

BULLETIN

Miscellaneous Statutes Amendment Act (No. 2), 2004

POLICY AND STATUTORY CHANGES REGARDING LAND USE BYLAWS FOR FLOOD HAZARD AREAS

Date: May 2004

Rationale:

The new provisions and amendments, which are in effect as of May 20 2004, reflect the new approach to land use management in flood hazard areas announced in May 2003. Specifically, the legislation provides:

- **Clarification** of the authority for local governments to determine requirements for flood hazard area bylaws by providing local governments with expanded variation authority in relation to those bylaws, and with authority to grant exemptions in relation to those bylaws and to section 910(4) of the *Local Government Act* if the exemption is consistent with Provincial Guidelines or is supported by a professional report confirming safety of intended use on a flood plain.

Explanatory Notes:

Miscellaneous Statutes Amendment Act (No. 2), 2004, sections 26 and 27 amending:

Local Government Act, section 910.

- Defines the “Provincial guidelines”.
- Expands the variation authority of local governments in making bylaws in relation to flood plains to allow the local government to implement the recommendations provided for under the Provincial guidelines.
- Provides that local government may grant exemptions from the application of section 910 (4) and from the requirements of flood plain bylaws adopted under section 910 (2), if:
 - the exemption is consistent with the Provincial Guidelines; or
 - a professional engineer or geoscientist, or other prescribed person, certifies that the property can be safely used for the intended use.
- Authorizes the minister to prescribe other categories of persons who may complete reports about safety of a use on a flood plain, for example, Agrologists or Foresters with the appropriate background.

- Makes amendments consequential to the coming into force of the *Environmental Management Act*.

Miscellaneous Statutes Amendment Act (No. 2), 2004, section 33, amending:

Municipalities Enabling and Validating Act (No. 3), Part 4, by adding section 15.

- Retroactively validates and confirms local government bylaws adopted under section 910 of the *Local Government Act* if those bylaws could be adopted under section 910 as amended by this Bill on May 20, 2004, and any actions taken under those bylaws.
- Retroactively validates and confirms local government authorizations or permissions given before May 20, 2004 in reliance on the minister's exemptions for types of developments given under section 910 (6) of the *Local Government Act* before its repeal on November 17, 2003, and that the local government is authorized to give under section 910 as amended by this Bill.

Miscellaneous Statutes Amendment Act (No. 2), 2004, section 50 respecting:

Transition – Local Government Act, section 910.

- Continues, for a maximum of 1 year starting on May 20, 2004, the validity of exemptions issued by the minister under section 910 (6) of the *Local Government Act* respecting types of developments before the repeal of section 910 (6) on November 17, 2003. During this 1 year transition period, local governments have the option of providing for the continuation of the operation of such minister's exemptions by adopting or amending a flood plain bylaw to incorporate the exemptions.

Practical Considerations:

- These changes to the *Local Government Act* clarify the ability of local government to develop flood hazard area bylaws without ministry approval but with consideration of policy and guidelines.
- Local governments are provided with expanded variation authority in making flood hazard area bylaws, as well as with the authority to grant exemptions in relation to such bylaws if the exemptions are consistent with Provincial Guidelines or a professional engineer or geoscientist experienced in geotechnical engineering or other prescribed person certifies that property in a flood plain can be safely used for the use intended.
- The authority to grant site-specific exemptions is a new tool available to local governments to promote or achieve certain goals in relation to a designated flood plain. Before granting a site specific exemption, local government may want to consider both the immediate and long-term implications of the site-specific exemption in terms of overall flood plain management. Council may want to consider adopting a policy for exemption decision-making, which promotes clarity, consistency and certainty to the local government, the public and the prospective applicants.

Transitional Considerations:

- Local government bylaws adopted under section 910 of the *Local Government Act*, if those bylaws could be adopted under section 910 as amended by this Bill, and actions taken under those bylaws, are validated and confirmed.
- Local government authorizations or permissions given before the date this Bill receives Royal Assent in reliance on the minister's exemptions for types of developments given under section 910 (6) of the *Local Government Act* before its repeal, and that the local government is authorized to give under section 910 as amended by this Bill, are validated and confirmed.
- The effect of exemptions of types of developments given by the minister under section 910 (6) of the *Local Government Act*, before its repeal, is continued for 1 year from the date of Royal Assent of this Bill unless continued by bylaw.

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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