



# **NEW ENVIRONMENTAL LEGISLATION:**

## **Impacts and Implications for Local Government**

**Discussion Paper**

**September 2003**

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## **1. PURPOSE**

The intent of the paper is to explore the impacts and implications of the new direction for environmental policy and legislation being proposed by the Ministry of Water, Land and Air Protection on local government. The paper will attempt to explore how these themes are being implemented in the legislation, regulation and policies being introduced by the ministry and the potential impact of these decisions for local government. The discussion paper will attempt to identify issues that local government will need to have addressed if it is to participate effectively and satisfactorily in this process.

## **2. INTRODUCTION**

In early 2002, the government completed its Core Review of all ministries. This review confirmed that the mandate of the Ministry of Water, Land and Air Protection is to protect and enhance the quality of British Columbia's water, land and air in a way that contributes to healthy communities, recreational opportunities, a sustainable environment, and a strong and vibrant provincial economy.

The Core Review provided direction on three major areas of action for the ministry:

8. Environmental Protection — shift to results-based regulation, shared stewardship, industry responsibility and market incentives.
9. Environmental Stewardship and Conservation — shift to results-based regulation and focus on priority ecosystems for protection.
10. Outdoor Recreation — increase partnerships and private sector involvement and move to market-rate fees for service.

The Ministry of Water, Land and Air Protection as part of the provincial government budgetary measures is facing an approximate 50% reduction in its budget from 2001/02 to 2004/05 and an estimated 30% reduction in its staffing during this same period.

The overall affect of these changes will be to reduce the scope of the services and activities the ministry is able to provide and to limit the technical assistance that it is able to provide.

In light of these significant reductions, local government needs to be assured these are true reductions and not a transfer of financial responsibilities to local government.

## **3. BACKGROUND AND CONTEXT FOR LOCAL GOVERNMENT AND PROVINCIAL RELATIONS**

The relationship between local government and the province is outlined in two key documents the “Protocol on Sharing Environmental Responsibilities” and the Community Charter (Part 1 – Section 2) (see Appendix A for details).

## **MEMORANDUM OF UNDERSTANDING**

The UBCM and the provincial government renewed the “Protocol on Sharing Environmental Responsibilities” in September 2001.

The document identifies some key issues – Partnership, Funding and Resources and Liability – in the relationship between local government and the province on environmental issues. The Memorandum of Understanding attempts to lay out the meaning of these concepts in greater detail. Outlined below are some excerpts from the agreement:

### *Partnership*

- recognize each others' strengths and capabilities.
- [ensure] a clear division of responsibilities which leaves the Province and local governments accountable for specific policies and gives them the authority and financial capacity to effectively perform their roles.

### *Funding and Resources*

8. New environmental responsibilities will not be assigned to another party until issues of funding and resources have been discussed among the parties.
9. With respect to environmental matters where local governments are responsible, they should have adequate authority and independence to fulfill their responsibilities.

### *Liability Protection*

- Any devolution of authority or responsibility should provide local government with protection from any liability arising from the delivery of Provincial programs or standards when acting in good faith and without negligence.

## **BILL 14 – COMMUNITY CHARTER**

The *Community Charter*, passed by the legislature in May 2003, has also attempted to lay out the framework for future relations between local government and the province. Outlined below are some key concepts in the legislation which highlight the relationship between local government and the province, under the following heading:

### **Principles of municipal-provincial relations**

Section 2(1) of the *Community Charter* lays out the following points:

- acknowledge and respect the jurisdiction of each,
- work towards harmonization of Provincial and municipal enactments, policies and programs, and
- foster cooperative approaches to matters of mutual interest.

Section 2(2) of the *Community Charter* outlines the following principles on which a relationship between local government and the province should be based:

- the Provincial government respects municipal authority and municipalities respect Provincial authority;
- the Provincial government must not assign responsibilities to municipalities unless there is provision for resources required to fulfill the responsibilities;
- consultation is needed on matters of mutual interest, including consultation by the Provincial government on
  - (iii) proposed changes to Provincial programs that will have a significant impact in relation to matters that are within municipal authority.

