RURAL LAND USE CONTROL:
AN ALTERNATIVE TO THE
STANDARD ZONING BY-LAW

By

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ABSTRACT

This analysis is based on a situation which has evolved in Electoral Area "G" within the Regional District of Okanagan-Similkameen located in the south central sector of the Province of British Columbia. The spread of urbanization into this unzoned rural area in the form of a large block subdivision created a land use conflict with existing agricultural uses. The Regional District responded by proposing to zone the entire electoral area with a standard zoning by-law. Rural residents reacted to oppose this idea saying the standard zoning by-law is too stringent. The Regional District eventually spot zoned the property in question which limited the development to that which was initially proposed. While this measure solved the immediate problem, it did little to prevent future land use conflicts.

The situation just described highlights the two issues which form the purpose of this study. First, that some form of land use control is necessary in rural areas because existing residents and land users should be protected from possible conflicting or undesirable land uses; and second, an alternative land use control should be developed to replace the standard zoning by-law which residents are so strongly opposed to.

To obtain more information on what the main participants in rural land use planning think about the standard zoning by-law; Regional Planners were asked why they felt the implementation of the standard zoning by-law was important; and residents were asked why it should not be implemented? The statements by both groups were analyzed for their validity. Research showed that most of the planners statements were true but that existing provincial land use controls have more of an effect on development than is realized. Analysis of residents statements showed that some are based on rumours and emotions rather than fact. However, regardless of fact the way in which the public perceive a situation is important and must be considered.

An investigation of the Development Permit, Flood Plain Zones, Spot Zones, Contract Zones and Conditional Zones as alternatives to the standard

zoning by-law revealed their positive and negative aspects along with their suitability for implementation in Electoral Area "G".

Incorporating what had been learned in previous chapters, a Rural Maintenance By-law proposes two important differences. First, is a list of prohibited uses rather than the usual permitted uses. A list of prohibited uses is felt to better suit the two zoning district concept being proposed. It also presents a more positive image of a land use regulation to the public. Second, flexibility is built into the concept by way of a conditional zoning technique. In this way, developments will not be restricted by the stringent regulations found in a standard zoning by-law. It will also encourage resident participation in the development process of their area. And finally, it will require the planner to work at the grass roots level with developers and residents to negotiate the best possible development for future generations.

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1.0 INTRODUCTION

1.1 PROBLEM STATEMENT

The purpose of this thesis is to identify a land use control technique which will provide rural residents with a suitable method of controlling undesirable land uses resulting from the spread of urbanization. At the same time, this land use control technique will be designed to respect the characteristics of an environment which is essentially rural.

1.2 BACKGROUND

This study will concentrate on a situation which has arisen as a result of the spread of urbanization into a rural area which is not zoned. An example of such a situation is when a small lot residential subdivision is developed adjacent to an agricultural operation. As the residential lots are built upon, the adjacent farmer may receive complaints about his normal agricultural practices such as his use of chemical sprays, early morning plowing and the like.

This study will focus on a situation which has arisen in the south central portion of British Columbia. commonly described as the Regional District of Okanagan-Similkameen. More specifically, the study will concentrate on the south central sector of the Regional District legally described as the Electoral Area 'G'. This Electoral Area surrounds the Village of Keremeos and encompasses the unincorporated areas of Hedley and Olalla. (See Figure 1)

Electoral Area 'G' is composed of a variety of land uses. Agricultural lands follow the valley bottoms of the Similkameen River and Keremeos Creek. Pockets of residential, commercial and light industrial land lie within the unincorporated areas of Hedley and Olalla. The majority of land consists of hillside grazing and mountain ranges.

