

BULLETIN

FLOOD HAZARD STATUTES AMENDMENT ACT, 2003

POLICY AND STATUTORY CHANGES REGARDING DIKING & LAND USE MANAGEMENT FOR FLOOD HAZARD AREAS

Date: January 2004

Rationale:

The new provisions which, as of January 1, 2004, were all in effect, reflect the new approach to diking and land use management in flood hazard areas announced in May 2003. Specifically, the legislation provides:

- **Authority** to regulate dikes,
- **Ability** to voluntarily amalgamate smaller diking authorities with larger diking authorities,
- **Authority** for both local government and provincial approving officers to determine subdivision requirements for flood hazard areas without ministry approval, and
- **Authority** for local governments to determine requirements for flood hazard area bylaws.

Explanatory Notes:

Dike Maintenance Act

Amends section 1 -

- re-enacts the definition of "inspector" to include acting and deputy inspectors;
- re-enacts the definition of "order" to include other actions of the inspector;
- re-enacts the definition of "private dike" to remove the requirements that the dike be built with private funds and to protect only the property of the person owning the dike and re-defines that term as a dike on private property that protects only that property.

Amends section 2 and enacts section 2.1 -

- replaces a general supervisory power of the inspector with a more specific power to make orders relative to construction and maintenance of dikes;
- extends the inspector's authority to include orders to persons on whose land a dike, other than a private dike, is located;
- adds new authority for the inspector to require diking authorities to provide reports, to inspect records, and to audit a diking authority's construction and maintenance program;
- permits a person or diking authority to do certain things in respect of a dike, including construction of a new dike, either with the approval of the inspector or in accordance with regulatory standards;

- requires an inspector who gives an approval to do certain things in respect of a dike to consider any regulatory standards and other factors relevant to the dike;
- adds a definition of "registered mail" and deems anything sent by registered mail to be received by the addressee 14 days after its deposit or on the date of actual receipt;
- permits the inspector to amend or revoke an order

Re-enacts section 3 and repeals section 4 -

- clarifies that the inspector's authority to take remedial action for failure to carry out an order exists if the order was not carried out by the time specified and if the order was not carried out satisfactorily;
- adds a power for the inspector to certify the amount of the debt owing to the government and that remedial work was necessary.

Amends section 5 -

- prohibits an appeal being taken from an order of the inspector that requires a person or diking authority to comply with regulatory standards or from a refusal of the inspector to grant approval to do certain things in respect of a dike that would not otherwise comply with regulatory standards.

Re-enacts section 6 and enacts sections 6.1 and 6.2 -

- adds a maximum fine for an offence committed under this Act;
- clarifies that employees, officers, directors or agents can be convicted if they authorize, permit or acquiesce in the commission of an offence;
- adds a limitation date for charging someone with an offence under this Act and adds a power for the inspector to certify the date on which the limitation period begins;
- clarifies that an action taken in respect of an offence under this Act does not relieve a person or diking authority from any other liability;
- adds sections which permit the court to make orders in respect of an offence committed under this Act beyond those orders usually permitted under the *Offence Act*.

Repeals section 7 -

- is consequential to the enactment of section 2.1 of the Act.

Amends section 8 -

- adds authority to make regulations that establish standards of construction, operation and maintenance in relation to dikes, to prescribe trusts to which a payment may be made under section 6.1 of the Act, and to make different regulations for different classes of dikes, persons, or diking authorities.

Drainage, Ditch and Dike Act

Amends section 166 - permits the minister to transfer a commission's powers from the inspector to a local government if the Lieutenant Governor in Council has first ordered a transfer of those powers from a commission to the inspector.

Amends section 167 - is consequential to the amendment to section 166 of the Act.

Amends section 168 - is consequential to the amendment to section 166 of the Act.

Amends section 169 - is consequential to the amendment to section 166 of the Act.

Amends section 170 (2) - removes an inconsistent authorization to distribute assets and liabilities of a dissolved development district.

Enacts section 170.1 - expands the power of the minister responsible for the administration of the *Local Government Act* to distribute the assets and liabilities of a dissolved development district to a regional district.

Amends section 171 - is consequential to the enactment of section 170.1 of the Act.

Enacts sections 172 and 173 - makes the same powers available to regional districts as are available to municipalities under section 171 of the Act and sets a date for repealing the Act, but permits the date to be extended by regulation.

Land Title Act

Repeals section 82 - repeals the authority of the minister to designate a flood plain, and to set conditions and to require registration of restrictive covenants for development on land that may be subject to flooding.

Amends section 86 (1) - provides authority for approving officers to require an engineering report in respect of, and to require registration of restrictive covenants for, development on land that may be subject to flooding.

Adds sections 219 (9.1) and (9.2) - authorizes the approving officer to modify or discharge a restrictive covenant that was required under section 82 of the Act before the repeal of that section.

Local Government Act

Re-enacts section 910 - removes the authority of the minister to designate flood plains and to set construction requirements for development on a designated flood plain, but requires local government bylaws in respect of these things to have regard for ministry policies and standards.

Amends section 966 (6) - is consequential to the re-enactment of section 910 of the Act.

Ombudsman Act

Re-enacts section 16 of the Schedule - is consequential to the amendment to section 166 of the *Drainage, Ditch and Dike Act*.

Practical Considerations:

- The changes to the *Drainage, Ditch and Dike Act* support the ability of the government to voluntarily amalgamate smaller diking authorities into larger diking authorities. This Act involves the Barnston, Colebrook, Coquitlam, Fortune Creek and Surrey Diking Districts.
- The changes to the *Dike Maintenance Act* support the ability of the provincial Inspector of Dikes to set standards for the maintenance and protection of the dike infrastructure in the province or to apply those set by regulation.
- The changes to the *Land Title Act* enable both local government and provincial approving officers to determine requirements for subdivision in flood prone areas, to require an engineering report regarding safety of use and also a restrictive covenant.
- The changes to the *Local Government Act* enable local government to develop flood hazard area bylaws without ministry approval but with consideration of policy and guidelines.

Transitional Considerations:

- Ministry approval of flood hazard area bylaws is no longer required and ministry authority to exempt has been removed. Existing bylaws previously approved by the ministry and in effect on the date the new section 910 of the *Local Government Act* came into force, have not been repealed. Local governments should be aware at such time as amendments to existing bylaws are desired, that the new guidelines must be considered under section 910 of that Act.
- Even though ministry approval of subdivisions and covenant conditions in flood hazard areas is no longer required, all covenants previously approved by the ministry will remain in force and effect. The current status of existing covenants is protected, but approving officers should be aware at such time as changes to existing covenants are desired, that they may exercise their authority in regard to flood hazard areas under section 86 (1) (d) and section 219 (9.1) and (9.2) of the *Land Title Act*.

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See MoE Regional boundaries at http://www.env.gov.bc.ca/main/prgs/regions_map.html

Please send any comments or suggestions to Brian.McMullen@gov.bc.ca