court. The time limits for launching this type of appeal are less restrictive than the statutory appeals described above. Time limits for starting court actions should always be discussed with a lawyer.

Judicial review is a complicated area of law. There are many possible grounds for judicial review of local government decisions. Some of these grounds and examples of BC cases illustrating these grounds are provided below. This list is not exhaustive.

ULTRA VIRES OR LACK OF STATUTORY OR CONSTITUTIONAL AUTHORITY

Ultra vires is a Latin phrase meaning "outside the power". A municipality cannot act beyond its powers. If a municipality attempts to do something by bylaw or resolution that it is not authorized to do, the bylaw or resolution is void and of no force and effect.

BIAS – HOW BIASED IS TOO BIASED?

A councillor will not be found to be biased for having a public opinion on an issue that will later be decided by council, as long as that opinion is not so fixed that it cannot be dislodged. The test used by the courts to determine bias of local government decision-makers is whether the councillor is "amenable to persuasion". The Supreme Court of Canada described the test this way: "Statements by individual members of council while they may very well give rise to an appearance of bias will not satisfy the test unless the Court concludes that they are the expression of a final opinion on the matter, which cannot be dislodged".[15]

In *Shell Canada Products Ltd. v. Vancouver (City)*, Vancouver City Council passed resolutions stating that that the City would do no business with Shell Canada "until Royal Dutch/ Shell [the parent company of Shell Canada] completely withdraws from South Africa". The Supreme Court of Canada held that the City of Vancouver had exceeded its statutory authority by passing a resolution which had the object of influencing events outside the borders of the City and which served no municipal purpose. The Court said "…the purpose of the Resolutions is to affect matters beyond the boundaries of the City without any identifiable benefit to its inhabitants. This is a purpose that is neither expressly nor impliedly authorized by the *Vancouver Charter* and is unrelated to the carrying into effect of the intent and purpose of the *Vancouver Charter*."[14]

BAD FAITH

Bylaws and resolutions directed at specific individuals or groups attempting to prevent them from doing something others are allowed to do may be attacked as bad faith. Municipal authority must be exercised in good faith. In *MacMillan Bloedel Ltd. v. Galiano Island Trust Committee*,[16] a lower court found that the local government's expressed motives (to maintain forestry on the island by increasing the minimum parcel size) did not conform to their real motives (to prevent residential development) and that the zoning bylaws they passed should be overturned due to bad faith. The Court of Appeal disagreed, found that bad faith did not exist in that case, and said that courts should give deference to elected municipal bodies acting under legislative authority and should be slow to find bad faith, unless there is no other rational conclusion.

A decrease in the value of land as the result of a zoning or re-zoning decision will not of itself justify a finding of bad faith.[17]

ABUSE OF PUBLIC OFFICE

In a recent case a court invalidated council's decisions, finding that the council had fettered its own discretion by forming an intention not to allow a developer to re-zone, before even receiving the developer's application. This was deemed an abuse of public office, for which the district was held liable.[18] The case is under appeal.

IMPROPER DELEGATION

Council may not delegate its authority to any other person if it is required to enact the regulation by bylaw. Municipal officials, staff, or Committees may not make decisions that council itself must make.

UNCERTAINTY OR VAGUENESS

If a bylaw is too vague it may be struck down on the grounds of uncertainty. It is impossible to enforce a bylaw unless the words are precise. The legal test has been described as follows:

The general approach to examining a municipal bylaw whose validity is challenged on this ground is that the vagueness must be so pronounced that a reasonably intelligent person would be unable to determine the meaning of the bylaw and govern his actions accordingly. A mere difficulty in interpretation will not be sufficient.[19]

STANDING

WHO CAN CHALLENGE A BYLAW OR DECISION OF COUNCIL IN COURT?

Members of the public who do not have a legal right or interest that is directly affected by a decision may have to prove their "standing" to challenge a bylaw. If appealing a bylaw under section 262, a person must either be an elector or "a person interested". In the case of judicial review, a person not directly interested in a bylaw will need to seek public interest standing before challenging the bylaw.

To qualify under section 262 appeals, a person must satisfy the court that they have an interest that is palpable such that the applicant is not a "mere busybody."[20]

There is little difference between the test set out in the *Local Government Act* and the public interest test used for judicial review. Public interest standing may be granted only when certain conditions are met. First, there must be a serious issue in question and the issue must be one that can be resolved by a court. Second, the party wishing standing must be able to demonstrate that it has a genuine interest in the matter and that it will fully argue the matter. Finally, there must be no other reasonable and effective means by which the issue can be brought before the court.