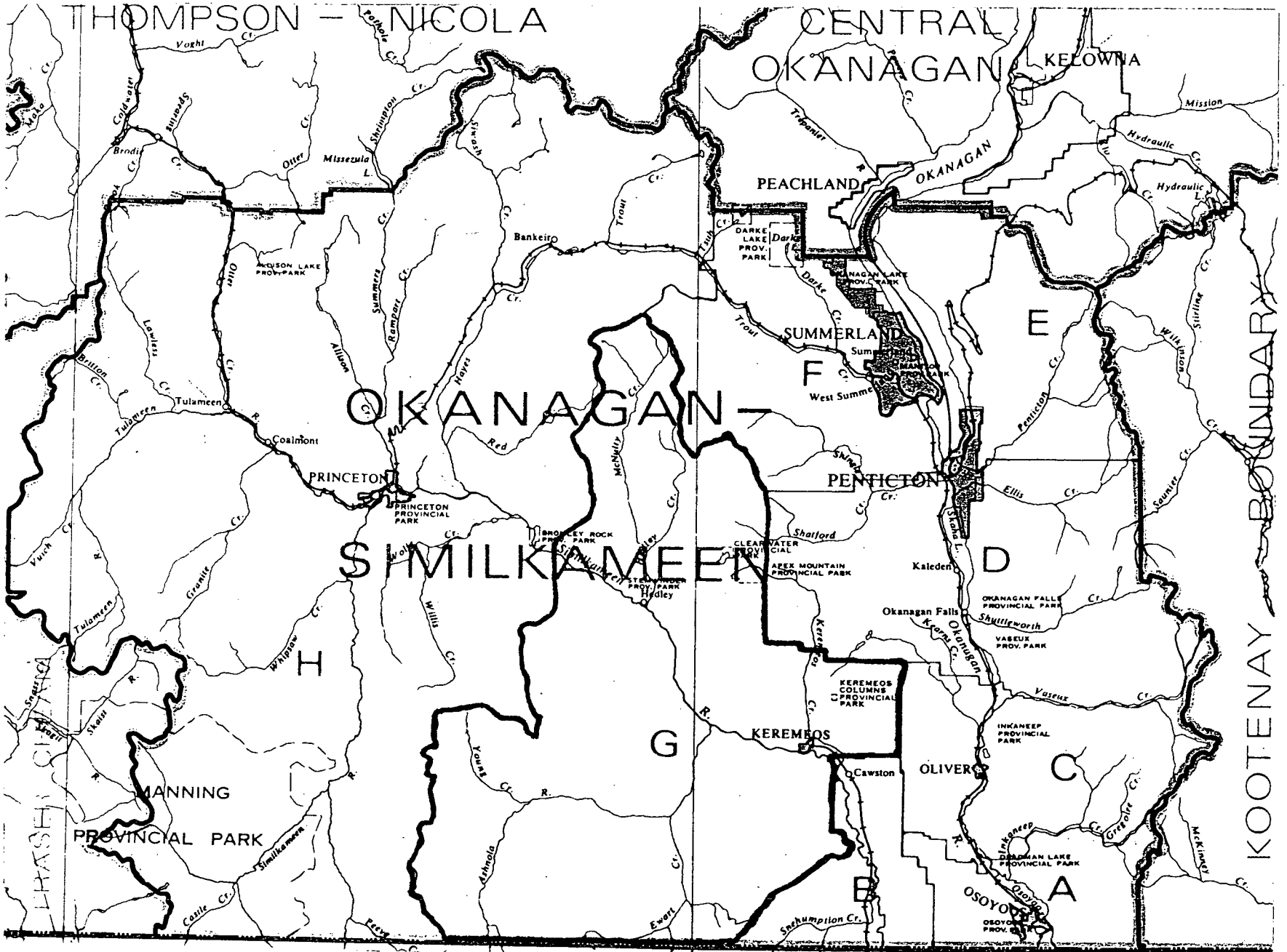

THOMPSON – NICOLA
CENTRAL OKANAGAN
KELOWNA
PEACHLAND
SUMMERLAND
West Summerland
PENTICTON
Kaleden
Okanagan Falls
OLIVER
Cawston
KEREMEROS
Hedley
PRINCETON
Coalmont
Tulameen
Bankeir
Missezula L.
Hydraulic L.
Mission
Hydraulic
Trepanier
OKANAGAN
Darke
Trout
Tulameen
Otter
Shrimpton
Sawtooth
Summers
Ramparts
Allison
Hayes
Red
McNulty
Shinnah
Shatford
Ellis
Skaha L.
Penticton
Stirling
Wilkinson
Saunier
Okanagan
Shuttleworth
Kromis Cr.
Vaseux
Inkaneep
Gregoire
McKinney
Kennedy
Similkameen
Willis
Whipsaw
Granite
Vuich
Lawless
Britton
Brodie
Coldwater
Spanish
Voght
Maka
Pathole
Ashnola
Young
Ewart
Snehumption Cr.
Castle
Peach
Skaist
Sowaqua
Shakwaqua
Similkameen
OKANAGAN – SIMILKAMEEN
MANNING PROVINCIAL PARK
THOMPSON
KOOTENAY
BOUNDARY
A
B
C
D
E
F
G
H
PRINCETON PROVINCIAL PARK
BROOKLEY ROCK PARK
STEMWINDER PROV. PARK
CLEARWATER PROV. PARK
APEX MOUNTAIN PROVINCIAL PARK
DARKE LAKE PROV. PARK
OKANAGAN LAKE PROV. PARK
OKANAGAN FALLS PROVINCIAL PARK
VASEUX PROV. PARK
KEREMEOS COLUMBIA PROVINCIAL PARK
INKANEEP PROVINCIAL PARK
OSOYOOS LAKE PROVINCIAL PARK
OSOYOOS PROV. PARK
ALLISON LAKE PROV. PARK

FIGURE 1

Over the past several years Electoral Area 'G', which is not zoned, has experienced conflicts resulting from the spread of urbanization. One of the most notable occurred in 1980 when a developer proposed to subdivide a 360 acre parcel into 10 acre holdings. This land which is located just north of the Village of Keremeos, is adjacent to a number of ranching operations. The ranchers became concerned when they realized that without zoning regulations, these 10 acre lots could be further subdivided into parcels as small as the Provincial Local Services Act would allow. The minimum parcel size allowable under these regulations is 7,500 square feet if connected to a community water system, which was the case for this subdivision. As a result, the ranchers demanded that the Board of the Regional District impose some form of land use control to protect their interests.