#### **4. NEW ENVIRONMENTAL LEGISLATION**

##### *Legislative and Policy Framework*

The intent of the Ministry of Water, Land and Air Protection in the review of its policies/regulations and new legislation is to focus its efforts on high risk sites where there is the greatest potential for harm to human health and the environment from a discharge. The following concepts highlight the ministry's future approach to environmental management:

- decrease reliance on site-specific authorizations (permits);
- introduction of a risk based authorization approach (three levels of approval: site specific approvals (high risk), code of practice, notification of activity);
- reliance on qualified professionals to determine risk;
- partnerships with stakeholders to co-develop the standards;
- new tools for compliance and enforcement.

The Ministry of Water, Land and Air Protection has undertaken a number of regulatory and policy reviews:

- Product Stewardship Regulation Review
- Wildlife-Humans Conflict Strategy
- Riparian Assessment Regulation Review
- Flood Hazard Management Review
- Pest Management Review
- Advisory Panel on Contaminated Sites

Each of the above policy/regulatory reviews have to some degree reflected the shift in ministry policy to shared stewardship, the increased use of qualified professionals, and the establishment of new standards on which to build a partnership. In some cases these reviews have been used as the basis for new legislation proposed by the ministry. These concepts have subsequently been reflected in the new legislation the ministry has introduced.

The Ministry of Water, Land and Air Protection introduced four bills on May 13, 2003:

- *Bill 53 - Integrated Pest Management Act*
- *Bill 55 - Water, Land and Air Protection Statutes Amendment Act*
- *Bill 56 - Flood Hazard Statutes Amendment Act*
- *Bill 57 - Environmental Management Act*

Each of these bills is reviewed below.

*Bill 53 - Integrated Pest Management Act*

The proposed legislation will:

- Limit the requirement for permits only to those pesticides classified as high risk;
- Eliminate the requirement for ministry approval of pest management plans in favour of a notice and confirmation;
- Require the person who wants to use pesticides to have a pest management plan prepared, in accordance with the regulations and a declaration that the user will comply with the Act and regulations;
- Requires that information be provided in a pesticide use notice for purposes of pesticide use that will enable the ministry to monitor and inspect pesticide use; and,
- Provides for the enactment of regulations that limit requirements under the Act for permits, certificates and pest management plans to prescribed pesticides – only pesticides classified as high risk will require a permit - and prescribed uses of pesticides.

The new legislation will provide a range of new compliance and enforcement tools for the ministry:

- Provide for a category of person known as “qualified monitors” who will perform required professional services for pesticide users and will reduce the monitoring required by government;
- Introduce additional sentencing options for the courts, such as prohibit the person from repeating the offence, direct the person to perform community service, take action to remedy or avoid any harm to the environment etc.;
- Introduce administrative penalties – ticketing offences – for minor violations of the Act; and,
- Increase the level of fines to individuals to up to \$200,000 and to corporations up to \$400,000 for major violations.

The proposed legislation as currently written specifically restricts a municipality or regional district from making bylaws in relation to prescribed pesticide uses in the following areas:

- In the management of pests for purposes of protecting human health and the environment (i.e. use of pesticide for predator control – wolf control programs etc.);
- In the management of non-indigenous pests (i.e. aerial application of pesticides to control the gypsy moth etc.); and,
- On land used for agriculture, forestry, transportation, public utilities and pipelines.

*Bill 55 – Water, Land and Air Protection Statutes Amendment Act*

The legislation is intended to meet the provincial governments de-regulation initiative by removing a 345 unnecessary regulatory requirements and would appear to have no major impact on local government.

*Bill 56 – Flood Hazard Statutes Amendment Act*

The Act is intended to amend four pieces of legislation the:

*Dike Maintenance Act*

*Drainage, Ditch and Dike Act*

*Land Title Act*

*Local Government Act*

In the case of the *Dike Maintenance Act* the proposed changes will provide increased authority to the Inspector of Dikes to:

- make orders relative to construction and maintenance of dikes;
- require diking authorities to provide reports, to inspect records, and to audit a diking authority's construction and maintenance program; and,
- make regulations that establish standards, operation and maintenance standards in relation to dikes.

The most significant changes under the legislation will be to the *Land Title Act* and the *Local Government Act*. Under the *Land Title Act* the following amendments are proposed:

- Section 82 – repeal the authority to designate a flood plain, and to set conditions and to require registration of restrictive covenants for development on land that may be subject to flooding.
- Section 86(1) – provide authority for Approving Officers to require an engineering report in respect of, and to require registration of restrictive covenants for, development on land that may be subject to flooding.
- Section 219 (adds new sections) – authorize the Approving Officer to modify or discharge a restrictive covenant that was formerly required under Section 82 of the Act.