DIRECT PARTICIPATION IN MUNICIPAL DECISIONS

In some instances, the *Local Government Act* provides opportunities for residents (or electors, to use the terminology of the *Act*) to participate in decisions with long term consequences. These opportunities make local governments more accountable to local citizens.

WHAT IS ASSENT OF THE ELECTORS, AND WHEN IS IT REQUIRED?

Some bylaws require the "assent of the electors" or approval by the electors through a vote before they can be finally passed by council. These situations are an exception to the general rule that council alone decides on bylaws. Most requirements for referral to the electors relate to financial matters. Examples in BC of bylaws which require the electors' assent are agreements under which the local government incurs a liability of longer than five years; or an agreement under which the local government intends to dispose of water, sewage or other utility works.

Some bylaws (not an exhaustive list) relevant to smart growth that require the assent of the electors include:

- s. 303 – dedication of municipal land for public purposes, such as parks; and
- s. 306 – establishment of municipal forest reserve suitable for reforestation purposes.

Assent is obtained by holding a vote and receiving a majority of the votes counted as valid in favour of the bylaw or question, s. 159.

For both referendums (see below) and when obtaining the "assent of the electors," voters must meet both the following requirements:

(a) qualify as a resident elector, or as a non-resident property elector, in relation to the area that is the subject of the special voting, and

(b) be registered to vote according to the prescribed procedures.

WHEN CAN PETITIONS AND COUNTER PETITIONS BE USED?

Petitions and counter petitions are procedures authorized by the *Local Government Act* for certain actions, mainly in relation to local improvements. These petition opportunities are for the benefit of residents, and allow more direct participation in some specific municipal actions. Smart growth advocates should be aware of these legal tools because they can be used to achieve (or block) smart growth goals. For example, bylaws to grant property tax exemptions for riparian property owners are subject to the counter petition process, and petitions can be used to obtain small parks.

Local governments have the choice whether to use counter petitions or obtain the assent of the electors for any circumstances where the *Act* requires or authorizes a counter petition opportunity. s. 6.3. There are advantages and disadvantages for each procedure.

PETITIONS

Petitions are used to require government to take action in certain cases. The most common example is to petition council for a local improvement, s. 631. For example, residents may petition the council to install streetlights in back laneways, accepting the costs that they will incur as ratepayers for this improvement.

When local improvements are proposed by a council on its own initiative, property owners likely to be affected (who will be required to pay charges for the improvement) have the opportunity to petition the council not to proceed with the improvement, s. 630.

The procedural requirements for petitions vary, but all petitions must include the full name and residential address of each petitioner, s. 241 (1).

COUNTER PETITIONS

"Counter petition opportunity" means an opportunity for electors to petition against a proposed bylaw, action or other matter of a local government in accordance with section 242 (municipalities) or 809 (regional districts). This procedure allows residents to object to certain specified proposals by local governments. Counter petitions are seen as a means for the public interest to be protected other than approval of bylaws by the Minister or Inspector of Municipalities.

The procedure works as follows: local governments must give notice of their intention to undertake an action that requires a counter petition opportunity by advertising in local papers and posting notices in the local government office. Council must also establish a deadline for submission of any counter petitions.

Residents then have the opportunity to petition against the action. There is no prescribed form for a counter petition. The full name and address of each person who signs must be included. If at least 5% of the electors of the area to which the counter petition applies petition against the action, the council or board cannot proceed with the action unless assent of the electors is obtained through a vote (referendum).

Some examples of situations where counter petition opportunities are provided for are:

- Disposal of utilities and water and sewer systems, s. 190;
- Power to reserve municipal land for public purpose, s. 302;
- Property tax exemptions for heritage or riparian property, s. 342, 343.1;
- Exchange of dedicated land, s. 614; and
- Municipal contribution for a downtown revitalization project, s. 648 (7).

WHEN ARE REFERENDUMS USED?

Referendums may be used for certain local government actions such as:

- obtaining the electors' opinion on a question that affects the municipality and with which the council has the power to deal, s. 245; and
- services that are or that may be operated by the regional district, s. 802.

Bylaws must establish the referendum procedure. However, councils cannot fetter their discretion to decide the issues that the *Local Government Act* authorizes them to decide. The results of a referendum will likely be very persuasive to a council, but it is not obliged to act in accordance with the referendum decision.

SPEAKING OUT

CAN INDIVIDUALS SPEAK OUT AGAINST A PROPOSED DEVELOPMENT?

Individuals are free to oppose a development. They are free to sign petitions and speak at public hearings. Indeed, the *Local Government Act* specifically provides for these activities to occur. However, the freedom to oppose a development or express an opinion on a particular land use or proposed land use is not unlimited.

WHAT ARE THE LIMITS ON SPEAKING OUT AGAINST DEVELOPMENTS?