The Regional Board had, on previous occasions, put forward proposals to residents to zone the Electoral Area using a Standard Zoning Bylaw. On each occasion residents responded expressing the view that they did not want to be restricted by such a stringent form of land use regulation.

Undaunted by the meetings of the past, the Regional Board responded to the ranchers request for protection by once again proposing that the entire Electoral Area be zoned. A public meeting was held with the Regional District citing the plight of the ranchers as the reason for wanting a set of comprehensive regulations such as are found in the Standard Zoning Bylaw being proposed.

Unmoved by the situation of a few, the majority of those in attendance at the meeting remained vehemently opposed to the imposition of these stringent regulations over the entire Electoral area.

The result was that the Regional Board adopted a zoning bylaw limiting the parcel sizes in the 360 acre block to 10 acres.

While the situation which as been described, ended to the relative satisfaction of the ranchers, the fact remains that such spot zoning is not a solution for preventing future land use conflicts which may arise. While a more indepth analysis of spot zoning as a land use control technique will be undertaken in a later chapter, it should be said that spot zoning is normally initiated after a subdivision has be proposed. Because of this, it can only limit the developer to the parcel size already proposed. This, along with the fact that spot zoning can be interpreted by the courts as being discriminatory against the developer, limits the applicability of this technique in unzoned areas.

The situation within Electoral Area 'G' of the Regional District of Okanagan-Similkameen highlights the two issues which form the purpose of this thesis; Firstly, that some form of land use control is necessary in rural areas because existing residents and land users should be protected from possible conflicting or undesirable land uses; Secondly, an alternative land use control should be developed to replace the Standard Zoning Bylaw which residents are so strongly opposed to.

1.3 DESCRIPTION OF THE STUDY

Chapter two is designed to obtain more information on what the main participants in rural land use zoning think about the Standard Zoning Bylaw. To this end, statements by Regional Planners on why they felt the implementation of a Standard Zoning Bylaw was important in Electoral Area 'G', and statements made by residents on why the Standard Zoning Bylaw should not be implemented, will be analyzed for their validity. In other words, when a planner gives a reason for the implementation of a Standard Zoning Bylaw, are these simply stock replies or do they actually apply in Electoral Area 'G'? Or, on the other hand, when residents make statements against the implementation of the Standard Zoning Bylaw, are their

reactions based on rumours and emotions or on ascertainable facts.

The research required in the analysis of these statements will involve defining what provincial and or local land use regulations now exist in all unzoned areas and assessing their efficiency and effectiveness.

Chapter three will investigate a number of alternatives to the Standard Zoning Bylaw. A review of the literature on the Development Permit, Floodplain Zone, Spot Zone, Contract Zone and Conditional Zone will provide insights into the various definitions of each along with their positive and negative aspects. The chapter will conclude with a discussion on the suitability of implementing these alternatives as a land use control technique in Electoral Area 'G'.

Incorporating what has been learned in the previous chapters, Chapter four will propose the "Rural Maintenance Bylaw", as an alternative to the Standard Zoning Bylaw. It will be designed to be applicable to other rural areas of the province besides Electoral Area 'G'. The factors affecting the design of this alternative and procedures for its amendment will be presented.

The final chapter is a critical review of this study and of the alternative it proposes. A discussion of the validity of the alternative and how it would be considered concludes the thesis.

2.0 ANALYSIS OF STATEMENTS ON STANDARD ZONING

This chapter will analyze and validate statements made about the standard zoning bylaw by Regional Planners and Electoral Area 'G' residents. Regional planners for the Reg. Dist. of Ok.-Similkameen were asked to list their reasons for the implementation of a standard zoning bylaw in Electoral Area 'G'. Similarly, residents who had strongly opposed the imposition of zoning at the public meeting, were interviewed and asked to list their reasons on why the standard zoning bylaw should not be implemented. After interviewing the regional planners and residents of

Electoral Area 'G', the following statements emerged.

Regional Planners Statements

1) Without zoning, the character of the neighbourhood can not be preserved.
2) Without zoning, official settlement plans can not be implemented.
3) It is more expensive to service sprawl development than clustered development.
4) Without zoning, development can take place on hazard lands.
5) Without zoning, residents health and safety can not be protected.
6) Unzoned areas become melting pots for undesirable land uses.