Under the *Local Government Act* the following change is being proposed:

- Section 910 – remove the authority of the minister to designate flood plains and to set construction requirements for development on a designated flood plain, but requires local government bylaws in respect of these things to have regard for ministry policies and standards.

*Bill 57 - Environmental Management Act*

The new legislation repeals the *Environment Management Act* and the *Waste Management Act*, replacing both pieces of legislation with new *Environmental Management Act*.

The following changes are being proposed under the new Act:

- Responsibilities under the *Environmental Management Act* are assigned only to the Director;
- Eliminates the need for a permit for the storage of hazardous waste and requires that it be stored in accordance with the regulations;

- Authorizes the minister to enact codes of practice, so that industry sectors may be exempted from requirements under the Act if they comply with the applicable code of practice;
- Authorizes the minister to require area based management plans in the interests of environmental management;
- Introduces an administrative penalty scheme as an alternative to prosecution;
- Authorizes regulations respecting economic incentives to encourage environmentally responsible behaviour; and,
- Assigns regulation making powers to the minister.

The most significant changes proposed in the legislation by the ministry is on how it intends to deal with the management of contaminated sites. The proposed legislation:

- Narrows the definition of “contaminated site” so that the presence of any quantity of hazardous waste no longer brings the site within the definition;
- Provides for a category of persons known as “approved professionals” who may perform professional services in respect of contaminated sites;
- Eliminates “conditional certificates of compliance” in relation to contaminated sites;
- Authorizes the director to establish protocols that must be complied with in relation to technical matters associated with contaminated sites;

## **5. IMPACTS AND IMPLICATIONS FOR LOCAL GOVERNMENT OF NEW ENVIRONMENTAL CONCEPTS**

The policy and legislative changes proposed by the Ministry of Water, Land and Air Protection focus on three broad themes:

- Shared Stewardship and Risk Based Approach;
- Partnerships and Compliance.
- Liability and Use of Qualified Professionals;

The three concepts highlighted above affect local government in different ways and the discussion paper will explore the impact and implication of each of them.

### *Shared Stewardship and Risk Based Approach*

The shift in policy by the ministry to a ‘shared stewardship and a risk based approach’ in addressing environmental issues has the potential to lead to uncertainty. This has occurred for a number of reasons.

One reason is that the terms have not been clearly defined. A second reason is that there has not been a clearly defined division of responsibilities between local government and the ministry. A third reason is that in some cases there is not clear accountability as to who is responsible for taking action, when the action is to be taken, and what action is to be taken. Finally, in some cases the authority to act has not been clearly assigned to local government in the legislative changes proposed.



The application of the 'shared stewardship and risk based approach' on the policy side has resulted in a reduction of ministry service and a response based on 'high risk' incidents only. For example, in the case of the wildlife-human conflict strategy it appears that conservation officers will now only respond to a wildlife sighting in an urban area where there is a 'high risk' of human-wildlife conflict. While the move to a new preventative strategy to avoid wildlife-human conflict by the ministry is a positive measure, the immediate affect of the policy change will be to shift greater responsibility for human-wildlife interface on to local government protective services, creating uncertainty over who is responsible and who should take action when a wildlife incident occurs (i.e. bylaw officers, police and fire etc.).

A similar affect in the application of 'shared stewardship and risk based approach' is illustrated on the legislative front. In the case of the *Integrated Pest Management Act* (Bill 53) the ministry has proposed that it will issue permits for only 'high risk' pesticides in the future, whereas currently it issues permits for all regulated pesticides and is responsible for ensuring they are used in accordance with the regulations. Under the new process local government has the added responsibility of ensuring that an applicator it has hired is undertaking the work in accordance with established ministry standards and using the appropriate pesticides, in the past the ministry would have assumed this responsibility when it issued a permit. The affect of the legislation is to shift the responsibility for the management of the pesticides used under the plan and the monitoring of them on to local government. The legislation has created uncertainty as to the type of responsibilities local government is taking on, the extent to which it must monitor the use of pesticides and the extent and type of monitoring it must undertake. There is also the potential concern that given the uncertainty around the general management of pesticides at the local level that the public will put increased pressure on local government to fill what it perceives as a regulatory vacuum.

