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## **Preserving Closed-School Lands as Public Green Spaces**

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# **Preserving Closed-School Lands as Public Green Spaces**

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## Loss of School Lands: an Environmental Concern

Neighbourhood public schools are more than just a facility; the school lands provide communities with essential public green space. Although school yards are typically wide swaths of trimmed grass that bear little ecological value, the open grass provides critical public green space for recreation and community activities. To the neighbourhood, school lands are valued in much the same way as parks are valued; for unstructured physical activity, sports practice, scenic value, and outdoor community events. In urban centres, school lands often function as critical links in regional greenways systems. Furthermore, it is no accident that historic school sites once donated to a school district are situated on prime pieces of property, reflecting the societal value placed on quality public space.

But with declining enrolment in BC, communities across the province are seeing their schools closed and listed for sale. This has a destabilizing effect on communities that rely on schools and school lands as their main public gathering place. Although public school enrolment in British Columbia has declined less than 6% since 2001 (just 18 fewer students in a school of 300<sup>1</sup>), over 170 schools have been closed since 2001, with several more threatened with closure this year.<sup>2</sup> The issue of school closure is compounded by provincial policy that encourages school boards to close and sell “surplus” school properties to qualify for capital funding. And until recently, school boards were required to sell closed-school properties at fair market value, rendering the properties too expensive for local governments and community organizations to purchase in order to retain the schools and lands for public use. The unfortunate result is that numerous school properties have been sold to private purchasers for development since the first wave of closures in 2001.

This report draws attention to the fact that school lands are accorded inadequate protection as public green space. This is largely because provincial law and policy governing the disposition of school lands fails to recognise the value of school land in this regard. This can be explained, in part, because the green space created by school yards is incidental to the provision of public education. Therefore, the administration of school lands rests with the Ministry of Education and School Districts – governing bodies that have public education, not the preservation of community green space, as their primary objective.

The result is a gap in law and policy: the future of the green space that schools provide is tied to the budgetary needs of the public education system. These needs fluctuate over time, depending on student enrolment levels and the fiscal approach of the governing party, leaving school green spaces hanging in the balance. Thus, the preservation of school lands as public green space is largely contingent upon public education planning, instead of preserved as a public asset in its own right. Furthermore, any efforts by the ministry to retain schools for alternative community uses are geared towards facility use, with no formal attention paid to school land use.

Not only has this policy gap resulted in the loss of public green space, but community confidence in school boards has been weakened. In many cases, school districts, faced with the pressure to consolidate and sell off surplus assets, have conducted inadequate public consultation with regard to school closure and sale. Instead of drawing communities together to plan for retaining underutilized

school space, “the provincial policy framework makes sale for development the most likely outcome of school closures, which are rising as enrolments continue to decline.”<sup>3</sup>

Of the three levels of government with an interest in school lands – provincial, municipal, and school district – only local governments have a direct interest in creating and maintaining community green space. This interest is part of a broader land use planning mandate, through which urban and suburban green spaces are created and maintained. Indeed, local governments are already well equipped to protect school lands with protective zoning in the absence of adequate provincial policy.

This report argues that the public green space created by school lands should be recognized in law and policy as an important public asset, much like a park, and not merely as a source of revenue to fund capital projects. Planning for underutilized school space must include the preservation of school land as public green space and not focus merely on facility use. It is critical that this policy gap be filled: school yards are often the last remnants of public green space in urbanized areas. Once the land is sold and developed, there is little hope of acquiring land of similar quality, size and location in the future. To fill this gap, it is imperative that local governments be brought into the decision-making process.

This report begins with a review of law and policy regarding the disposition of school lands in BC since 2002 to show how underutilized school space has been erroneously characterized as “surplus” and sold for fair market value to the detriment of public green space. The Ministry of Education’s recent policy changes in September 2008 and the Neighbourhoods of Learning pilot project will also be reviewed, in light of these initiatives to find new “purposes” for underutilized school space.

Next, legislative and policy changes to protect closed-school lands as public green space will be canvassed, with an emphasis on building an effective partnership between school boards, local government, community groups and the provincial government. The ministry’s School Community Connections Program will be reviewed as a model for bringing local governments on board in school land use planning. The ability of local governments to plan for and preserve school lands with protective zoning by-laws and Official Community Plans will also be explored, with examples. However, such local efforts are in reaction to Ministry of Education policy. Therefore, it is imperative that strategies be adopted at the provincial level to ensure school green space remains intact.

Lastly, appended to this report is information regarding two protective mechanisms that already exist at law: Grants of Crown land and donations of land to school districts for an educational purpose. In some cases the rules governing individual donations and Crown grants may be useful to those wishing to preserve school lands for public purposes.

## **Review of BC Law and Policy Regarding the Disposal of School Lands**

The Ministry of Education introduced policy changes with regard to school closure and sale in September 2008. However, it is useful to review the Ministry’s policy during the years prior to understand how we got to where we are now. Because the current government took office in 2001, law and policy in effect between 2001 and September 2008 will be reviewed. This time period is also important because, as noted previously, since 2002 over 150 schools have been closed.

Although school land is public, section 96 of the *School Act* enables school districts to sell school land:

**96** (1) In this section, “**land**” includes any interest in land, including any right, title or estate in it of any tenure.

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(3) Subject to the orders of the minister, the board may dispose of land or improvements, or both.<sup>4</sup>

Consistently since 2001, the Ministry’s capital plan instructions require school districts to provide support for capital projects by selling surplus assets. Essentially, if a school district can “bring money to the table”, they move up the priority list for capital upgrades.<sup>5</sup> Currently, the 2008/09 Capital Plan Instructions state “school districts will be required to demonstrate potential savings in operating costs and provide support for the requested capital project through the sale of surplus assets.”<sup>6</sup>

In January, 2003, right around the time when the enrolment decline became noticeable, the Ministry of Education introduced Ministerial Order 16/03 (M16/03), “Disposal of Land or Improvements Order,” providing school property disposal instructions for school boards.<sup>7</sup> (Note, this order as it first existed and currently exists does not apply to grants of Crown land described in section 99 of the *School Act*; see Appendix B.) The policies and procedures outlined in M16/03 are as follows:

### **Policies and Procedures**

**3.** Boards must develop and implement policies and procedures with respect to the disposal of land or improvements under section 96(3) of the *School Act* and make these policies and procedures publicly available.

**4.** The policies and procedures referred to in section (3) must provide for:

- (a) consideration of the future educational needs of the school district
- (b) disposition of land or improvements through a public process, and
- (c) disposition of land or improvements at fair market value.

