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Ownership of Parkland Provided at Subdivision

Rationale:

The new provisions reflect the *Municipal Act* Reform principles of **flexibility**, local government **accountability**, and legislative **clarity** and **simplicity**. Specifically, the legislation:

- provides that the local government will own future parkland which is given at subdivision or in lieu of payment of a development cost charge, rather than such property being owned by the Crown;
- retains the local government park or park reserve status of such property, the existing procedural requirements related to disposition of the properties, and the requirement that the proceeds from the disposition of any such properties must be placed in a special reserve fund that can only be used for the purpose of acquiring parklands; and,
- also includes a number of minor clarifications related to existing legislative provisions.

These provisions will all become effective January 1, 2001.

New Provisions:

Background

- Prior to this change, when parkland was provided by a subdivision applicant in fulfilment of the requirement in section 941 of the *Local Government Act*, the *Land Title Act* provided that title to such property must be vested in the Crown. Local government had full authority to manage the property as a community park, and (subject to certain procedures and limitations) the local government could choose to trade it for other parkland or sell it and apply the proceeds to acquisition of other parkland. However, its status as Crown land made disposition of the properties a unnecessarily lengthy and difficult process.

Ownership

- A new subsection, 941(14), establishes that the title to parkland which is provided by a subdivision applicant in fulfilment of the requirement of this section is to be vested in the applicable local government (unless the land is in a regional district that does not provide a community parks service).

- The *Land Title Act* continues to require that a parcel is not to be created by the plan of subdivision for such parkland, and that it be labelled as "park" on the plan of subdivision. Therefore, at this stage there is no certificate of title in the name of the local government. However, the local government can "raise title" and remove the park status of the land if it disposes of the property under the provisions of section 305.2
- A new subsection, 936(5), allows for land that is provided in lieu of paying a parkland development cost charge to be dealt with in the same way, or it may be subdivided as a parcel in the name of the local government.

Disposition and management

- Section 305.1 continues to provide that a municipality or a regional district (under the new section 798) is entitled to possession and control of this land. There continues to be no requirement that land acquired in this way must be operated as a park, but the land may not be used for other purposes. Despite the fact that such property is commonly referred to as a "park dedicated at subdivision", there is no relationship to the power to dedicate land under section 303.
- Section 305.2 continues to provide that the local government may, by bylaw, dispose of such property, either by exchanging it for land that is suitable for use as a park, or by selling it. A bylaw to dispose of such property is subject to a counter petition opportunity.
- Both subsection 305.2(2) and a new subsection 188(3) clarify that the proceeds from the disposition of any parkland must be put into a reserve fund that can only be used for the purpose of acquiring parkland. These proceeds cannot be used to make improvements to existing parks. Section 188(3) applies to the sale of any parklands, not just to those that are acquired by dedication at subdivision.
- A new subsection 501(2) provides that money cannot be transferred from a fund established for the purpose of acquiring parkland to another fund, unless the bylaw is approved by the minister. This is consistent with requirements related to other reserve funds where the funds have been accumulated at the expense of a specialized segment of the community, such as development cost charge reserve funds.

Regional districts

- Subsection 941(3) has been amended to clarify that subdivision applicants do not have the usual option of providing cash-in-lieu if the location is in an area of a regional district that "does not provide a community parks service." However, the subdivision applicant is still required by section 941 to provide parkland. Since the new subsection (14) does not apply in such a situation, under section 107 of the *Land Title Act* the title to the parkland would be vested in the Crown.

- Prior to August 30, 2000, community parks were a local service enabled under section 798(1)(e), and they are different than regional parks which were enabled as an extended service under section 799(1)(k). However, the new broad service powers no longer require regional districts to make this distinction.

Additional requirement to provide parkland

- A new subsection to the provision of parkland requirements, 941(5.1), eliminates the possibility that a subdivider could avoid the requirement to provide parkland by registering a series of separate subdivisions of parcels from a property, in order to take advantage of the provision in subsection (5) that parkland need not be provided if a subdivision plan only creates one or two additional parcels. This is accomplished by requiring the provision of parkland even if the subdivision creates fewer than three additional lots if the property being subdivided was itself created by subdivision within five years.

Related Provisions:

- Section 176 provides authority to acquire, hold, manage, and dispose of property.
- Division 5 of Part 5 (sections 186-190) set out procedural requirement in relation to dispositions of property (see Bulletin B.3.0.0 -- Property Acquisition and Disposal).

Practical Considerations:

- The new legislative change regarding ownership is not retroactive: it only applies to parkland that is acquired after the legislation is brought into effect. Land that was acquired before that time continues to be vested in the Crown, with the right of possession and control that of the applicable local government.
- In practice, these changes constitute "fine tuning" of the existing provisions, and may have little effect on the current policies and practices of local governments. The distinction between local government ownership and Crown title with a local government right of possession and control only becomes meaningful if and when the local government decides to dispose of the property, and local governments continue to have the opportunity to "raise title" to such land if they are disposing of the property.
- The existence of these public lands, whether developed as a park or not, is likely to be seen by nearby residents as a valued amenity, and likely adds to the market value of nearby properties. The "park" status of these properties on the plan of subdivision may be seen as a commitment to preservation or park development by the local government. While this legislative change facilitates the legal capability of local governments to dispose of such land in order to enable the acquisition of parkland elsewhere, any such actions can be controversial.
- Unless the local government has adopted policies respecting the location and type of future parks in its official community plan (OCP), the subdivision applicant has the option of providing either park land or cash-in-lieu. OCP policies therefore give the local government control over the development of their local park system which is otherwise not available.

- In regional districts which do not provide a community parks service, subdivision applicants do not have the option of providing either land or cash-in-lieu, and the regional district does not have the authority available under section 941(2) to require cash-in-lieu rather than land. To ensure clarity, although the legislation no longer requires regional districts to establish regional and community parks under different services, the establishment bylaws should identify if the regional district is providing a community parks service.

Transitional Provisions:

- There are not transitional provisions related to these amendments.

Local Government Act References:

Primary Sections: s. 941, 936, 305.1, 305.2

Bill 14 Sections: *Land Title Act*, s. 107