A further illustration of the uncertainty and confusion created, in the shift in ministry policy to a 'shared stewardship and risk based approach', is in the response to spills. This environmental issue is addressed under the *Environmental Management Act* (Bill 57). The ministry in the case of spills has indicated that it will only respond to 'high risk' spills. It raises the question: What is a high risk spill?; in this case there has been an attempt to address the issue in the field where it is determined on the following basis: location (environmental sensitivity of the area); size of the spill; company (large companies may have own spill response unit); or staff availability. This determination of responsibilities, however, poses a dilemma for local government as to which spills it may be responsible to manage under the ministries new policy as it does not clearly identify: who is to respond to a spill should it occur?; and who should be responsible for the clean-up and response costs? Under the *Environmental Management Act* only the provincial government has the direct legislative authority to recover the costs of responding to and cleaning up a spill.

The above examples illustrate some of the implications of the Ministry of Water, Land and Air Protection shift to a 'shared stewardship and risk based approach' on local government. They suggest the need for clear definitions, clearly defined roles and responsibilities, the assignment of clear lines of authority to act in the legislation and in any regulations and policy that is developed. The legislative framework that has been proposed for future regulations and the current policy that has been adopted based on a 'shared stewardship and risk based approach' raises concerns as to the ministries intent in using these concepts and whether or not they are simply tools for downloading added responsibilities on to local government.

### *Partnership and Compliance*

In the development of the Ministry of Water, Land and Air Protection legislation and policy it is unclear what type of partnership it is proposing with local government. The ministry has not completed its discussion paper outlining its compliance strategy at this time, so it is not possible to determine what direction it intends to take in this area.

The legislation and policy have signaled some potential problems for local government with respect to the nature of the partnership contemplated by the ministry. The model illustrated in the legislation is one in which local government is expected to take action based on "standards/guidelines" established by the ministry, to implement these standards/guidelines in accordance with ministry policy, and to monitor compliance based on provincial standards/guidelines. The direction proposed in the legislation raises concerns as to whether the intent of the ministry is to delegate its responsibilities to local government or to develop a partnership around the delivery of environmental initiatives. The expanded duties would suggest a need for increased 'financial and technical resources' for local government to implement the changes proposed.

In the case of the *Integrated Pesticide Management Act* (Bill 53), for example, local government will be required to meet 'integrated pest management standards' established by the ministry. Whether existing plans used by local government will meet the new provincial standard to be established by the ministry is not known at this time. Local government will be required to employ 'qualified professionals', on a periodic basis, to monitor the work undertaken under its integrated pest management plan, based on the regulation and policy established by the ministry. The legislation would appear to provide limited flexibility for local government in dealing with pesticide policy and would appear to require additional technical resources (staff and/or training) to meet the new management responsibilities required for pesticide use in the future.

Under the *Flood Hazards Statutes Amendment Act* (Bill 56) local government will be required to meet 'dike maintenance standards' and 'flood plain development guidelines' to be established by the ministry. The underlying intent is that local governments will attempt to ensure all dikes are maintained to the new standard and that any development undertaken in a flood plain meets the standards

established. . Under the Act the ministry is proposing to repeal Section 82 of the Land Title Act removing the authority of the Minister of Water, Land and Air Protection to designate flood plains and to establish restrictive covenants and to move this authority to the approving officer under Section 910 of the Local Government Act.

It is not clear in the legislation, however, that all of the authority needed to effectively manage this issue has been transferred to local government. Under the proposed legislation the Approving Officer will have the ability to “require an engineering report” and to “require restrictive covenants”. The Approving Officer however does not appear to have the ability to vary the flood plain regulations or to obtain covenants from owners of existing non-conforming properties and may not have the flexibility to require different covenants for different parts of the flood plain. Furthermore, it is not clear as to whether or not the Board of Variance has the authority to deal with exemptions or variances from the flood plain bylaws. These are all tools that local government will need if it is expected to take on these responsibilities.

The new system contemplated under the legislation will require local government’s have additional technical skills or the financial resources to employ experts to assess the engineering reports and other technical information it will be required to review to determine whether ‘dike standards’ and ‘flood plain guidelines’ are being complied with. In addition, it will need the technical expertise where changes are requested to determine whether or not they are feasible. In the past many local governments have relied on the technical advice from the ministry if it has had to address these types of issues.