Residents Statements

1) Increased governmental regulation will result in loss of the rural lifestyle.
2) Increased bureaucracy means increased taxes.
3) Zoning regulations are designed for urban areas and do not consider rural values.

Analyzing these statements will, on the one hand, show whether the standard zoning bylaw really accomplishes what the regional planners say it will, and on the other hand, it will verify whether rural residents perceptions of a standard zoning bylaw are valid. This research will also cover two further subjects. First, the existing land use regulations governing Electoral Area 'G' are described, and second, the rationale if any, for rural land use regulations beyond what currently exists.

Examination of each of the statements has the potential for a major research project. The scope of the analysis here is limited to verifying whether readily ascertainable evidence is available to support or disprove their validity.

2.1 REGIONAL PLANNERS STATEMENTS

2.1.1 Without zoning, the character of the neighborhood can not be preserved.

Prior to examining this statement, it is essential to recognize who has the control over land use in B.C. The British North America Act of 1867 assigned powers to the federal government under Section 91 and to the provincial government under Section 92. With respect of land,

Section 92 (13) assigns the authority over land to the provinces. In turn, the provinces can delegate specific authority to subordinate government bodies or government departments. As will be seen throughout this section, the delegation of specific authority over land through provincial statutes has been common.

The Ministry of Lands, Parks and Housing, "Land Allocation Terminology" bulletin, provides a compilation of all provincial and Federal Acts presently in force in the province. By noting a number of these Acts and the powers contained in them to effect land use, it will be seen that zoning regulations are not the only ones controlling land use.

A) Electrical Safety Act

-establishes the standards for electrical safety within the the province. Section 5.2 states that no electrical equipment shall be used unless it has been inspected by a provincial electrical inspector.

B) Environment and Land Use Act

-gives the Provincial Cabinet powers to make orders and regulations to deal with any matter involving land use, as long as it acts within the constitutional jursidiction of the province.

C) Fire Services Act

-authorizes the Lieutenant Governor in Council to make regulations pertaining to fire safety within the province. With respect to Electoral Area 'G', the administration becomes somewhat tenuous. Problems arise concerning the Chimney, Fireplace, Smokepipe and Furnace Regulation (B.C. Reg. 492/59). Section 3 of the regulation, requires that persons obtain a permit prior to the construction of such structures. Section 59 (2)(h)(i)(i) of the Fire Service Act states that one or more persons in an area can be designated as

responsible for enforcing these regulations.

While in most parts of the province, the area building inspector is responsible for enforcing the Act, Electoral Area 'G' has no building inspector because it is not governed by a building bylaw. Therefore, lands and structures within the Keremeos Fire Protection District are administered by the local fire chief. Problems arise over the administration of lands outside the fire protection area. In discussion with British Columbia Fire Commission staff, it was learned that the local detachment of the Royal Canadian Mounted Police are left with enforcing this regulation. Fire Commission staff concede that the police are too busy to enforce their regulations and that usually no one enforces them in situations such as this.

D) Forest Act

-gives the Provincial Cabinet powers to modify existing and future forest tenure agreements to obtain more effective forest management.

E) Greenbelt Act

-governs the provincial government acquisition of private lands and reservation of provincial crown lands which are suitable for preservation as greenbelts.

F) Heritage Conservation Act

-gives the Minister or a designated person or body (municipal council) the right to designate, protect and conserve heritage properties.

G) Highway Act

-section 401 of B.C. Regulation 822/74 amended by B.C. Regulation 15/78 of the Highways Act, requires that all structures be set back from the road right-of-way by 15 feet. Unless an area is governed by a zoning bylaw, which takes precedence over this provincial

regulation, the setback is enforced by the Department of Highways.

H) Land Act

-regulates the disposition of provincial crown land and establishes procedures by which private individuals can acquire and use public lands.

I) National Parks Act

-gives powers to the Federal Cabinet to regulate all activities within an area designated as a national park.

J) Park Act

-gives powers to the Provincial Cabinet to control the occupancy, use, development, exploration, or extraction of a natural resource on or in a park.

K) Range Act

-gives the Provincial Cabinet power to regulate the grazing of animals or cutting of hay on provincial crown lands.

L) Regional Parks Act

-gives a regional district power to acquire, develop and administer regional parks and trails.

M) Water Act

-abolishes the principle of riparian rights held under common law and has vested the property in and the right to use all water in any "stream" in the province; except where private rights have been established under licences issued or approvals given under this or some former Act.

While the preceding Acts do control land use, their application is primarily limited to provincial crown lands or particular properties. The following legislation pertains to the control of privately owned land and thus affects a greater number of people.

For this reason, a more indepth analysis will be presented.