Individuals are guaranteed the right of freedom of expression by the Canadian Charter of Rights and Freedoms. This freedom does not extend to violating laws such as the law of defamation, more commonly known as libel and slander. Defamation is statements that are "calculated to injure the reputation of another by exposing him to hatred, contempt or ridicule", or that "tend to lower a person in the estimation of right-thinking members of society generally". Defences to charges of defamation include truth and privilege attached to some forms of communication (for example those made in the House of Commons). Libel is the written form of a defamatory statement and slander is spoken or oral defamation. Individuals are advised to obtain legal advice if they have reason to believe that their public comment may violate the libel and slander laws.

DO INDIVIDUALS RISK BEING SUED IF THEY OPPOSE A PROJECT OR DEVELOPMENT?

The importance of public participation in smart growth decision making is vital to both maintaining and enhancing the quality of our communities. Despite wide acceptance of this principle, there is a growing threat that those individuals and groups who advocate for smart growth may be subject to private litigation designed to retaliate against them for past advocacy and participation.

"Strategic Lawsuits Against Public Participation" (SLAPP) are lawsuits by private interests against individuals or non-government organizations. A SLAPP alleges injury usually based

on some form of tort (e.g. interference with economic relations) due to the individual's or organization's efforts to influence public decision-making on an issue of public concern. A SLAPP's underlying objective is to intimidate. It seeks to create a specific and general deterrent to participation by raising the risk of litigation for exercising fundamental democratic rights. The resources and costs required to defend against a SLAPP can produce an effective chill on the activities of individuals and organizations involved in public interest advocacy.

A recent BC case is the first in Canada to discuss SLAPPS and to rule that a SLAPP suit brought by a landowner proposing to redevelop was "an attempt to stifle the democratic activities of the defendants, the neighbourhood residents". As such, it was "reprehensible and deserving of censure by an award of special (increased) costs".[22] The case arose when some concerned citizens of Saanich signed a petition against a proposed development. They were sued on the basis that they colluded, conspired, breached fiduciary duty, acted in bad faith and interfered with contractual relations. There was no facts backing up these claims. The court sharply criticized the developer who sued the citizens and dismissed the claim. This case is an important precedent, and should encourage continued public participation in critical decisions about land use and growth.

"Signing petitions, making submissions to municipal councils, and even the organization of community action groups are sometimes the only avenues for community residents to express their views on land use issues. The solicitation of public opinion is specifically mandated in the *Local Government Act*. This type of activity often produces unfavourable results for some parties involved. However, an unfavourable action by local government does not, in the absence of some other wrongdoing, open the doors to seek redress on those who spoke out in favour of that action. To do so would place a chilling effect on the public's participation in local government."[21]

– Mr. Justice T.M. Singh
May 31, 1999 in *Fraser v. Saanich et al*

INFORMAL PARTICIPATION OPPORTUNITIES

Many extra-legal mechanisms for public input exist, not required by statute, that have been effective. Four of these procedures – pre-hearing consultations, referall procedurers, monitoring, and design charrettes – are discussed below.

WHAT ARE PRE-HEARING CONSULTATIONS?

Policies to resolve disputes prior to going to public hearing have been important. In Victoria developers are expected to consult with community groups and work out conflicts before going to public hearing. In the case of the one new development, the developer's proposal shifted over time from a "big box" development to a "complete community" that included residential and commercial development as well as preservation of amenities.

REFERRAL PROCESSES

Processes for referring proposals to particular groups for comment have also been important. For instance, in Saanich, any developments potentially affecting Garry Oak habitat are referred to the Garry Oak Meadow Preservation Society. They have often succeeded in getting patches of meadow saved as park and clustering development away from sensitive habitat. Burnaby's Stoney Creek Environmental Work Group involves environmental groups, industry, large institutions and the regional government, and it to co-ordinates actions of stakeholders and comments on development proposals in the Stoney Creek watershed.

Groups such as these are typically most effective when advising on issues that involve win-win solutions. For instance, they are more likely to be successful in providing advice on the timing of construction, or the siting of a building on a given piece of property, rather than fundamental issues such as whether a development should proceed.

HOW CAN COMMUNITIES MONITOR FOR SMART GROWTH?

Another important way community groups and individuals can participate in the planning process is to monitor the progress of the community in achieving goals.

Smart growth advocates should monitor implementation of existing plans such as RGS, OCPs, and neighbourhood plans. Holding politicians to their commitments is a crucial aspect of Smart Growth. Currently, there is little public attention when, for example, the Vancouver Transportation Plan or Transportation 2021 is ignored. Similarly, little attention is paid when new developments extend beyond areas identified in a RGS. Smart growth advocates need to monitor the implementation of agreed plans.