The requirement that school lands be sold at “fair market value” (i.e. what the land would be worth as a condo development) has meant that cash-strapped municipalities and community groups cannot afford to purchase the land to retain it for public use. David Cubberley, MLA for Saanich South and Opposition Critic for Education, argues that school lands are already owned by the public, therefore it is a “costly shell game” to require municipalities to re-purchase the lands at inflated values.<sup>8</sup> Further, M16/03 made no mention of repurposing closed-school property for alternative community uses. The combination of:

- The Capital Plan requirements that districts seeking capital funding provide support by selling “surplus” lands, and
- The Ministerial order (M16/03) requirement that land be sold at “fair market value”,

has created an incentive for school districts to sell school lands, with the likely result that when purchased for market value, the lands will be developed and lost as public green spaces. These

measures have failed to acknowledge the high social value of school lands as public green space and to protect it accordingly.

In addition to the fair market value requirement, M16/03 provided little instruction as to the level of public consultation required, stating only that policies and procedures be publicly available and that the closure and sale of schools must be a public process. In the years since, numerous school sites across BC have been sold to private purchasers after inadequate public consultations.

School closures and sales have pitted communities against school boards, who have been under pressure by the Capital Plan Instructions to consolidate “surplus assets” in order to move up the priority list for capital projects. The closure and sale of Fairburn School in School District 61 (Victoria) is a good example, described by Linda Travers of “Friends of Fairburn” as “botched from the beginning – the public were shut out of the decision-making process and School District 61 did not even have the courage to respect democratic process and vote on listing the school for sale at an open Board meeting.”<sup>9</sup> The District sold Fairburn School to a developer in January 2007 after a public promise not to sell. Now, 18 houses will be built on the school field and only 30 percent of the field will remain as public access. Furthermore, of the original school land, less than 10 percent will remain as recreation space.

In September 2007, M16/03 was repealed and replaced with Ministerial Order 233/07 (M233/07).<sup>10</sup> M233/07 expanded on M16/03 content by adding several significant provisions, including the use of the term “surplus property” to describe real property not required by a board for educational purposes. This language is problematic because it defines “surplus” school properties as surplus in relation to educational purposes only. It fails to recognize the other public purposes (i.e. green space) that school lands may legitimately serve.

M233/07 also brought in an “opportunity matching” scheme, whereby school boards were required to provide an inventory of surplus property to both the Ministry of Education and the Ministry of Labour and Citizen’s Services. The Ministry of Labour and Citizen’s Services was brought on board to match surplus property with “alternative government use”, defined as “a use determined to meet the requirements of the Provincial government or of a Crown agency.” The Ministry of Education had a database of surplus schools undergoing opportunity matching on their website, but a password was required to access the database. In effect, by shuffling the properties back and forth in this way, the public was completely shut out of the process. Even now it is unclear just how many schools have been sold for private development since 2002.

### **Policy shift**

In September 2008, the Ministry of Education introduced the School Building Closure and Disposal Policy (“the policy”) to deliver its 2007 Throne Speech promise to “use underutilized school spaces as public spaces to deliver on public priorities”; to “work with boards to better manage capital planning across all school districts”; and to “ensure schools or school lands are used for their highest and best use for maximum public benefit”.<sup>11</sup> The policy makes it more difficult for school lands to be sold by stating that “only in exceptional cases should a board consider permanently disposing of school property”.<sup>12</sup> To support this, the policy requires that all future sales of school land to first be approved by the Minister

of Education. There is one exception: the Minister's approval is not required if a school board sells or leases the land or buildings to another school board, including francophone or independent school boards, for educational purposes.

The rationale for retaining underutilized schools instead of selling them is to meet the ministry's expanded mandate for community service delivery and early learning. With regard to the former, the new policy was introduced to support the ministry's Neighbourhoods of Learning pilot project, launched in September 2008. The project aims to bring education and community services "together in a single neighbourhood hub".<sup>13</sup> The idea is to use extra school space for delivering community services, such as child-care programs, family resource or seniors' centres, industry training, or branch libraries. With regard to the latter (early learning), the ministry is currently moving towards the implementation of all-day kindergarten for five year olds and optional all-day programs for three and four year olds, as introduced in the 2008 Throne Speech.

To meet this expanded mandate, the ministry will require all the additional facility space it can find. Therefore, the School Building Closure and Disposal Policy recognises that "School buildings and property is a valuable public asset that can become centres for delivering education and community services that meet the vital needs of the community. Available school space should be considered for alternative community use..."<sup>14</sup> "Alternative Community Use" is defined as "a use by a community agency or organization for land or improvements, owned by a board, other than for the educational purposes of the board." This phrase is notably different than "alternative *government* use", as introduced in M233/07.

Significantly, the policy permits school property to be sold to other school boards, local governments or community organizations for alternative community uses at less than fair market value, a marked departure from earlier policy. The policy goes on to outline the consultation requirement for school boards, who must consult with local government, community organizations and the public on alternative community uses. This consultation process must include:

- Consideration of future enrolment growth in the district, including Kindergarten to Grade 12, adult programs, and early learning;
- Consideration of alternative community use of surplus space in school buildings and other facilities; and
- A fair consideration of the community's input and adequate opportunity for the community to respond to the board's plans for the school.

Concurrent with the introduction of the School Building Closure and Disposal Policy, a new version of the Disposal of Land or Improvements Order (M193/08) came into effect on September 3, 2008.<sup>15</sup> M193/08 reinforces the policy objectives described above, removing the "fair market value" requirement that existed in previous versions of the Order.

In sum, the new policy shift does several important things with regard to preventing sale of school lands for private development:

- the policy uses the word “underutilized” jointly or instead of the word “surplus” to describe currently unneeded school space - a positive recharacterization;
- it restricts a school board’s ability to sell land by first requiring the Minister’s approval;
- it uses the phrase “alternative community use” in place of “alternative government use,” which provides for uses more in-line with community development; and,
- it makes a commitment to repurpose underutilized schools instead of selling them. This is supported by removing the fair market value requirement, rendering closed-school land more affordable for local governments and community agencies.

Because the School Building Closure and Disposal Policy has only been in effect for three months, we have yet to see how effective it will be in retaining school lands for future school and green space purposes. Although it represents a positive shift in provincial policy, it does not go far enough to ensure that closed-school lands will remain publicly accessible and undeveloped – the cornerstones of public green space. With regard to public access, the policy makes it easy for independent (i.e. private) schools to purchase school lands with no guarantee the lands will remain publicly accessible. Furthermore, by repurposing land for alternative community uses without any word on how the land itself will be preserved as green space, the policy fails to foreclose the possibility that the school yards could become covered with buildings. And although the accompanying Neighbourhoods of Learning pilot project is a positive step, it too is focused on facility use, not land use, and does not invite local governments to partner in school planning.

## Legislative and Policy Reform

Without provincial leadership through law and policy reform, other protective measures to preserve closed-school lands, such as local government efforts (discussed further in the report), will merely be a stopgap. Therefore, it is important to consider how provincial law and policy can be amended to recognize the value of school lands as public green space to protect it for the future.

There is a close link between public land set aside for schools and public land set aside for parks and green space. The link is both real and legal. In reality, school yards perform an important public green space function for the community and are typically a critical part of a community’s greenways system.<sup>16</sup> Legally, provincial laws that impose a charge or reserve land for acquiring public schools and public parks when land is developed are closely related.