N) Municipal Act

-the Municipal Act delegates extensive legislative and administrative powers to the municipalities and regional districts. This includes the power to control zoning, subdivision, and building.

i) Zoning

Division (3), Section 716 (1) of the Act states that Council may by a zoning bylaw:

> (a) divide all or part of the area of the municipality into zones and define each zone either by map, plan or description, or any combination of them;
>
> (b) regulate the use of land, buildings and structures, including the surface of water, within the zones, and the regulations may be different for different zones and for different uses within a zone, and for the purposes of this paragraph the power to regulate includes the power to prohibit particular uses in specified zones.
>
> (c) regulate the size, shape and siting of buildings and structures within the zones, and the regulations may be different for different zones and with respect to different uses within a zone;
>
> (d) without limiting the generality of paragraph (b), require the owners or occupiers of any building in a zone to provide off street parking and loading space for the building, and may classify buildings and differentiate and discriminate between classes with respect to the amount of space to be provided, and may exempt any class of building or any building existing at the time of adoption of the bylaw from any requirement of this paragraph.

It can be seen that the power of a zoning bylaw can be quite extensive. However, the Regional District of Okanagan-Similkameen has, to this time, not opted to use this in Electoral Area 'G;

(ii) Subdivision

Division (4) of the Act states that Council may by bylaw regulate the subdivision of land. Section 729 (1) to (14) perscribe how the lands to be subdivided can be regulated. The Regional

District of Okanagan-Similkameen Subdivision Bylaw No. 300 regulates subdivisions within the entire regional district including Electoral Area 'G'. The powers vested in this bylaw are limited. Section 4 (1) of the bylaw states that "where a parcel is served by a community water system but not a community sewer system, that parcel shall not be smaller than 9,000 square feet".

Section 4 (2) requires that every proposed subdivision which is not within the boundaries of an irrigation district or an improvement district shall establish that each parcel has a proven source of potable water, of which the source must be capable of providing 500 imperial gallons of water per parcel per day.

Section 4 (3) requires that any new subdivision which creates more than two additional parcels and which is within a fire protection district, shall provide fire hydrants which are no more than 500 feet from the proposed parcels. Finally, Section 4 (4) states that every proposed parcel in a subdivision which is within a specified sewer area shall be connected to the sanitary sewerage system in that area.

Section 729 (1) to (14) of the Municipal Act, details the authority which councils may legislate in a subdivision bylaw. The powers legislated in the bylaw described above are limited. This is not to say that subdivisions are totally unregulated because what is not covered under the subdivision bylaw is regulated under the provincial Local Services Act. The Local Services Act, which will be described later, is the basic subdivision regulatory legislation in the province. A local government subdivision bylaw simply provides more specific regulation to adapt a subdivision to an areas particular needs and concerns.

iii) Building Regulations

Division (5) of the Municipal Act states that council may, for the health, safety and protection of persons and property, adopt building regulations in the form of a building bylaw. Section 734 (a) to (k) legislate what regulations may be adopted. Section 739 specifically empowers the council to adopt regulations consistent with supplementary regulations made under this division. For example, regulations found in the Electrical Safety Act, Gas Act or Fire Services Act can be adopted.

Here again, the Regional District of Okanagan-Similkameen has chosen not to adopt a building bylaw for Electoral Area 'G'.

(O) Agricultural Land Commission Act

The Revised Statutes, Chapter 9, 1979, more commonly referred to as the Agricultural Land Commission Act, serves as a method of preserving farmland and potential agricultural lands from the encroachment of non-agricultural development. The use of the land within the Agricultural Land Reserve (ALR) is limited to agricultural and other uses that do not diminish the capability of the land to produce crops.

Generally, lands with a soil capability rating of 1 to 4 inclusively on the 7 class Canada Land Inventory (CLI) agricultural capability maps are included in the Agricultural Land Reserve. Nonetheless, lands suitable for grazing, such as found with soil rated as classes 5 and 6, have also been included in certain areas. It should be noted that the CLI soil classification system is only used as a general guide in deciding which land should be in the land reserve. Varying agricultural practices and climate characteristics make it impossible to say exactly what soil classes are included and which are not.

The Agricultural Land Reserve for Electoral Area 'G' and the Regional District of Okanagan-Similkameen, was designated on February 13, 1974. The total area of land now within the Agricultural Land Reserve for Electoral Area 'G' has not been measured. However, when the land reserves were first established, over 213,600 acres or 7.8 percent of the entire area of the Regional District was in the land reserve.

All lands designated as agricultural on the constitutent maps are subject to regulations contained in the Agricultural Land Commission Act. Section 15 (2) of the Act states;

> (2) no person shall use agricultural land for any purpose other than farm use, except as permitted by this Act, the regulations or an order of the Commission, on terms the Commission may impose.