Another way of monitoring is to use different environmental, social and economic indicators (the three pillars of sustainability) and see how they match up to the vision or goals for smart growth, whether they have been formally established in an RGS or not.

In Whistler, the municipality is far along with its monitoring program, and produces a yearly report including:

- development indicators such as inventories of residential, commercial and hotel development,
- social indicators such as population, school enrolment, social agency statistics, crime statistics etc.,
- environmental indicators such as weather and snow, air quality, vegetation, noise, old growth forest cover, and
- community facilities, infrastructure, market indicators (volume of skiers) transportation indicators, and satisfaction indicators from residents and visitors.

The Capital Regional District and the City of Kelowna also produce community monitoring reports. The indicators are produced to measure important changes, describe the implications of these changes, set standards for acceptable ranges for important indicators, and provide important information for planning, and budget allocations.

Monitoring allows communities to set sustainability targets and keep watch over whether those targets are being met.

Monitoring for Urban Sustainability in Brazil

In Brazil, many local governments use the Human Development Index, a monitoring tool developed by the United Nations Development Programme, to measure the well-being of the community. The results are published each year, and are an important factor in elections and re-elections of municipal politicians.

HOW CAN COMMUNITIES USE DESIGN CHARRETTES FOR SMART GROWTH?

Many attempts to adapt urban design to promote smart growth and sustainability have occurred in BC. Design charretes are time-limited visioning and planning exercises conducted by a team of professionals from the architectural, landscape and planning professions. The term is based on design competitions conducted at the School of Architecture at the Ecole de Beaux Arts in Paris. Problems in design were given to the students and when the time to complete the problem was over a puch-cart or “charrette” in French would be wheeled past the students who would throw their drawings into the cart.

Sustainable urban landscape design charrettes have focussed on developing design responses to make sites and communities more sustainable. The design performance criteria for the Surrey design charrette were based on sustainability goals for land and water, the built environment, and energy use gathered from a variety of legal requirements and government recommendations on how to attain sustainable urban centres.[23]

Design charrettes have been used in a number of communities in BC, and are a good method of involving the public in creating visions for more liveable communities.

EFFECTIVE ADVOCACY FOR SMART GROWTH

As evident from the preceding sections, there are many avenues available for smart growth enthusiasts to participate in municipal decision-making, both formally (for example, council meetings, public hearings) and informally (for example, pre-hearing consultations, design charrettes).

To be an effective advocate means more than attending a meeting or hearing. To make the most of advocacy opportunities, smart growth advocates need to be organized, have clear messages and a plan for delivering them, be able to generate and show public support for their issues, use the municipal bureaucracy effectively, and employ tactics to effectively lobby local elected officials.

Skill building for effective advocacy takes time and effort, and comes with experience. There are a range of skills and considerations that enhance an advocate's ability to pull off a successful campaign. The ability to organize and effectively work in groups, the cultivation of "media saavy", and the development of positive working relationships with both elected officials and municipal employees all benefit the promotion of smart growth.

Volumes have been written about these subjects. Some highlights are given here. Smart growth advocates are encouraged to explore more detailed resources on these topics.

GETTING ORGANIZED

"Getting organized" builds your capacity to be an effective advocate for smart growth. There are some fundamental organizational issues that are important for you to deal with at the onset of your advocacy campaign, and to revisit periodically.

1. **Establishing a group or coalition**. Although there are challenges associated with working in groups, there are also great benefits. Generally, groups receive more attention on public issues than do individuals. Neighbourhood associations, rate payer groups, environmental organizations, and your friends and family are all good starting places. Once you identify a group who might be willing to support your issue, ask if you can make a presentation to their board. Or, invite several groups to a joint meeting to discuss the issue. The box on the following page provides an example of one very effective smart growth coalition.
2. **Developing clear goals, strategies and tactics**. To work toward your common goal, everyone in your group should have a clear understanding of what that goal is. For instance, it is important to decide whether your goal is to stop a particular development (if so it is important to have an alternative in mind) or simply change the design of a development? Do you all agree on the strategies and tactics you are going to use to promote your cause? It is important to define central messages you want to deliver to politicians and the media. Do you have a plan B?
3. **Clearly outlining roles, responsibilities and rules for working together**. Many organizations – even informal ones – develop a code of conduct,[24] which formally outlines roles and responsibilities, decision-making mechanisms, and how to record and monitor decisions.
4. **Building your skills and material resources**. Do you need materials such as paper? Do you need access to photocopiers, computers? Will you have travel costs? Do you need to fundraise? Is there some one in your group who has good facilitation skills? Public speaking skills? Outline your needs and develop a plan to meet them.