For example, development charges for dedication of both park and school lands are treated similarly under the *Local Government Act* (LGA).<sup>17</sup> This is indicative of their common value as public assets and provides a basis for similar management under the Act. Section 933 of the Act permits a local government to impose development cost charges by bylaw on subdivision approvals and building permits. A development cost charge is an amount paid by a developer to a local government to help offset the capital costs imposed by the new development (s. 933(2), LGA). These costs include providing or upgrading sewage, water, drainage and highway facilities and providing and improving park

land (s. 933(2)(a)(b)). To determine the amount of a development charge, a local government must take into consideration the following, as per section 934(4):

- (a) future land use patterns and development;
- (b) the phasing of works and services;
- (c) the provision of park land described in an official community plan;
- (d) how development designed to result in a low environmental impact may affect the capital costs of infrastructure referred to in section 933(2) and (2.1)...

Development charges are a creative way for local governments to acquire and develop park land in conjunction with development. The charge can also be paid with the provision of land in lieu of cash. With regard to park land specifically, section 936 provides as follows:

- 936** (1) If a development cost charge bylaw provides for a charge to acquire or reclaim park land, all or part of the charge may be paid by providing land in accordance with subsection (2).
- (2) Land to be provided for the purposes of subsection (1) must
- (a) have a location and character acceptable to the local government, and
  - (b) on the day the charge is payable, have a market value that is at least equal to the amount of the charge.

Just like parks, charges are imposed on new developments to acquire and develop school land, as per s. 937.3 of the Act. This charge is called a “School Site Acquisition Charge,” and is paid by a developer to a local government to ensure adequate school sites will be provided to meet the population growth created by the development. Upon payment to the local government, the charge is transferred to the school district.

As per s. 937.4 of the Act, before submitting a capital plan for approval under s. 142 of the *School Act*, a school board must consult with each local government in the school district to make all reasonable efforts to plan for the size and location of schools by agreeing on the projected number of development units to be built in the district and the projected number of children of school age that will be added to the district as a result of the development. The amount of the school site acquisition charge is based on a formula set out in s. 937.5 of the Act. As with park land, a developer may provide land to the local government or the school board for school sites in lieu of the charge (s. 937.6). However, the local government, the school board, and the person required to pay the charge must all agree to the provision of that land (s. 937.6).

This link between park and school lands dedication/development charge requirements has been reflected in provincial legislation across Canada, to varying degrees. Although published in 1996, the research paper “Green Space and Growth: Conserving Natural Areas in BC Communities” by Calvin Sandborn indicates that at that time most Canadian provinces authorized local governments to require a 10 percent dedication of park and/or school lands.<sup>18</sup> At that time, the *BC Municipal Act* (now the *Local Government Act*), permitted local governments to require a dedication of 5% for school site purposes

when land is subdivided, in addition to a 5% dedication for parkland. Vermont law similarly linked school and park dedications, authorizing municipalities to require a parks and school dedication of up to 15%.<sup>19</sup> Note that s. 937.3 of the current *Local Government Act* replaces the old system with the School Site Acquisition Charge scheme described above -- however it should be noted that park and school lands continue to be dedicated and reserved similarly.

These legislative schemes demonstrate analogous treatment for acquiring and maintaining park land and school land. These laws recognize that school land and park land are similar public assets that serve similar public interests (i.e. public space). The examples above suggest that the law governing *disposal* of school land should similarly recognize the link between public schools and public parks. Indeed, some jurisdictions like California explicitly recognize this link.

Section 17459 of California's *Education Code* imposes restrictions on the manner in which surplus school property can be sold, requiring the land first be made available for low-income housing and for park and recreation purposes.<sup>20</sup> This restriction is enacted by Article 8 of the California *Government Code*, which requires that all surplus land, defined as land owned by any government or local agency that is no longer necessary for the agency's use, be first offered for low-income housing and for parks and recreation purposes.<sup>21</sup> As per parks and recreation, section 54220(b) provides:

The Legislature reaffirms its belief that there is an identifiable deficiency in the amount of land available for recreational purposes and that surplus land, prior to disposition, should be made available for park and recreation purposes or for open-space purposes...

The advantage of this legislative scheme is that surplus land is tied to a broader legislative purpose. In this way, when school lands become surplus they are allocated for purposes set out by the *Government Code*, instead of solely for State Board of Education purposes. Furthermore, the California Legislature also states its concern regarding the loss of open-space upon the sale of school lands in the *Education Code* (sections 17485-17500). Section 17485 provides:

The Legislature is concerned that school playgrounds, playing fields, and recreational real property will be lost for those uses by the surrounding communities even if those communities in their planning process have assumed that the properties would be permanently available for recreational purposes. It is the intent of the Legislature in enacting this article to allow school districts to recover their investment in surplus property while making it possible for other agencies of government to acquire the property and keep it available for playground, playing field or other outdoor recreational and open-space purposes.

This legislated concern supports the argument that school lands should be recognized in law for their environmental value and preserved accordingly. Section 17230 of the *Education Code* 17230 states that in addition to the requirements placed upon school districts pursuant to Section 54222 of the *Government Code*, a school board may sell surplus school sites to any park district, city or county in which the school district is situated for less than fair market value. This is in line with the new Ministerial Order and Policy of BC's Ministry of Education. However, in the sections proceeding section 17485 (above), the California *Education Code* goes further. In section 17494 the *Code* states:

Any land purchased or leased by a public agency pursuant to this article shall thereafter be maintained by such agency for playground, playing field, or other outdoor recreational and open-space uses...unless the governing body of that agency, by a two-thirds vote at a public hearing, determines that there is no longer a significant need for the land to be used, in which case the land may thereafter be used for other outdoor recreational or open-space purposes.

The provisions of the California *Education Code* cited here provide a legal model for preserving school lands as green spaces by connecting the lands with a broader community need for green space. When schools are listed as surplus and slated for sale, a provision of the *Local Government Act* could require the land first be offered to the local government for park and recreation purposes at less than market value, much like California's *Education Code*.

In planning for law reform, it is important to consider solutions in the alternative. In exceptional cases, preserving closed-school lands as public green space may not achieve maximum public benefit. For example, low-income housing may be a pressing need in a community that already has considerable green space, which is why the California legislation identifies such housing as an alternative public purpose. In this case, it may be important for school districts and local governments in exceptional circumstances to develop closed-school lands to maximize other public benefits. In any discussion of this sort, it is imperative that the community affected be adequately consulted.

Although the current Ministerial Orders of the Ministry of Education require public consultation before the disposal of school lands, this has proven to be woefully inadequate. If school lands must be sold to maximize their public benefit, the current minimum public consultation requirements must be improved to manage school land as an essential public asset, not just a school facility. In this way, the fate of closed-school lands as green spaces would be untangled from the Ministry's budgetary needs and given due process.