Thus, any landowner wanting to use the land for a use other than agricultural must apply to the Land Commission for approval. An applicant may apply under Section 20 (1) for permission to change the use of the land while still remaining in the land reserve or under Section 12 (1) to exclude the land from the reserve.

Lands excepted from these regulations are lands which meet the requirements of Section 19 of the Land Commission Act, which states;

> 19. (1) Restrictions on the use of agricultural land do not apply to land that, on December 21, 1972, was, by separate certificate of title issued under the Land Registry Act, less than 2 acres in area.
>
> (2) The restrictions on the use of agricultural land do not apply to land lawfully used for other than a farm use, established and carried on continuously for at least 6 months immediately prior to December 21, 1972 unless and until
>
> (a) the use is changed, other than to farm use, without permission of the commission:
>
> (b) an enactment made after December 21, 1972, prohibits the use; or
>
> (c) permission for the use granted under an enactment is withdrawn or expires.

Lands within Electoral Area 'G' that fall within Section 19 of the Act and are excepted from the Land Commission Act as well as lands which are not suitable for agriculture and are not within the Land Reserve, are not subject to any land use regulation contained within the Agricultural Land Commission Act.

Policing of lands within the agricultural land reserve in B.C. has always been a problem. Land Commission staff confess that they have never had the number of staff needed to do their own policing. As a result, they rely heavily on Regional Districts for information on infractions. In particular, regional district building inspectors are noted as the most consistent source, because they travel to all parts of the district looking for building infractions on a weekly basis.

According to the Land Commission staff, there is no written agreement between Regional Districts and the Land Commission on policing the A.L.R. Nor is there any fee paid to the Districts for this service. There is, however, an arrangement whereby Regional Districts retain the entire application fee required for an application to the Land Commission as remuneration for the part they play in the process.

In areas, such as Electoral Area 'G', policing poses an even greater problem, because this Electoral Area is not covered by a building bylaw, thus there are no building inspectors available to spot infractions. As a result, the Land Commission must rely on other sources for information on infractions to the Act. At best, sources such as field inspectors from other government agencies and the general public, supply intermittant information. The reason government inspectors do not like to report infractions is twofold. The first is that it is not their job. Secondly, it may jeopardize

their relationship with the person committing the infraction. The public is an inconsistent source of information for two reasons as well. Firstly, many people will only report neighbors they do not like. Secondly, entire areas may be so adamently against government regulation that no one will report any infractions for fear of government imposing more regulations on them.

The enforcement powers of the Land Commission are found under Section 34 of the Act which states that "where the Commission believes present or future activity or use of land in the land reserve may contravene this Act, the Commission

> (a) may order the owner or occupant to refrain from the activity or use for a period not exceeding 60 days, and to make written or oral submissions to the commission as it requires to determine any likely impairment of the agricultural capability of the land;
>
> (b) may apply to the Supreme Court for an order restraining the owner or occupant from commencing or continuing the activity or use of land in contravention of this Act, the regulations or an order of the commission."

Section 35 of the Act establishes the extent and the powers of the Land Commission to impose a penalty upon landowners where it has been determined that an activity, or use of land would likely impair agricultural capability, or where no submission is made, the commission may, by order

> (a) impose on the owner or occupant the terms for activity or use of the land it considers advisable; or
>
> (b) require that the land be restored to its former condition as agricultural land, to the satisfaction of the commission; or
>
> (c) require a bond to ensure compliance.
>
> In the case of default under paragraph (b), the commission may perform the work, and the cost is a debt due to the commission by the owner or occupant in default.

In discussions with Land Commission staff it was learned that they only seek to have the land returned to its original state at the minimum expense to the land owner and the Commission.

A particular case is found in Electoral Area 'G' where in December of 1981 the Regional District informed the Land Commission that a landowner was storing wrecked cars on agricultural land in contrevention of Section 15 (2) of the Act. The landowner was informed of this by the Land Commission and he in turn applied under Section 20 (1) for permission to continue to use the property for the storage of these cars. The Land Commission denied this application stating that the land had high capability for agriculture and that the cars should be removed. In January of 1983, the Land Commission requested Regional District staff to view the property to see whether the landowner had complied with their decision. The landowner had not complied, so, in February, 1983, the Land Commission sent a letter to the landowner giving him 2 months to restore the property to its original condition failing which court action would be taken. The landowner finally cleared his property within the specified time and no further action was required.

(P) Land Title Act

The Revised Statutes, Chapter 219, 1979 commonly referred to as the Land Title Act, provides the core legislation governing the subdivision of land in British Columbia (Ince, 1977, 48). The Act specifically legislates aspects concerning the procedure which must be adhered to by an approving officer.