In the case of the *Environmental Management Act* (Bill 57) a number of different things have occurred. The majority of the legislation is based primarily on the existing *Waste Management Act*, which currently sets ‘solid waste and liquid waste management standards’, details how the standards are to be achieved, and requires that local government comply with them. No major changes were made to these sections of the legislation. However, the technical resources in the ministry which local government has previously relied on to assist it in the development of these standards, for example, design of sewage treatment plants and landfill sites appears to be no longer available. This shift in ministry resources would suggest that local government will need additional financial and technical resources in the future if it is to meet the standards as directed by the province.

Amendments are proposed to the *Environmental Management Act* (Bill 57) concerning contaminated sites, that would appear to establish new ‘contaminated site standards’, which local government will be expected to use when making land use decisions related to these sites. The ministry has indicated that it will no longer be providing technical assistance to local government on contaminated sites and has suggested it rely on the reports of ‘qualified professionals’ employed by the land developer when making decisions on these sites. This poses a problem for local government as independent of the standards set by the province it has a ‘duty of care’ when exercising its decision

making authority and in the area of contaminated sites it has relied on the ministry for unbiased technical advice. The decision by the ministry that it will no longer provide technical assistance related to contaminated sites would indicate that local government may need additional 'financial and technical resources' to administer contaminated sites in the future.

The partnership approach suggested by the legislative changes in which the ministry sets the 'standards' and then through regulation/policy directs how local government is to implement the standards would appear to suggest a lack of respect for local government as an independent level of government and a failure to recognize its legal authority. A partnership approach would suggest that once standards are established, and it is clear that the other partner has the authority to implement them, how the objective is achieved would be left to the other partner to determine. There would appear to be a need to review the partnership model being suggested in these legislative changes to ensure that local government authority and independence is recognized.

The legislative changes proposed would appear to require local government to take on additional responsibilities in each of the environmental areas identified beyond what it has done in the past. Each these areas whether it is the management of pesticides, management of dikes and flood plains, or management of contaminated sites would appear to require greater financial and technical resources on the part of local government. There is a need to ensure that the financial and technical resources local government required to implement these changes are provided.

#### *Liability and Use of Qualified Professionals*

The policy shift on the part of the Ministry of Water, Land and Air Protection to authorize the greater use of 'qualified professionals' - to monitor pesticides; to manage flood plains; to determine contaminated sites and approve clean-up options; and to undertake riparian assessments and determine development options around streams - has the potential to expand local government liability as a result of the role it is expected to play in the delivery of provincial programs and/or standards.

Under the *Integrated Pest Management Act* (Bill 53) the ministry is proposing to limit its responsibility and accountability for pesticide use to only 'high risk' pesticides, shifting responsibility for the remaining use of pesticides on to the user. The legislation will require the sign off of integrated pest management plans by senior executives and require that local government be responsible for the use of all pesticides under the plan. In addition, the Act will require that local government employ 'monitors' or qualified professionals on a periodic basis to assess the actions taken under the plan, information that would subsequently be made available to the ministry. Both of these legislative changes would appear to broaden local government's general liability exposure and specifically increase its potential exposure to liability from the use of pesticides.

In the case of the *Flood Hazards Statutes Amendment Act* (Bill 58) the proposed elimination of ministerial approval under the *Land Title Act*, has shifted a greater portion of the liability for development in flood plains to local government. Historically the Minister's authority to designate flood plains and to require restrictive covenants have included a clause that limited the liability of the province from loss or damage caused by flood or erosion. The proposed legislation does not appear to provide local government with the specific ability to provide restrictive covenants and limit its liability in the same fashion that the provincial government did. The legislation may have increased local government's liability exposure in the way it has proposed to transfer the authority over flood plains to it, as suggested in the following legal opinion, if "*a municipality obtains a flood plain covenant which it does not have statutory authority to obtain or grants a variation which it did not have the statutory authority to grant, that covenant has no legal effect. The end result is that the municipality could be liable in both instances if innocent owners sustain loss or damage.*"

Amendments to the *Environmental Management Act* (Bill 57), to foster changes in the management of contaminated sites, illustrates a further shift in liability on to local government. Under the new process local government will be expected to make its decisions/grant approvals on the basis of reports provided by "qualified/approved professionals". The fact that local government has issued an approval based on this process has the potential of exposing it to a broader range of liability, particularly if problems should arise later, such as the discovery of off-site contamination on adjacent properties or by utilities using rights-of-way under local government roads. In both cases local government could potentially be held liable for the damage caused by the contamination and the subsequent clean up costs on the land affected.

