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Comprehensive Bylaw and Repeal of Rural Land Use Bylaw Provisions

Rationale:

The new provisions, which will become effective January 1, 2001, reflect the *Municipal Act Reform* principles of *broader powers* and *flexibility*. Specifically, the legislation provides:

- **broader powers** for local governments to pass a single bylaw to encompass all matters in Part 26 and most matters in the remainder of the *Local Government Act*; and,
- **flexibility** for local government to name bylaws as they consider appropriate to their needs

Division 3 of Part 26 is repealed but the ability to create a Rural Land Use Bylaw (RLUB) remains available by using provisions for development in a comprehensive general bylaw.

New Provisions:

- Section 259.1 provides authority for local governments to exercise all or part of their authority through a "comprehensive general bylaw", but that authority is subject to other provisions of the Act. The former section 873 restricted the combination of Part 26 authorities in a single bylaw to authorities under Divisions 4 to 11. This meant that official community plan (OCP) authority could not be exercised in the same bylaw as other land use management provisions such as zoning, and that Part 26 bylaws could not be combined with authorities under other parts of the Act.
- Section 873 was repealed by the *Local Government Statutes Amendment Act, 2000* (Bill 14), effectively removing the restriction on comprehensive bylaws and allowing the provisions of section 259.1 to be applied to all authority under Part 26. Therefore, both municipalities and regional districts may now exercise any of their Part 26 powers (i.e., planning and land use management authority) including OCP authority, and any other *Local Government Act* authority in any of the following ways:
 - by combining most authorities in a single bylaw (i.e., some authorities, such as loan authorization authority, is still required to be exercised in a separate bylaw);
 - by combining parts of the authorities in one bylaw and exercising others in separate bylaws; or,

- by exercising all of the authorities in separate bylaws.
- Provisions relating to RLUBs contained in Division 3 of Part 26 provided a limited exception to the section 873 restrictions on combining bylaws, by allowing some aspects of OCP, zoning and subdivision servicing authorities to be combined. With the elimination of the section 873 restrictions, the need to separately authorize regional districts to include some aspects of OCP, zoning and subdivision servicing in a single bylaw is also eliminated, since the provisions of section 259.1 already allow this. Therefore, specific RLUB authority has been repealed, and regional districts can, in the same way as municipalities, choose to exercise any of their *Local Government Act* powers as identified above.
- Section 876 now provides a requirement that an OCP "must be included in the adopting bylaw as a schedule". This provision applies whether or not the OCP is combined with other authorities, and is intended to provide clarity with respect to which aspects of a particular bylaw relate to policy (i.e., OCP) and which relate to regulation (eg., zoning). This provision, however, does not apply to an existing RLUB by virtue of section 873.1.
- Under section 873.1 all existing rural land use bylaws are deemed to be comprehensive bylaws pursuant to section 259.1. Applicable provisions of a RLUB are deemed to be provisions of an OCP, zoning or subdivision servicing bylaw depending on their nature.
- The elimination of rural land use bylaws provisions as a specific power for regional districts bring the planning activities of regional districts and municipalities closer together.

Related Provisions:

- Section 259.1 provides authority for comprehensive general bylaws.
- Section 280.1 authorizes the consolidation of one or more bylaws.
- Section 794 provides cross-references to sections 259.1 and 280.1, making them applicable to regional districts.

Practical Considerations:

- There is no statutory requirement for regional districts to identify which provisions of existing RLUB relate to OCP, zoning or subdivision servicing authority, but there may be a number of practical reasons to do this. For example:
 - with the deeming of various RLUB provisions to OCP, zoning or subdivision servicing bylaw provisions, depending on their nature, a provision that was in Part 1 of a RLUB and intended as a statement of policy, may actually be considered as a regulation if the nature of the provision is sufficiently prescriptive. Similarly, provisions in Part 2 that were intended to be regulatory may be found to be in the nature of policy, and therefore deemed to be OCP.
 - some officials such as approving officers and building inspectors must consider an OCP differently than a regulatory bylaw, such as zoning. Identifying which provisions of the bylaw relate to the OCP and which relate to regulatory powers will therefore provide greater clarity for approving officers in the exercise of their statutory duties; and,

- the bylaw must be adopted, amended or repealed according to the same requirements that relate to the exercise of the authority in separate bylaws (section 259.1(3)). So, for instance, if a part of an existing RLUB relating to subdivisions servicing standards is amended, a public hearing is not required, but if the zoning provisions of that same bylaw were amended, a public hearing may be required.
- Regional Districts should therefore review existing RLUB to examine the intent of each provision, and to ensure that the intent matches the nature of the provision (i.e., if a provision was intended as policy, its nature should not be regulatory). If the nature of any of the provisions appear to be in conflict with their intention, the regional district may wish to clarify the provision through amendments to the RLUB.
- In making decisions about what authorities to exercise in a single bylaw, local governments will want to consider whether the advantages in doing so outweigh the disadvantages. For example, combining bylaws has the advantage of ensuring all provisions relating to one area of land can be found in one place, but disadvantages such as confusion about what authority particular provisions in the bylaw relate to or the potential for minor amendments to open up protracted discussions on aspects of the bylaw that are not being amended.
- Local governments will have complete freedom to choose a name for the bylaw, for example, call it the "Area 'A' Rural Land Use Bylaw".

Transitional Provisions:

Even though the authority to enact RLUBs will be repealed, all current RLUBs remain in force and effect, and are deemed by section 873.1 to be comprehensive bylaws under section 259.1. This protects the current status of existing RLUBs, but regional districts should be aware at such time as amendments to existing bylaws are desired, the new provisions relating to the aspect of the bylaw being amended must be complied with (e.g., if an amendment to an OCP provision is needed, then the bylaw that makes the amendment must also ensure that all OCP provisions are included as a schedule to the bylaw).

Local Government Act References:

Primary Sections: 259.1, 872, 873.1