Section 77 (2) (a) of the Land Title Act states;

(2) The approving officer shall be, in the case of lands situated in

(a) a rural area;

(i) the Deputy Minister of Transportation and Highways; or

(ii) a person appointed by the Lieutenant Governor in Council in respect of all or part of the land situated in a rural area;

For most parts of rural British Columbia, the Deputy Minister of Transportation and Highways has delegated the subdivision approving authority to a regional approving officer. For Electoral Area 'G' the approving officer is located with the Ministry of Transportation and Highways regional office in Kamloops.

With regard to maintaining the character of an area, the approving officer, is empowered to refuse to approve a plan of subdivision for a number of reasons. Under Section 85 (3) he has the authority to refuse to approve a subdivision if he feels the plan is "against the public interest." According to regional approving office staff, this reason is very rarely used because its generality makes it very difficult to defend in court.

Section 86 (1) (c) lists seven more specific reasons for refusing to approve a subdivision on lands outside municipalities.

(i) the anticipated developement of the subdivision would injuriously affect the established amenities of adjoining or reasonably adjacent properties;

(ii) the plan does not comply with the provisions of this Act relating to access and the sufficiency of highway allowances shown in the plan, and with all regulations of the Lieutenant Governor in Council relating to subdivision plans;

(iii) the highways shown in the plan are not cleared, drained, constructed and surfaced to his satisfaction, or unless, in circumstances he considers proper, security in an amount and in a form acceptable to him is provided;

(iv) the land has inadequate drainage installations;

(v) the land is subject, or could reasonably be expected to be subject, to flooding, erosion, land slip or avalanche;

(vi) after due consideration of all available environmental impact and planning studies, the anticipated development of the subdivision would adversely affect the natural environment to an unacceptable level; or

(vii) the cost to the Province of providing public utilities or other works or services would be excessive.

The reasons for refusing to approve a subdivision lean heavily toward solving problems associated with the engineering aspects of

subdivision. A resident concerned about the effect a proposed subdivision will have on the character of an area, has only one article on which to base a complaint. Subsection (i) states that if the proposed subdivision would injuriously affect the established amenities or adjacent properties the subdivision could be refused.

In a discussion with regional approving office personnel in Kamloops, the impression was given that to prove injurious affection, adjacent property owners would have to provide detailed information outlining the physical damage which their property would suffer. For example, if residents felt that the subdivision would undermine the lateral support of their property, they would have to support this allegation with a geotechnical study which would be both difficult and costly to obtain.

The subdivision application referral process employed by the approving officer offers little hope for residents wanting to maintain the character of their area. Within Electoral Area 'G', subdivision applications are referred to; the Ministry of Health, Regional District, Keremeos Irrigation District, Ministry of Environment, Ministry of Forests and Ministry of Lands, Parks and Housing.

Each agency reviews the proposed subdivision with respect to their own legislation. Their recommendations are then forwarded to the approving officer. He must then review the recommendations and make a decision based upon the statutory requirements by which he is bound. For example, if the Ministry of Environment indicates that a proposed subdivision is subject to flooding, Section 86 (1) (v) of the Land Title Act states that the subdivision may be refused. If, however, the Regional District recommends that the subdivision be refused for the reason that it does not comply with

a proposed settlement plan, the approving officer will not refuse the subdivision. The reason being that the settlement plan must be "official" before it can be used as a reason for refusing a subdivision. Therefore, only legislated regulations can be employed to refuse a subdivision. As a result, most recommendations are technically oriented because they can be up held in court.

If an approving officer approves a subdivision, the decision can be appealed to the Supreme Court under Section 89 of the Land Titles Act. However, past legal decisions indicate that as long as the approving officer has acted in good faith and has not used discrimination in his decision, the court will uphold his decision (Gray vs. City of Vancouver, 1977).

Q) Local Services Act

The Revised Statutes, Chapter 247, 1979, more commonly known as the Local Services Act, regulates the subdivision of all land except lands within municipalities, those regulated by a Regional District subdivision bylaw, and those controlled under Planning Area Number 24 (The Gulf Islands).

As already noted in the section under the "Municipal Act," a Regional District subdivision bylaw takes precedence over the regulations found in the Local Services Act. Thus, the regulations found in this Act only apply where Regional District regulations do not.

The Local Services Act three headings; General, Highway and Parcels. These provide the basic criteria for subdivision approval.

Under the "General" heading, section 4.04 legislates that a subdivision may be refused if it is subject to erosion, landslides, flooding or has inadequate drainage. However, Section 4.05 allows

a developer to circumvent the above regulations if he agrees to register a restrictive covenant in favour of the crown limiting the use of the subject property.

In Sections 5.01 to 5.11 under the heading of "Highways", proposed subdivisions are regulated with respect to highway widths (s. 5.02), lanes (s. 5.07), intersecting highways (s. 5.05), turnarounds (s. 5.07) and intersections (s. 5.08 to 5.10).