The new process for managing contaminated sites, also has the potential for increasing local government's future liability, as it is proposed that the decision as to the extent of the clean-up required at a site could be based on the type of land use proposed. For example, if the contamination was not going to be disturbed by the development proposed at that time it might not have to be cleaned up or the clean up might be very limited in its scope. This process raises concerns about how these sites will be managed. For example, if the land use in the area shifts in the future from commercial to residential where the land use could disturb the contamination and higher clean-up standards are required, who will ultimately be responsible for tracking these sites and ensuring that they are cleaned up to the new land use requirements. In any event, the process increases the potential that mistakes may be made and exposes local government to broader liability if it subsequently approves a development without requiring that additional measures be taken to clean up the site.

The future administration of contaminated sites is also under going review. Currently local governments that require site profiles to be completed are provided with liability protection for managing this process. There is a suggestion that the use of site profiles may be eliminated from the process and the subsequent liability protection provided to local government be removed as

well. This would further increase local government's liability exposure related to contaminated sites.

The legislative and policy changes discussed above would appear to suggest a broadening of local government's liability exposure. The issues identified highlight the need for amendments to the legislation to provide local government with additional liability protection when making decisions in accordance with standards established by the province and using the reports of 'qualified professionals' as the basis for land use decisions in accordance with provincial direction.

## **6. SUMMARY: SHARED STEWARDSHIP, PARTNERSHIPS AND LOCAL GOVERNMENT**

Section 3 of this paper sets out the principles under which the new legislation should be evaluated.

The new *Community Charter* has highlighted a number of key factors that are needed when building a relationship between local government and provincial ministries. These factors include such items as "acknowledge and respect the jurisdiction of each", and "work towards harmonization of Provincial and municipal enactments, policies and programs". The new Charter highlights the need to ensure that resources are provided: "the Provincial government must not assign responsibilities to municipalities unless there is provision for resources required to fulfill the responsibilities".

The following sections of the Memorandum of Understanding should be used as the basis for ensuring the new legislation meets the intent of the protocol. Some of the key sections have been highlighted.

### **2. PARTNERSHIP**

*The parties recognize each others' strengths and capabilities. To maximize efficiency and effectiveness, the parties are committed to cooperate in the spirit of partnership, particularly in the harmonization of environmental legislation, regulations, policies, programs and projects.*

*The leadership roles of the Ministry of Water, Land and Air Protection and Ministry of Sustainable Resource Management are recognized with respect to ensuring a clear division of responsibilities which leaves the Province and local governments accountable for specific policies and gives them the authority and financial capacity to effectively perform their roles.*

### **3. FUNDING AND RESOURCES**

*Any party proposing a significant change in environmental legislation, standards, policies or programs that effects another party will ensure that a full evaluation is done of the costs and revenues associated with the proposed change.*

*New environmental responsibilities will not be assigned to another party until issues of funding and resources have been discussed among the parties.*

*With respect to environmental matters where local governments are responsible, they should have adequate authority and independence to fulfill their responsibilities.*

#### **4. LIABILITY PROTECTION**

*Any devolution of authority or responsibility should provide local government with protection from any liability arising from the delivery of Provincial programs or standards when acting in good faith and without negligence.*

On the basis of the analysis set out in section 5 and the principles referred to in section 3 UBCM has concerns that the legislation as proposed needs to conform more closely with the principles agreed to.

#### **7. RECOMMENDATIONS**

The UBCM believes that there is a need to apply some basic principles for the successful application of shared stewardship and partnerships of environmental programs with local government. The legislation and future regulations need to conform to the Memorandum of Understanding signed between local government and the Ministry of Water, Land and Air Protection.

In developing a 'shared stewardship' and 'partnership' process with local government it is important to ensure that there are:

- Clear roles and responsibilities;
- Clear legislative authority to take action;
- Respect for local government jurisdiction;
- Liability protection when implementing provincial standards;
- Recognition of local government authority and independence;
- Financial and technical resources to undertake new responsibilities.

