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MARCH 19, 2014

## CLIENT BULLETIN

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### LAND USE CONTRACTS: ENDGAME BEGINS

The provincial government has tabled in Bill 17, the *Miscellaneous Statutes Amendment Act, 2014*, amendments to the *Local Government Act* that will lead to the termination of all outstanding land use contracts.

Land use contracts were authorized by provisions of the *Municipal Act* that were in effect for a relatively brief period in the late 1970s, prior to the introduction of development permit, development cost charge and off-site servicing requirement powers. They were used either to authorize site-specific variances from zoning bylaw use and density restrictions, to oblige developers to provide off-site works and services, or both. Zoning bylaws generally do not apply where land use contracts are in place, except to the extent that they may be incorporated by reference into the contracts, though in many jurisdictions the land use contract is an “overlay” taking precedence over zoning regulations. Many thousands of parcels in the province are subject to land use contracts. The amendment or discharge of a land use contract requires the consent of the owner of the affected land. With the passage of time, LUC provisions have become increasingly out of step with the generally applicable zoning regulations for comparable lands.

The basic scheme of the new provisions is that all land use contracts are terminated by operation of a new section of the *Local Government Act*, on June 30, 2024. Local governments are required to have replacement zoning in place for the affected lands by June 30, 2022. They’re also required to advise all owners in their jurisdiction whose land is subject to a land use contract, by June 30, 2022, that their land use contract will be coming to an end and that zoning regulations will begin to apply. Thus owners who have not yet “built out” the projects authorized by their land use contract will have about ten years to do so before the general termination occurs.

Local governments will however be able to terminate any land use contract before 2024, unilaterally, by adopting a bylaw under new enabling provisions before June 30, 2022. A land use contract termination bylaw will require a public hearing with the usual public notification, and cannot be adopted unless zoning regulations have been adopted for the land in question. The “in force” date of such a bylaw must be at least one year after the adoption date, giving owners who have not yet developed their land in accordance with their land use contract at least an additional year to do so. In addition, owners will be able to apply to the board of variance within 6 months of the adoption of a such a bylaw, on grounds of hardship, to extend the in force date of the bylaw to an even later date but not later than June 30, 2024. Local

governments will have to file notice of these bylaws in the Land Title Office, and provide individual notices to affected owners.

Section 911 of the *Local Government Act* is being amended to afford lawful non-conforming status to development that occurred lawfully under the terms of a land use contract but does not conform to a zoning bylaw. Section 914 is also being amended to make the “no compensation” rule applicable to a local government bylaw that unilaterally terminates a land use contract. The existing land use contract amendment and discharge provisions in s. 930 will continue in effect alongside the new unilateral termination provisions.

We will update this bulletin with information on when these amendments will come into force.

*Bill Buholzer*