Looking to forest planning in BC, the *Forest and Range Practices Act* enacts minimum process requirements for public consultation, somewhat similar to that imposed on school boards by Ministerial Order 193/08.<sup>22</sup> The Forest Practices Board has outlined principles of effective public consultation from its previous work and in literature. The following principles are worth including here as a basis for improved public consultation policy with regard to school closures and sale.

- EARLY AND MEANINGFUL – The opportunity for involvement occurs while plans are in formation and can still be changed, rather than after a forest company has already made significant investment and committed to a plan.
- SUFFICIENT TIME – Sufficient time is allocated for public involvement, proportional to the complexity and scope of the planned forest activities.
- ADEQUATELY RESOURCED – Adequate resources are made available so that members of the public can participate effectively alongside the professionals representing forest companies and government agencies.

- INCLUSIVE – All interested parties are provided opportunity to comment, particularly those whose interests are directly affected by planned forest activities.
- INFORMATIVE AND ACCESSIBLE – Sufficient and understandable information is provided to enable the public to make informed comment.
- RESPONSIVE AND GENUINE – The forest company documents its response to public input, demonstrating that it understands the issues raised and has taken those issues seriously.
- VERIFIABLE – The forest company is able to demonstrate that the commitments made have been delivered on the ground.
- CONTINUOUS – Trust established is maintained by communicating and engaging with the public throughout the lifetime of the forest activities in question.<sup>23</sup>

Legislation and policy based upon such general public consultation principles should be considered to govern disposition and use of school lands.

### **Partnerships for Schools as Green Space**

Legislative and policy reform takes time to come into effect. In the interim it is imperative that a partnership between school districts, municipalities and the provincial government be formed to plan for closed-school *lands*, not just school facilities. The infrastructure for such a community partnership already exists. The School Community Connections Program (SCC) provides a model for a collaborative partnership between school districts and municipalities with the support of the Ministry of Education. In 2005, the Ministry of Education launched the School Community Connections Program (SCC) to support school districts and municipalities as partners in planning for school facility use.<sup>24</sup> The purpose of SCC is to create opportunities for schools to better serve the needs of changing communities. By bringing municipalities and school districts together, the needs of education and the broader community are represented in the planning process. Through SCC, the Ministry of Education provides grants to assist in transforming school facilities into something akin to community centres. The program and grants are administered on behalf of the ministry through a partnership between the Union of British Columbia Municipalities (UBCM) and the British Columbia Trustee's Association (BCSTA).<sup>25</sup>

Although the program was launched in 2005, by the summer of 2008, the majority of participating school districts were just nearing completion or entering the completion phase.<sup>26</sup> As such, the success of the program remains to be seen. However, in May 2008, the Ministry of Education and partners UBCM and BCSTA launched a new School Community Connections Grant: *Strengthening the Connection 2008*, to fund smaller-scale local projects, suggesting sustained interest in the program. As of the 2008/09 school year, SCC funding is available to all BC's boards of education.<sup>27</sup>

As an example of what SCC looks like on the ground, in School District #5 (Southeast Kootenay) a SCC grant is being used to create a new all-ages activity space that will serve the entire community and be inclusive of people with limited physical abilities. Also under SCC, School District #85 (Vancouver Island

North) contracted to lease space on the Port Hardy Secondary School site to the Stepping Stones Centre for Early Child Development.

SCC is similar to the Neighbourhoods of Learning pilot project, although arguably better designed to meet community needs by partnering with municipalities. Although the design and objectives of SCC are consistent with the goal of retaining underutilized and closed schools for public use, the drawback to relying on SCC for school green space planning is that the program's focus is school *facility* use, not *land* use. As such, a similar partnership model could be established or the mandate of SCC could be extended to include planning for schools as public green space.

A "School Green Space Partnership" would also create infrastructure to explore opportunities for environmental education, a growing need given our current climate crisis. Two examples that come to mind are community gardens and ecosystem restoration. Community gardens on school lands would give students the opportunity to learn about food security and urban sustainability. In Greater Victoria, The LifeCycles Project Society, a non-profit community-based organization, runs a "Growing Schools" program to teach students about food security, community development and the environment through organic food gardens on school grounds. The program has become extremely popular with gardens established in 12 schools and 15 schools on the waitlist.<sup>28</sup>

Using areas of school land for ecosystem restoration would also give students the opportunity to learn about the benefits of conserving and restoring natural spaces. Although school yards are typically wide swaths of imported grass that bear little ecological value, the open space is a perfect opportunity to restore designated areas to a more natural state, achieving both educational and environmental goals. Students would learn hands-on about the importance of biodiversity and ecological processes. By purposing school land in these ways, it reaffirms the lands' value as critical green space into the future.

The interests of education and green space are not mutually exclusive, as both are essential components to the creation of healthy communities. Indeed, by not selling school lands for development during enrolment dips, the interests of education, local planning, and green space conservation are met:

- The land and facilities are held in reserve to accommodate future public school enrolment growth (enrolment declines are predicted to level off by 2013 – just 4 years away);
- The land is retained as an important part of a municipality's green space inventory;
- The facilities can be leased for community purposes, providing school districts with an important revenue stream;
- If the land is situated on or near a fragile ecosystem, the environmental integrity of the area remains intact; and,
- Communities that rely on schools and school lands as a place for public gatherings, recreation and community activities are not destabilized.

## Local Government Strategies

Because schools and school yards are an integral part of community health, local governments have an interest in what happens to the land when the school is closed. Furthermore, local governments have the mandate and tools necessary to effectively plan for land use, unlike the ministry or school districts. Therefore, it is imperative that local governments be brought into the decision-making process of how to retain underutilized schools, as emphasized above. Two tools available to local government for land use planning are zoning bylaws and Official Community Plans. This section of the report briefly discusses the efficacy of zoning and OCPs as a means to protect school lands and provides examples of how zoning and OCPs have been applied.

Zoning is a way to regulate land use by categorizing properties for specific permitted uses. Section 903 of the *Local Government Act* (LGA) authorizes local governments to enact zoning bylaws, including the power to prohibit uses. The section provides as follows:

- 903** (1) A local government may, by bylaw, do one or more of the following:
- (a) divide the whole or part of the municipality or regional district into zones, name each zone and establish the boundaries of the zones;
  - (b) limit the vertical extent of a zone and provide other zones above or below it;
  - (c) regulate within a zone
    - (i) the use of land, buildings and other structures,
    - (ii) the density of the use of land, buildings and other structures,
    - (iii) the siting, size and dimensions of
      - (A) buildings and other structures, and
      - (B) uses that are permitted on the land, ...
- \*\*\*\*\*
- (4) The power to regulate under subsection (1) includes the power to prohibit any use or uses in a zone.

An Official Community Plan (OCP) is a vision statement for the community that provides a basis for zoning bylaws. OCP is defined in s. 875.1 of the LGA as a statement of objectives and policies to guide decisions on planning and land use management, within the area covered by the plan, respecting the purposes of local government. All zoning bylaws enacted after the adoption of an Official Community Plan must be consistent with the relevant plan (s. 884(2)). Indeed, zoning is the tool used to implement the land use policies stated in the OCP.