#### **RECOMMENDATION #1**

**ANY SHARED STEWARDSHIP AND PARTNERSHIP RESPONSIBILITIES SHOULD:**

- 10. BE SUPPORTED BY THE APPROPRIATE LEGISLATIVE, REGULATORY AND POLICY AUTHORITIES THAT CLEARLY DEFINES LOCAL GOVERNMENT ROLES AND RESPONSIBILITIES;**
- 11. PROVIDE LOCAL GOVERNMENT WITH PROTECTION FROM LIABILITY ARISING FROM THE DELIVERY OF PROVINCIAL STANDARDS/GUIDELINES;**

12. *RESPECT LOCAL GOVERNMENT JURISDICTION AND RECOGNIZE ITS AUTHORITY;*
13. *BE ACCOMPANIED BY THE APPROPRIATE FUNDING AND TECHNICAL RESOURCES.*

**RECOMMENDATION #2**

*THE DISCUSSION PAPER ON “NEW ENVIRONMENTAL LEGISLATION: Impacts and Implications for Local Government” BE REFERRED TO THE ENVIRONMENT PROTOCOL COMMITTEE FOR GOVERNMENT-TO-GOVERNMENT CONSULTATIONS.*



## APPENDIX A

# CONTEXT OF LOCAL GOVERNMENT AND PROVINCIAL RELATIONS

## MEMORANDUM OF UNDERSTANDING

The UBCM and the provincial government renewed the “Protocol on Sharing Environmental Responsibilities” in September 2001.

Outlined below are some key excerpts from the agreement:

### **2. PARTNERSHIP**

*The parties recognize each others' strengths and capabilities. To maximize efficiency and effectiveness, the parties are committed to cooperate in the spirit of partnership, particularly in the harmonization of environmental legislation, regulations, policies, programs and projects.*

*The leadership roles of the Ministry of Water, Land and Air Protection and Ministry of Sustainable Resource Management are recognized with respect to ensuring a clear division of responsibilities which leaves the Province and local governments accountable for specific policies and gives them the authority and financial capacity to effectively perform their roles.*

### **3. FUNDING AND RESOURCES**

*Any party proposing a significant change in environmental legislation, standards, policies or programs that effects another party will ensure that a full evaluation is done of the costs and revenues associated with the proposed change.*

*New environmental responsibilities will not be assigned to another party until issues of funding and resources have been discussed among the parties.*

*With respect to environmental matters where local governments are responsible, they should have adequate authority and independence to fulfill their responsibilities.*

### **4. LIABILITY PROTECTION**

*Any devolution of authority or responsibility should provide local government with protection from any liability arising from the delivery of Provincial programs or standards when acting in good faith and without negligence.*

### **6. NOTIFICATION AND CONSULTATION**

*In the spirit of fairness, openness and equality, any proposed significant change in environmental legislation, regulations, standards, policies or programs will be preceded*

*by appropriate consultation among the affected parties, including timely notification of the proposed change.*

*Parties agree to use their best efforts to agree on a timetable for review and evaluation of the proposed change(s).*

## **BILL 14 – COMMUNITY CHARTER**

Outlined below is the key section on local government and provincial relations:

### **PART 1 – PRINCIPLES, PURPOSES AND INTERPRETATION**

#### **Principles of municipal-provincial relations**

##### **Section 2:**

- (1) The citizens of British Columbia are best served when, in their relationship, municipalities and the Provincial government*
  - (a) acknowledge and respect the jurisdiction of each,*
  - (b) work towards harmonization of Provincial and municipal enactments, policies and programs, and*
  - (c) foster cooperative approaches to matters of mutual interest.*
  
- (2) The relationship between municipalities and the Provincial government is based on the following principles:*
  - (a) the Provincial government respects municipal authority and municipalities respect Provincial authority;*
  - (b) the Provincial government must not assign responsibilities to municipalities unless there is provision for resources required to fulfill the responsibilities;*
  - (c) consultation is needed on matters of mutual interest, including consultation by the Provincial government on*
    - (i) proposed changes to local government legislation,*
    - (ii) proposed changes to revenue transfers to municipalities, and*
    - (iii) proposed changes to Provincial programs that will have a significant impact in relation to matters that are within municipal authority;*
  - (d) the Provincial government respects the varying needs and conditions of different municipalities in different areas of British Columbia;*
  - (e) consideration of municipal interests is needed when the Provincial government participates in interprovincial, national or international discussions on matters that affect municipalities;*
  - (f) the authority of municipalities is balanced by the responsibility of the Provincial government to consider the interests of the citizens of British Columbia generally;*
  - (g) the Provincial government and municipalities should attempt to resolve conflicts between them by consultation, negotiation, facilitation and other forms of dispute resolution.*