5. **Expanding your knowledge**. Who is responsible for addressing your issue of concern? Is this an issue to be dealt with by local government staff or politicians? Can you find examples from other areas which support the policy alternative you want to present?
6. **Identifying supporters**. Who supports your cause? Who do you *need* to support your cause? The identification of local champions can be highly beneficial. Local champions are people whose visible commitment to your cause encourages participants, adds importance to the goals of the project, and increases confidence in the process.[25]

LOBBYING LOCAL POLITICIANS

If you want your local government to act on your issue, you need to make sure that they are aware of it. Telling politicians what you want gives them the impetus to act. If large numbers of their constituents give them the same message, all the better! Community groups can and do raise the profile of issues and problems when they bring them to the attention of regional directors and municipal councillors.[26] Don't underestimate your effect.

THE COALITION FOR A LIVEABLE FUTURE

The Coalition for a Liveable Future stands out as a North American model in coalition building. The Coalition's members include land use, affordable housing, conservation, transit, social justice and inner city development advocates as well as professional associations and faith groups. Together these groups have been able to develop and advocate for a shared vision about how their community should grow.

The Coalition initially formed in 1994 to advocate a detailed set of amendments to the Portland's long term growth plan. By 1998, two-thirds of the initial package of amendments had been adopted.

Fundamentally, the Coalition is about drawing connections between regional issues that have historically been viewed as separate. For instance, their research shows the inextricable link between expansion of wealthy suburbs and decline of the urban core. By drawing these links the Coalition has, for instance, been successful in getting the Audubon Society to speak in favour of affordable housing.

The Coalition has stayed unified despite inevitable differences in opinion. At the beginning, several months were spent on hashing out common principles, and the members inevitably need to return to these to resolve the inevitable differences. But the result is all the more persuasive, because it represents a broad range of interests. Proponents of urban sprawl have difficulty arguing that sprawl reduces housing costs when both anti-sprawl and affordable housing advocates have thought through and agreed on an alternate approach.

HOW DO YOU BUILD RELATIONSHIPS WITH LOCAL POLITICIANS?

A recent US survey, conducted of 182 randomly selected local and state elected officials from 32 different states, led to the following recommendations.[27]

1. **Know the backgrounds of elected officials before you decide how to approach them**. A large percentage (46% of those surveyed) of elected officials have a social/political movement background which you can use to attract their support. Shape your message to address their interests.
2. **Family, friends and supporters are very important to elected officials**. Politicians turn to these people for advice. Find out who you know who is in the loop, and put some effort into educating these individuals about your cause.
3. **It's beneficial to link your issue with one that already concerns the official**. The study reported that those officials working on environmental issues did so because those issues were linked to health aspects of environmental problems. (Education, health, and economic issues all rated higher on the survey in terms of "priorities of constituents").
4. **You can provide elected officials with a service**. Most of those surveyed reported having few or no staff. Offers to keep an official up-to-date on an issue, or to assist in the writing of op-eds or holding a meeting (when you have found a sympathetic councillor) can strengthen a relationship.
5. **Public forums and local newspapers ranked high on the list of ways officials keep in touch with their constituents**. Holding public events and inviting the local press are effective means of reaching local government.

Environmental regulation and environmental justice were both identified by survey respondents as areas in which elected officials need new or alternative progressive policy models to implement in their areas. Smart growth advocates should think of this as an opportunity. Providing alternative models to traditional development practices, and giving examples of why your models are better than the status quo, could open dialogue and set the stage for change.

HOW CAN YOU MOTIVATE LOCAL POLITICIANS TO MEET WITH YOU?

You have important information to share with local politicians, and you are going to make their job easier by telling them what they should do to solve a problem within their jurisdiction!

There are several potential advantages for local governments working in cooperation with community groups:

- "Opportunities for the pooling of knowledge and skills;
- Increased efficiency in the use of community resources;
- Better coordination of parallel initiatives;
- Avenues for bringing in different interests, actors or groups from the community;
- Encouraging a broader range of interests and a diversity of opinions to expand thinking about possibilities;
- Encouraging mutual learning; and
- Extending the conventional roles of individuals and organizations to foster creativity and innovation".[28]

HOW SHOULD YOU PREPARE TO MEET WITH A POLITICIAN?

In addition to the public participation forums presented earlier in this chapter, there are a number of possible opportunities to meet with local politicians, for example, civic events such as fairs or picnics, face to face meetings, and your own events. You can invite them to tour a green space, visit a smart growth example, or come to your slideshow. If you request a face-to-face meeting, give the politician an overview of your cause, why it is important, and why it would benefit them to talk to you.