The benefits to zoning and OCP, with regard to preserving school lands as public green space, is that together they can legitimately restrict the use and density of school properties, rendering school lands less attractive for development. Indeed, rezoning can be passed without any change to provincial policy and does not require provincial government approval. Another benefit is that schools and parks can be zoned together, and often appear together under a version of a public use zone. This enables a local government to zone school and park land use similarly, necessitating fewer rezoning bylaws when

schools are closed. Furthermore, by linking schools and parks together under one zone, this performs a public education function – the two appear together reminding planners and communities of their common value as public green space. Including a policy vision for school land use in OCPs is also an important step in preserving school yards as critical green space because all future zoning must be consistent with the OCP. During the development of an OCP, the local government is required to consult with persons, organizations and authorities it considers will be affected, including school districts (s. 879).

An important benefit to using zoning and OCP as a means of planning for school land use is that a public hearing is statutorily required when a local government intends to consider an OCP or zoning bylaw (s. 890, LGA). Notice of the public hearing must be advertised in a newspaper prior to the hearing. The only circumstance in which a public hearing can be waived is if an OCP has been adopted and a zoning bylaw is proposed that is consistent with the OCP (s. 890(4), LGA). Unlike the development of provincial policy, the public hearing requirement imposed on local governments provides an important opportunity for community members to express their concerns regarding the future of school lands.

The drawback to zoning is that the threat of a rezoning application is always present. However, any zoning changes must be consistent with the OCP, as per s. 884(2) of the LGA.<sup>29</sup> Additionally, a rezoning application must also be put to a public hearing where residents and other organizations such as school districts may express their concerns. Public notice of the rezoning application is posted on a large white sign on the property, titled, “Rezoning Application”.

Although zoning and OCP are important tools in retaining school lands as public green space, it is imperative that provincial law and policy be amended to include school land use planning. In this way, local government measures will support provincial directives, instead of merely providing a stopgap. Three examples of zoning bylaws and Official Community Plans to protect closed-schools for public use are worth reviewing: the District of Oak Bay’s P9 zoning bylaw, the Cowichan Valley Regional District’s Official Community Plan amendment, and the District of Saanich Official Community Plan.

### **District of Oak Bay “P-9 Zoning”**

In 2006, the District of Oak Bay’s attempt to protectively zone a closed-school site survived a court challenge by the school board opposing the restrictive zoning. For this reason, *Greater Victoria School District No. 61 v. Oak Bay (District)* is a helpful illustration of how local governments can successfully rezone closed-school properties and the likely objections to such rezoning by school districts.<sup>30</sup>

Uplands School was permanently closed in June, 2003. During the closure process, the Oak Bay Council agreed that “it would be desirable if the property remained in public ownership and preferably as an educational facility.”<sup>31</sup> Approximately one year later, the Mayor of Oak Bay expressed concern to

Council that the P-1 zoning, which had been in place since 1986, allowed for development that might be inconsistent with the character of the neighbourhood around the school site. After “unsatisfactory discussions with the School Board”, in September 2004, Council adopted a spot-zoning bylaw (No. 4235) to ensure the property of Uplands School would remain undeveloped and in public use.

The new bylaw rezoned the property to “P-9 – Neighbourhood Civic Institutional Use,” defined by reference to “Civic Use” as defined in bylaw No. 3531, which read:

“Civic use” means a use providing for public functions under the auspices of a government body; includes federal, provincial and municipal offices and yards, public works, public schools, universities and colleges, public hospitals, community centres, playschools, kindergartens, day nurseries, day care schools, swimming pools, libraries, museums, parks, playgrounds, police stations, fire stations and waterways.

The bylaw also reduced permitted lot coverage from 30% to 10% and limited the height of any structure and the amount of surface that could be paved:

11.9.4(3) Not more than 7.5% of the area of any parcel may be surfaced with asphalt, concrete, brick, gravel or other hard material.

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11.9.5(1) On any parcel, the combined lot coverage of all building and structures shall not exceed 10%.

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11.9.5(4) No building shall have a building height in excess of 7.6m (24.9 feet).

Within a month after the bylaw was adopted, the Greater Victoria School District No. 61 filed a petition in the Supreme Court contesting the validity of the new bylaw. The Chambers judge upheld its validity, but the decision was overturned on appeal. Despite this, part of the bylaw survived the court challenge and prevented Uplands School from being sold for development in 2006. The School Board’s main objection to the bylaw is reviewed below, as is the current version of P9 zoning, now called “Neighbourhood General Institutional Use”.

The Board did not object to the height and density restrictions imposed by Bylaw No. 4235, however, the Board objected to the public-user requirement by reference to “civic use”. Although municipalities are statutorily permitted to regulate land uses, they are not, without specific provision, permitted to regulate who uses the property.<sup>32</sup> The Board cited the Supreme Court of Canada decision *R v. Sharma*, wherein the Court held that “it is a fundamental principle of municipal law that bylaws must affect equally all those who come within the ambit of the enabling enactment”.<sup>33</sup> The Board argued that Bylaw No. 4235 violated this principle by permitting only public users for the school site – those operating under government “auspices” – and that this amounted to discrimination against private users. The Court of Appeal agreed.

After the judgment, Oak Bay amended the bylaw so that it currently exists as P9 – “Neighbourhood General Institutional Use,” defined by reference to “General Institutional Use” instead of “civic use”:

“GENERAL INSTITUTIONAL USE” means the use of land for: legislative chambers, and offices, archives and meeting rooms ancillary thereto; parks; playgrounds; playing fields, and change rooms, washrooms, meeting rooms, sports equipment storage facilities, score booths and bleachers ancillary thereto; police and fire stations; community centres; allotment gardens; schools; universities; colleges; kindergartens; pre-schools; child day care centres; recreation centres; circulating libraries; works or facilities appurtenant to community water distribution systems, community sewage collection systems and community storm water collection systems; and includes the use of land covered by water for a breakwater. (Bylaw 4305 – April 24/06) (Bylaw 4428 – Sept 29/08)<sup>34</sup>

General Institutional Use is the only use permitted in P9 zones. The main difference between this bylaw and its predecessor is that the land may be used by private owners and occupiers, likely private school use. Of importance, the building coverage restriction of no more than 10% remains in force, as does the 7.5% restriction on paved surfaces. Although the lands can still be used for private school use, the development restrictions render the land unmarketable and so it remains unsold. Currently, Uplands School is used as an international student facility, providing School District No. 61 with an important revenue stream. And, when school enrolment rebounds in the future, the school district will still own Uplands School, providing a school and green space in the heart of the community.

### **Cowichan Valley Regional District Official Community Plan Amendment (Bylaw No. 3074)**

In 2008, the Cowichan Valley Regional District amended Area E of its Official Community Plan in response to several school closures and one school sale to a private purchaser (Bylaw No. 3074/5).<sup>35</sup> The amendment states the Regional District’s commitment to ensuring closed schools remain in public use, rendering the properties less attractive to developers. It is worth including the key provisions of the CVRD amendment as a model for other municipalities and regional districts to consider following.