Advocates and local government politicians have identified several key "check" points for meeting with politicians:[29]

- Know and state your issue clearly
- Always be cordial and thank your audience for their attention and time
- Stick to the issue
- Be brief and on time
- Show support for your cause (e.g., be able to state how many people you represent, who is affected by or supports your cause)
- Know what responsibilities are held by the politician you're meeting, and know what you want them to do
- Provide a brief written summary of your position and the actions you are requesting
- Make sure that your facts are correct and that you are honest. Incorrect information and dishonesty undermine your credibility and could damage the relationships you've worked hard to establish
- When you can, compliment politicians on any good work that they have undertaken towards your cause
- One spokesperson is recommended, though a second person can serve as moral support and a resource person. Be sure to tell your host in advance who they will be meeting with
- If you are attending a council meeting, stay until the meeting is over. This shows dedication and may give you an opportunity to discuss points with the media
- Follow up the meeting with a thank-you note

USING THE MEDIA TO BUILD SUPPORT

Since elected officials look for public support before acting on issues, it is your job as an advocate to generate public support for your cause. Good publicity attracts support for your cause and can raise the profile and credibility of your organization. The media can bring your smart growth solutions to the attention of both the public and local politicians.

WHAT ARE THE BASIC MEDIA TOOLS?

1. **Publicity Strategy**. A publicity, media, or communications strategy outlines what you want to say, to whom, and how. It outlines different methods for reaching different audiences.[30]
2. **Media File**. This is a list of media contacts, which you develop and expand over time. Basic information such as names, contact information and deadlines are recorded along with descriptions of the types of stories the reporter is likely to cover. You can start building a media file by collecting names from your local newspapers. Reporters

tend to rely on sources they know and trust. It is important to cultivate these relationships.

3. **News Release**. This is a common and effective tool for getting coverage. A sample news release is given (*at right*). It should be concise, answer all the pertinent questions (who, what, when, where, why), should provide a contact name and telephone number for more information. Because the media get so many press releases, being timely and looking for a media hook (offering something newsworthy) is important. It is also very important to personally phone reporters that have an interest in the issue. Ask them to look out for(or whether they have seen) your release. Tell them what a great story it will make. If a reporter needs to receive a release early in order to make a deadline, it can be sent to them on an embargoed basis – meaning the reporter can write or develop the story but not release it before a specified time. This allows you to accommodate a reporter's deadline while making sure all media outlets can cover the story before it becomes "old news."
4. **Fact Sheet.** A fact sheet summarizes key information and provides background to your issue and your organization's involvement. It should also provide contact information. It can be used as part of a press kit, or as a brochure at events. It should be short: one page.
5. **Press Kit**. A press kit is usually developed for a specific event, campaign or occasion and provides the media with everything they need to put together a story about your issue. It includes material such as: a cover letter, news releases (recent and current), a fact sheet, a schedule of events, photographs, quotes, business cards, and copies of other relevant information like reports.
6. **Press Conference**. Press conferences are used when you have a hot news item, a major story, or are releasing a major report. You should have "expert" speakers, and press kits should be available. They take a lot of effort to organize so should be reserved for really important events. On-site press conferences with interesting visual imagery can be useful for attracting TV media.
7. **Press Briefing**. You can invite the press to meet with you for background information or to assist them in their education on emerging issues. This is a much less formal meeting than a press conference.
8. **Op-Ed Articles.** Op-eds or "Opinion-editorials" are valuable means of getting out your message. They are carefully written arguments that range from 600 to 1000 words in length. Contact the newspaper editor before you begin writing to gauge his or her interest and get information on the appropriate length. Your writing must be concise because, newspapers will not spend much time editing the article.
9. **Letters to the editor and Talk Back Lines.** These are an easy means of getting out your message. They need to be punchy, making a single point. For talk back lines, formulate what you are going to say before you call.
10. **Spokesperson**. This is the designated person who is prepared and able to speak with the media on your group's behalf. This person should be comfortable in this role, and able to well represent your group. Tips for preparing a spokesperson are given below.

NEWS RELEASE

PEOPLE TAKING AN ACTION FOR A REASON.
ENCAPSULATE YOUR MESSAGE IN AS FEW WORDS AS POSSIBLE.

For Immediate Release
<Date>

<City> - The Lede is the encapsulation of what you intend to say, the news, the story. It announces your information by stating who, what, why, where, how and when. It should not exceed two sentences or six lines. This is the one paragraph an editor will read. If you don't capture his/her attention here, your release will be recycled.

The Second Paragraph describes the details and the context of what you announced in the Lede – in that order. If a prominent figure or government department has done something untoward, state your source here. If you are releasing new statistics or a report, state the findings here. The Second Paragraph contains the "meat" of the release. This is where the story and the most newsworthy details are.

The Third Paragraph quotes your spokesperson, giving his or her impression and overview of what has been released. The quote should be compelling. Be very careful at how you craft quote(s) since they may be pulled out of the context you intended and used by the reporter in relation to the story, but following or preceding a thought which you cannot anticipate. The quote(s) should make sense as stand alone thoughts. For example, "I'm appalled", said Mr. X is not as useful to a reporter as "I'm appalled that the Mayor does not support (the issue)."

The Conclusion can either restate what was said in the Lede or can add an interesting detail which is not essential to the story, but adds a context which makes the reader think, "hmm, how interesting."

The Fifth Paragraph would be used if an event will be held in relation to the release. Indicate all relevant details: where, when, cost, RSVP required, number to call for more details, etc.

For additional information or to arrange interviews please contact:
Spokeperson's Name, Title, phone number
Alternate Contact Name, title, phone number

HOW DO YOU PREPARE A SPOKESPERSON?

The Institute for Media, Policy and Civil Society (IMPACS) offers five "Communicator's Commandments":

- Identify your message,
- Know your message,
- Believe your message,
- Present your message directly, and
- Summarize your message clearly.

IMPACS also provides a number of tips on their website for preparing a spokesperson.[31] These tips have been summarized below.

1. **Be available to comment.**
2. **Be prepared to comment.**
3. **Know and understand why you want to talk to a reporter.**
4. **Know and understand why the reporter wants to talk to you:** What's their angle? Do they have an agenda?
5. **Know what you want to say in a minute or less. If you can't, your message lacks focus.**
6. **Be interested in your subject (or you won't get the reporter interested either).**
7. **Believe in what you are addressing; this will make you more convincing.**
8. **Know your subject intimately – forwards, backwards, upside down – and address arguments against your position proactively.**
9. **If you don't know an answer, never lie or make it up.** Tell the reporter you'll get right back to them, or, offer another contact.
10. **Prepare to answer two or three really tough questions – the ones you're praying that you won't get asked.**
11. **Make your own messages clear and concise by making positive statements, avoiding defensive comments, keeping answers short, avoiding jargon; and use your organization's name (not "we" or "I").**
12. **Rehearse your delivery.**
13. **In broadcast interviews,** remember to smile, sit erect, be aware of your body language and hand gestures, maintain eye contact – not "camera contact," and use the interviewer's name once near the beginning of the interview.
14. **In print interviews,** pay attention to how the interviewer paraphrases you, correct her if necessary; clarify or elaborate; offer to follow-up with additional information; and supply photos if possible.

ADDITIONAL RESOURCES

http://www.best.bc.ca

Better Environmentally Sound Transportation (BEST) has been promoting environmentally sound transportation alternatives within the Lower Mainland since 1991. They started out as a grassroots cycling education and advocacy group, and have evolved into an integrated voice for all environmentally sound ways to move throughout the region. BEST has a "Transportation Advocacy Toolkit" including information on working with the meeting and influencing local councils available for order through their website.

http://www.impacs.bc.ca

The Institute for Media, Policy and Civil Society (IMPACS) is a non-profit organization based in Vancouver committed to the expansion and protection of democracy and the strengthening of civil society. Their goal is to help build strong communities by providing communications training and education to Canadian non-profit organizations, and by supporting free, open and accountable media internationally. IMPACS has useful

information on their web site about interacting with the media (e.g., how to write a press release, preparing a spokesperson for a media interview, etc.).

http://www.sparc.bc.ca

The Social Planning And Research Council of British Columbia (SPARC) is a voluntary association of people committed to promoting the social, economic, and environmental well-being of BC's citizens and communities. SPARC was incorporated as a non-profit society in 1966. SPARC has a series of citizen planning guides including information on strategic planning and facilitation skills, and organizes training workshops for community based groups through their yearly Community Development Institute.

http://www.vancouver.volunteer.ca

Volunteer Vancouver promotes volunteer participation and strengthens the voluntary sector. Volunteer Vancouver has a number of publications related to effective development of volunteer resources, non-profit boards, etc.