#### **10.3 Public School Properties**

The background of this Official Community Plan includes a review of School District policy. School District 79 has focused its policy onto centralized schools, with larger student populations. This is evident in the closure and sale to a private party of Sahtlam School, and the recent closure of the school and Cowichan Station. Schools have also been closed at Paldi and Glenora. Only Koksilah School remains in operation, within the plan area.

While there is undoubtedly an economic argument at work here, there is also a strong community aspect to schools and the roles they fulfill, especially in rural communities. The CVRD believes that the importance of schools and school sites to the community must be considered in these decisions and in the subsequent disposal of school properties deemed to be surplus.

The CVRD therefore will make a real effort to encourage the ongoing use of surplus school properties for public assembly, recreation, education and cultural activities. This effort may involve land acquisition on behalf of the community, zoning amendments where these would enhance ongoing public use, and – where appropriate – support of third-party community associations that may propose to acquire these properties.

Schools are gathering places for the community, places of socialization, centres of recreational activities and, in rural areas and smaller settlements, they are often the very heart of the community. School properties are therefore vital to the health and well-being of such communities, and need to be preserved in public use....

#### POLICY 10.3.3

Where the School District proposes to close schools and sell off the property and buildings, the Regional District strongly encourages the School District and Ministry of Education to give preference to local community groups and associations as well as regional recreation functions, among others, all of whom would keep the buildings and facilities open to the public. Alternatively, long-term leases of such properties to appropriate bodies will be strongly encouraged by the CVRD.

#### POLICY 10.3.4

Examples of public uses that the CVRD considers to be worthy of encouragement at disused school sites are: daycare, pre-school and kindergarten, after-school care, alternative education (private or public), senior citizens programs, civil emergency public shelter and similar uses. The CVRD is prepared to work with the community and other government agencies in order to encourage such uses at disused school sites.

#### POLICY 10.3.5

The Regional District considers all properties and facilities that are zoned as Parks and Institutional in the implementing zoning bylaw to be important for public uses, and converting these sites to an alternative land use zone that would exclude the public and close the facilities will be very strongly discouraged by the Board.

#### POLICY 10.3.6

The Regional District may be prepared to consider adding permitted land uses, such as limited commercial, to the Parks and Institutional zones that apply to school sites, so long as these uses would be complementary to the principal institutional use.

....

#### POLICY 10.3.8

In rural communities where a school or school site represents one of the very few – or perhaps even the only – public institutional gathering place, the CVRD Board will work especially hard to ensure that these sites remain in a zone which would only permit public uses to occur.

The Cowichan Valley Official Community Plan provides a good example of how a local government can use its OCP to demonstrate a commitment to retaining underutilized schools for public use. When paired with a zoning by-law that restricts development, the preservation of school lands as public green spaces may be realizable. Unfortunately, the accompanying zoning bylaw for the Cowichan OCP, “Parks and Institutional Zones,” allows for up to 40 percent lot coverage for all buildings and structures. In this case, development restrictions such as Oak Bay’s P9 Zone would be more consonant with the OCP objective.

### **Planning ahead for Rezoning School Lands: The District of Saanich Official Community Plan**

The District of Saanich Official Community Plan includes a good example of planning ahead for school land use. Under Section 4.2.6. Schools, Knowledge Centres and Institutional, the OCP states:

- i) That rezoning of existing public school sites to allow for non-institutional uses shall only be supported where the proposed use would result in:
  - a. The setting aside of at least 50% of the site as publicly-accessible open space or;**
  - b. Provision of other significant neighbourhood public amenities, as provided for under Section 904 or 905.1 of the Local Government Act.
- ii) That consideration be given to amending the institutional zoning of public schools by introducing restrictive maximum lot coverage and increased setbacks in order to encourage the retention of existing open space.<sup>36</sup>  
(Emphasis in bold added.)

As noted earlier, OCPs are of little use if existing zones are inconsistent with the vision laid out in the plan. Currently under the District of Saanich zoning bylaw, schools fall under P-1 Institutional Zone, which accords them little protection. At the July 21, 2008, Saanich Council Meeting it was recommended that schools be removed from the P-1 zone and into their own zone so they can be dealt with separately and in accordance with the OCP.<sup>37</sup>

### **Regional Park Designation**

Another protective strategy to consider is for local governments to acquire closed-school lands and turn them into regional parks as part of a broader green space strategy. The new School Building Closure and Disposal Policy makes this more affordable, as municipalities can purchase school property for a community use for less than market value. Section 30 of the *Community Charter* enables a local government council to reserve or dedicate property as a park or public square by an affirmative vote of at least 2/3 of all the members of council.<sup>38</sup>

By turning closed-school lands into regional parks, the land remains undeveloped and publicly accessible. And when school enrolment rises in the future, a buy-back or joint-ownership agreement may be negotiated. This ensures the green spaces that school lands provide will remain intact for future generations.

## Appendix A: Donations of Land for Educational Purposes

In many communities school lands were donated to a school district generations ago by benefactors who valued public education. Often these donated lands are prime pieces of property as a reflection of the social value placed on education and public space. It is likely that school land donated to a school board “so long as” or “on the condition that” it is used for educational purposes cannot be sold for non-educational purposes. This is because a donation of land for a specific purpose is tied to the *use* of the land for that purpose. Depending on the terms of the donation (e.g. in the form of a will) a school district’s title to the land may forfeit when the school land is no longer used according to the terms of the donation. Consider the following two examples:

- (1) If the land was donated to the school district *so long* as it is used for an educational purpose, when the school district ceases to use the land for an educational purpose, the land reverts back to the donor’s estate.<sup>39</sup>

The donation described above is a “determinable interest” in land. This means the school district’s title to the land is limited by the possibility of a determining event occurring. This is described as a “determinable limitation”. In the example above, the determinable limitation is when the land is no longer used for an educational purpose. If the limitation is not complied with, the title “determines” (ends) and automatically reverts back to the donor (if deceased, the donor’s estate). In law, this is called the “right of reverter”. Phrases like “while”, “during”, “so long as”, and “until” are normally taken to refer to a determinable limitation.

The case of *Tilbury West Public School Board v. Hastie* provides a helpful illustration.<sup>40</sup> Alexander Craig Hastie donated a parcel of his land to the Tilbury West Public School Board in 1890, subject to the limitation that the land be used for school purposes. When no longer used for school purposes, title must return to the owner of the land from which the parcel was donated.

The claimants in the case were the Hasties, the descendants of Mr. Hastie who inherited his land. In 1961 the school board ceased using the property for school purposes and began storing furniture in the building. The Hasties claimed that since the land was no longer used for school purposes it should revert back to them in compliance with Mr. Hastie’s will. The court agreed, finding that the original grant was a determinable interest in land, subject to a right of reverter.<sup>41</sup> Since the land was no longer used for a school purpose, according to the terms of the will, it must revert back to the Hasties.