NOTES

[1] Commission on Resources and Environment, The Provincial Land Use Strategy, Volume 3, *Public Participation*, February 1995, 15-19.
[2] *R. v. Reed*, 10 C.C.C. (3d) 573 (BCCA).
[3] *Using the Reformed Local Government Act*, Bulletin A.3.0.0, Open Meetings (Victoria: Ministry of Municipal Affairs, 2000).
[4] Rogers, *The Law of Municipal Corporations* (2d ed.), 437.
[5] *Western Eagle Properties v. City of Burnaby*, BCSC A992729, Nov. 30, 1999.
[6] *Smith and Wills Brook Farm Ltd. v. Surrey* (1998), 45 MPLR (2d) 74 (BCSC).
[7] Paul Wilson, "Re-zoning under the BC Local Government Act System" in *Re-zoning – Strategies and Procedures for Getting Results* (Toronto: Canadian Institute, 1992), 19.
[8] *Pitt Polder Preservation Society* v. *District of Pitt Meadows*, BCSC 19990810, Van. Registry.
[9] *Norman* v. *Port Moody* (1995), 31 MPLR (2d) 47) (BCSC).
[10] *Goldsmith* v. *Squamish* (1996), 35 MPLR (2d) 207 (BCSC), *Wild Salmon Coalition v. North Vancouver* (1996), 34 MPRL (2d) 122 (BCSC).
[11] Grant Anderson, "Public Meetings and Hearings" in *Local Government Law* (Vancouver: Continuing Legal Education Society of BC, March 1989).
[12] *Jones and Boundary Bay Conservation Committee et al v. Delta* (1991) 3 MPLR (2d) 30 (BCSC).
[13] *Hauff v. City of Vancouver* (1981), 28 B.C.L.R. 276 (B.C.C.A.).
[14] [1994] 1 S.C.R. 231.
[15] *Old St. Boniface* v. *Winnipeg* (1990), 2 MPLR (2d) 217 (SCC). Also see, Kathryn Stuart," Local Government Decision-making and the New Judicial Deference" in Continuing Legal Education Society of BC, M*unicipal Law Update – 1997*.
[16] (1995), 63 BCAC 81 (CA).
[17] *Hall* v. *Maple Ridge* (1993), 15 M.P.L.R. (2d) 165 (BCSC).
[18] *First National Properties Ltd. v. The Corp. of the District of Highlands* (Oct 1/99) BCSC, Victoria Registry 95/1435.
[19] *Dhillon v. Richmond (Municipality)* (1987), 37 MPLR 243 (BCSC).
[20] *548928 Alberta Ltd. v. Invermere (District)* (1996), 34 MPLR (2d) 181 (BCSC).
[21] *Fraser et al v. Corporation of the District of Saanich et al* BCSC 99-1973, Victoria Registry.
[22] *Fraser v. The Corporation of the District of Saanich*, BCSC 99-1973, Victoria Registry.

[23] Patrick Condon, Sustainable Urban Landscapes – the Surrey Design Charrette (University of BC: Vancouver), 1996.

[24] A good example of a Code of Conduct can be found in: *Community Empowerment in Ecosystem Management*. Institute for Research on Environment and Economy, University of Ottawa, 1996.

[25] David Chrislip and Carl Larson, 1994. *Collaborative Leadership: How Citizens and Civic Leaders Can Make a Difference*, Jossey-Bass Publishers, San Francisco, 192pp.

[26] This message was repeated continually by local government representatives participating in two series of workshops conducted by West Coast Environmental Law on fish habitat protection advocacy (Spring 1999 and Spring 2000).

[27] Charlotte Brody and Monica Rohde, "Building Relationships with Elected Officials." *Everyone's Backyard*. Vol. 18, No. 2: Summer 2000.

[28] *Navigating for Sustainability: A Guide for Local Government Decision-Makers*, Fraser Basin Management Program, Ministry of Municipal Affairs, Ministry of Small Business, Tourism and Culture, BC Urban Salmon Habitat Program, and the Real Estate Foundation, 1995, pp. 34-35.

[29] These points are consolidated from the following sources:

- Better Environmentally Sound Transportation, *The B.E.S.T. Advocacy Toolkit for Alternative Transportation: How to Lobby for Alternative Transportation*.
- West Coast Environmental Law, Results from Fish Habitat Protection Advocacy Workshops, April 2000.

[30] Detailed descriptions of these tools can be found in:

- *Publicity Handbook*, Health Canada, 1997.
- *The B.E.S.T. Advocacy Toolkit for Alternative Transportation: A Guide to Working with the Media*, Better Environmentally Sound Transportation.
- *Making the News – A Guide to Using the Media*, West Coast Environmental Law, 1992.

[31] http://www.impacs.ca/resources/spokesperson.htm.

APPENDIX A

TABLE OF STATUTES

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Agricultural Land Commission Act, R.S.B.C. 1996, c. 10.

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Canadian Environmental Assessment Act, R.S.C. 1992, c. 37.

Condominium Act, R.S.B.C. 1996, c. 64.

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Ecological Reserve Act, R.S.B.C. 1996, c. 103.

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Expropriation Act, R.S.B.C. 1996, c. 125.

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Mines Act, R.S.B.C. 1996, c. 293.

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National Defense Act, R.S.C. 1985, c. N-5.

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