Consider the second example:

- (2) If the land was donated to the school district *on the condition* that it is used for an educational purpose, when the school district ceases to use it for an educational purpose, the donor (likely the trustee of the donor’s estate) is authorized to rescind the donation.<sup>42</sup>

The donation described above is a “defeasible interest” in land. This means title is subject to a condition (called a “condition subsequent”), and if the condition is not met, the donation may be rescinded. If a school district has a defeasible interest in land and fails to meet the condition that it be used for an educational purpose, the donor (if deceased, the donor’s estate) has the right to step in and rescind the donation. This is called the “right of re-entry”. Unlike a determinable interest, the reversion is not automatic, and legal action will likely be required to exercise this right. Phrases like “on condition that”, “but if”, “if it happens that” are normally taken to refer to a condition subsequent.

The condition or limitation of a donation may prohibit a school district from selling school land if the land itself would no longer be used for an educational purpose (i.e. sold for housing development). Although it can be argued that the educational-purpose condition or limitation is invalid<sup>43</sup>, it is highly unlikely that this argument would succeed because a grant of land for specific purposes is a well-established form of a qualified or conditional gift.

If an interested parent, teacher, school trustee or community member wishes to review a school board’s title to a piece of school land, access to land title records in BC is possible through the following channels:

- A lawyer, notary public, or land surveyor
- A title services (title search) company: look under ‘Title Services’ in the yellow pages to find a Title Search Agent (also known as a Registry Agent)
- A BC Government Agent
- In person at a Land Title and Survey Authority (LSTA) Office in either Kamloops, New Westminster or Victoria.

The above sources have access to LTSA electronic documents, which requires fee-based user accounts and passwords. The LTSA website provides a list of lawyers and notaries who use the Electronic Filing System: [www.ltsa.ca/efs-locator](http://www.ltsa.ca/efs-locator). In any event, it will be necessary to retain a lawyer who is trained in Wills or Trust Law to advise a community or school board about the restraints a donation may impose on a school board’s ability to use or sell the land.

## **Appendix B: Grants of Crown Land for Educational Purposes**

If land is granted by the Crown to a school board, the Disposal of Land or Improvements Order (M193/08) does not apply, nor does the School Building Closure and Disposal Policy. Instead, the management of Crown land granted to a school board is governed by section 99 of the *School Act*.

To provide context, the BC Ministry of Community Development explains,

“Government has historically provided Crown land to local governments, public agencies and community organizations to support public purposes. This land has been provided at less than market value through a Crown Grant.... This promotes economic and social development through providing access to Crown land for public facilities and community infrastructure.”<sup>44</sup>

Grants of Crown land to government corporations and bodies are given effect by section 51 of the *Land Act*, R.S.B.C. 1996, c. 246, which provides as follows:

**51** (1) Despite any other provision of this court, Crown land may, with the approval of the Lieutenant Governor in Council and subject to the terms, reservations and restrictions that the Lieutenant Governor in Council considers advisable, be disposed of by Crown grant under this Act, free or otherwise to a...school board, francophone education authority as defined in the *School Act* or other government related body...

(2) A disposition under subsection (1) may be limited to a specific public purpose.

The *School Act* also contains provisions regarding Crown grants to school boards and outlines procedure for managing Crown land granted in trust for an educational purpose. Section 99 of the *School Act* provides as follows:

**99** (1) The Lieutenant Governor in Council may grant Crown land in a school district to the board of the school district, in trust for educational purposes and as a site for a school building, housing accommodation for students or employees or board offices.

(2) Crown land granted under subsection (1) must be held by the board in trust for educational purposes and must not be disposed of except with the consent of and on terms and conditions first approved by the Lieutenant Governor in Council.

(3) If the land granted under subsection (1) is no longer required for those educational purposes, the minister may notify the registrar of the land title district in which the land is located, and the registrar must then cancel the registration of the board's title on the records of the land title office.

As per section 99(1), land granted “in trust” carries legal significance. When land is granted “in trust”, it means the land is managed by a person or organization (called the “trustee”) for the benefit of another (called the “beneficiary”). The trustee holds legal title of the land and the beneficiary holds equitable title, which is the right to use and enjoy the land. In this case, the recipient school board of crown land granted “in trust for educational purposes” holds legal title for those who benefit from educational purposes. Presumably, the beneficiary is the community the school serves.

In acting as trustee, the school board owes a “fiduciary duty” to the school community, who are the beneficial owners of the granted land. A fiduciary duty is a relationship of trust and confidence,

whereby one party relies on the advice or protection of the other. The law imposes a fiduciary duty on trustees, who must always act for the benefit and interests of the beneficiary. This obligates school boards to be forthright in managing lands granted by the Crown, “in trust for educational purposes”.

Subsection 99(3) of the *School Act* also reinforces this special purpose by requiring that the land revert back to the Crown if no longer required for an educational purpose. Perhaps important, the word “required” is inserted instead of “used”, suggesting that although a school board may not *use* the land for educational purposes, the land is still *required*, and therefore can be retained. For example, presumably under this provision a school board would be able to lease a school no longer *used* for educational purposes to generate revenue for educational purposes elsewhere in the district.

Subsection 99(2) permits a school board to sell land that was granted by the Crown with the consent of and on terms and conditions first approved by the Lieutenant Governor in Council. The Lieutenant Governor in Council merely acts on and with the advice of the Executive Council or Cabinet, so in actuality it is a minister who approves and imposes terms and conditions on a school board with regard to selling land granted by the Crown. As such, section 99(2) is not that different from the School Building Closure and Disposal Policy, which requires a board to seek the approval of the minister (of Education) prior to selling school property. The only difference is that under the Policy a school board can sell land to another school board, including francophone and independent boards, without requiring the Minister’s approval.

Subsection 99(2) provides an alternative to the reversion described in subsection 99(3). Reading subsection 99(2) and (3) together, it would seem a school board can sell the land in certain circumstances with the approval of the Lieutenant Governor in Council, perhaps if the proceeds are required for educational purposes. Otherwise, subsection 99(3) provides it may revert back to the Crown at the discretion of the minister.

It may be useful to note that if the land does revert back to the Crown as per subsection 99(3), it would be possible for the province to classify the closed-school land as a provincial park or recreation area. While recognizing the best case scenario is for a school board to continue using the land for educational purposes, subsection 99(3) may have a role to play if the land is no longer required for an educational purpose. This is because unlike a regional park, a provincial park is created from parcels of Crown land. Therefore, if the land is no longer required for an educational purpose it will revert back to the Crown, enabling the Crown to establish the green space as a provincial park. Section 5 of the *Park Act* reads as follows:

- 5 (1) The Lieutenant Governor in Council may
  - (a) establish an area of Crown land as a Class A, Class B or Class C park, or as a conservancy or recreation area,....<sup>45</sup>

It should be emphasized that if closed-school lands are to be classified as a provincial park, it would likely be difficult for a school board to reclaim the land for school purposes if and when the school board

requires additional facilities. However, this remains a possibility for preserving closed-school lands as public green space.

## Notes:

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- <sup>1</sup> LANDS (Let's Agree Not to Dispose of Schools), "Here's what we know so far:" Retrieved from: <http://bclands.weebly.com> on November 30, 2008.
- <sup>2</sup> BC Teachers' Federation, *School Closures*. Retrieved from: <http://www.bctf.ca/SchoolClosures.aspx> on October 10, 2008.
- <sup>3</sup> David Cubberley, MLA (Saanich South), "School Lands – Public Asset or Cash Cow?" May 2008.
- <sup>4</sup> [R.S.B.C. 1996], c. 412.
- <sup>5</sup> Personal communication, Jessica Van der Veen, LANDS.
- <sup>6</sup> Ministry of Education, British Columbia, *2008-09 Capital Plan Instructions*, 2007, p. 7.
- <sup>7</sup> Ministry of Education, British Columbia, *Disposal of Land or Improvements Order, Ministerial Order M16/03*, effective January 2003, repealed by M233/07.
- <sup>8</sup> Supra note 3.
- <sup>9</sup> Media Release, Friends of Fairburn and LANDS, "Fairburn School Lands Memorial Service," released June 9.
- <sup>10</sup> Ministry of Education, British Columbia, *Disposal of Land or Improvements Order, Ministerial Order M233/07*, effective September 14, 2007, replaced M16/03, repealed by M193/08.
- <sup>11</sup> Speech from the Throne, 3<sup>rd</sup> Session, 38<sup>th</sup> Parliament of the Province of British Columbia, February 13, 2007.
- <sup>12</sup> policy
- <sup>13</sup> News Release, Ministry of Education, "Neighbourhoods of Learning Map new Future for Schools," released September 3, 2008.
- <sup>14</sup> Ministry of Education, School Building Closure and Disposal Policy, September 2008. Retrieved from: [http://www.bced.gov.bc.ca/policy/policies/school\\_closure.htm#](http://www.bced.gov.bc.ca/policy/policies/school_closure.htm#) on November 5, 2008.
- <sup>15</sup> Ministry of Education, British Columbia, *Disposal of Land or Improvements Order, Ministerial Order M193/08*, replaced M233/07.
- <sup>16</sup> Calvin Sandborn, "Green Space and Growth: Conserving Natural Areas in BC Communities," March 1996. A research paper prepared for the Commission on Resources and the Environment, Wildlife Habitat Canada, Fisheries and Oceans Canada, and the Ministry of Municipal Affairs and Housing. Contact Calvin at [csandbor@uvic.ca](mailto:csandbor@uvic.ca)
- <sup>17</sup> [R.S.B.C. 1996] c. 323.
- <sup>18</sup> Supra note 16, p 83 (note 2).
- <sup>19</sup> Ibid, p 83 (note 2).
- <sup>20</sup> California *Education Code*. Accessible from the official site for California Legislation, maintained by the Legislative Council of California: <http://www.leginfo.ca.gov/>
- <sup>21</sup> California *Government Code*, accessible from the official site for California Legislation, maintained by the Legislative Council of California: <http://www.leginfo.ca.gov/>
- <sup>22</sup> Supra note 15, "**Policies and procedures: 6.** Boards must develop and implement policies and procedures with respect to the disposal of land or improvements under section 96(3) of the *School Act*, consistent with this Order, and make these policies and procedures publicly available."
- <sup>23</sup> Forest Practices Board, Board Bulletin, Volume 3 – "Opportunity for Public Consultation under the Forest and Range Practices Act".

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- <sup>24</sup> School Community Connections. Information retrieved from <http://www.schoolconnections.ca> on December 3, 2008. Contact: UBCM Local Government Program Services.
- <sup>25</sup> Ibid.
- <sup>26</sup> Ibid.
- <sup>27</sup> Ibid.
- <sup>28</sup> Lifecycles at <http://www.lifecyclesproject.ca>.
- <sup>29</sup> Although the OCP can be amended at the same time as land is rezoned, to make the zoning and OCP consistent with each other.
- <sup>30</sup> *Greater Victoria School District No. 61 v. Oak Bay (District)* [2006] B.C.J. No. 110, 2006 BCCA 28, 264 D.L.R. (4<sup>th</sup>) 100.
- <sup>31</sup> Ibid, para. 3.
- <sup>32</sup> Ibid, para. 17.
- <sup>33</sup> Ibid, para 19, cited *R v. Sharma* [1993] 1 S.C.R. 650.
- <sup>34</sup> The Corporation of the District of Oak Bay Zoning Bylaw, Consolidated to September 29, 2008, Accessible from <http://www.oakbaybc.org/bylaws/3531.pdf>.
- <sup>35</sup> Cowichan Valley Regional District Bylaw No. 3074, Area E - Cowichan Station/Sahtlam/Glenora Official Community Plan (amendment bylaw -school sites). Not accessible online; retrieved from CVRD Planning Technician Alison Garnet on December 1, 2008.
- <sup>36</sup> The District of Saanich Official Community Plan, 2008. Accessible from: [http://www.saanich.ca/business/development/plan/pdfs/ocp%20files/ocp\\_adopted\\_jul808.pdf](http://www.saanich.ca/business/development/plan/pdfs/ocp%20files/ocp_adopted_jul808.pdf)
- <sup>37</sup> Minutes of the Council Meeting, District of Saanich, Monday, July 21, 2008. No. 197 ADM40/ADM135 "Rezoning School Properties." Retrieved from: <http://www.saanich.ca/municipal/clerks/ccw/minutes/2008/july21minutes.pdf> on December 5, 2008.
- <sup>38</sup> *Community Charter* [SBC] c. 26.
- <sup>39</sup> Professor Hamar Foster, Law 108b: Property Law, University of Victoria Faculty of Law, 07/08 class notes (Kristen Holten).
- <sup>40</sup> *Tilbury West Public School Board v. Hastie* [1966] O.J. No. 953, [1966] 2 O.R. 20, 55 D.L.R. (2d) 407.
- <sup>41</sup> Ibid. Note, because the school land in question had been expropriated for highway purposes, the Hasties were claiming the amount the government had compensated the school district for the expropriation.
- <sup>42</sup> Supra note 41.
- <sup>43</sup> Because it contravenes public policy, is too uncertain or imprecise, or unreasonably restrains the donee's ability to sell the land.
- <sup>44</sup> Ministry of Community Development, Local Government Governance & Structure Division, Free Crown Grant and Nominal Rent Tenure Program. Retrieved from: [http://www.cd.gov.bc.ca/lgd/gov\\_structure/free\\_crown\\_grants/index.htm](http://www.cd.gov.bc.ca/lgd/gov_structure/free_crown_grants/index.htm), on November 22, 2008:
- <sup>45</sup> [R.S.B.C. 1996], c. 344.