Sections 6.01 to 6.11 fall under the heading of "Parcels" which provides for specific regulations concerning the minimum parcel sizes allowable in an unorganized area. There are numerous variables which affect the allowable lot size. Section 6.01 states that where water and sewer serve a parcel and where both building and zoning regulations are in force the minimum lot shall be 5,000 square feet in areas where there are no zoning or building regulations, the minimum shall be 6,000 square feet. This section is not applicable to Electoral Area 'G' because there are no parcels connected to a sewer system.

Section 6.02 regulates proposed subdivisions which are served by a community water system. Regional District of Okanagan-Similkameen subdivision bylaw No. 300 takes precedence over this section and requires a 9,000 square foot lot size.

The section of the Local Services Act most applicable to Electoral Area 'G', is Section 6.03 which requires an 18,000 square foot minimum lot size for parcels not serviced by a community water or sewer system. The majority of lands within this area are governed by this regulation.

Sections 6.04 and 6.05 regulate the disposing of waste on parcels which are less than 5 acres and are not served by a community sewer system. Appendix B of the Act establishes a

procedure for conducting a percolation test for a disposal field. Longer rates of percolation and varying degrees of slope of the land could require that the size of the parcel be increased to ensure adequate drainage for the effluent. If test results do not meet the required standard, Section 6.06 of the Act provides the Medical Health Officer with the authority to deny subdivision approval.

In conclusion, the Regional District planners statement that the character of the area can not be preserved without zoning, is substantially true. However, this analysis of existing land use and subdivision legislation shows that despite the lack of zoning, there are many controls resulting from legislation imposed by the Federal and Provincial governments.

The legislation having the most effect over land use is the Agricultural Land Commission Act. This Act requires that landowners within the A.L.R not hinder the agricultural capability of their property. While it can be argued that the land reserve only covers a small portion of the total land within the province, it must also be remembered that these are the lands experiencing the greatest development pressure. Therefore, the Land Commission Act must be considered as a major control of land use in the province.

The subdivision of land within Electoral Area 'G' is governed by three instruments. The Land Title Act establishes the process of subdivision control within

the province. The Local Services Act and the Regional District of Okanagan-Similkameen subdivision bylaw establish the criteria for the approval of a subdivision.

2.1.2 Without zoning, official settlement plans can not be implemented.

Before analyzing this statement, some insight into what a settlement plan is and the legislative powers it has, should be discussed.

A settlement plan is defined in the 1979, Ministry of Municipal Affairs and Housing, "Technical Guide For The Preparation Of Official Settlement Plans" as;

> " a document embodying a statement of the intended future development of a particular area. It should be a flexible tool, responsive to change, which will serve as a guide to day-to-day decision making on the part of Regional Boards, private citizens and public agencies such as School Boards." (p.9)

The provincial governments desire to maintain the settlement plan as a guide is legislated in Section 810 (1) of the Municipal Act. This subsection states that it shall be the basis for the preparation and adoption of land use regulating bylaws and amendments to them.

With regard to specific powers contained in a settlement plan, Section 809 (8) would seem to rule that without specific land use bylaws implementing its policies, the official settlement plan cannot directly affect the rights of landowners (Ince, 1977, 45).

In contrast to settlement plans, a zoning bylaw empowers a Council with direct control over property rights over land in a zoned area. Section 716 (1)(a) to (d) of the Municipal Act legislates that Council may by zoning bylaw:

> (a) divide all or part of the area of the municipality into zones and define each zone either by map, plan or description, or any combination of them;

(b) regulate the use of land, buildings and structures, including the surface of water, within the zones, and the regulations may be different for different zones and for different uses within the zone, and for the purposes of this paragraph the power to regulate includes the power to prohibit particular uses in specified zones;

(c) regulate size, shape and siting of buildings and structures within the zones, and the regulations may be different for different zones and with respect to different uses within a zone; and

(d) without limiting the generality of paragraph (b), require the owners or occupiers of any building in a zone to provide off street parking and loading space for the building, and may classify buildings and differentiate and discriminate between classes with respect to the amount of space to be provided, and may exempt any class of building or a building existing at the time of adoption of the bylaw from any requirement of this paragraph.

The settlement plan itself is legally empowered to contain a great deal of information pertaining to the physical development of an area. Section 810 (2)(a) to (l) of the Municipal Act authorizes the documentation of;

(a) the location, amount and type of major commercial, industrial institutional, recreational and public utility uses;

(b) the location, amount, type and density of residential development required to meet the anticipated housing needs over a period of at least 5 years in the area covered by the plan;

(c) the protection of land areas subject to hazardous conditions;

(d) the preservation, protection and enhancement of land and water areas of special importance for scenic or recreational value or natural, historical or scientific interest;

(e) the preservation and continuing use of agricultural land for present and future food production;

(f) the proposed sequence of urban development and redevelopment, including, where ascertainable, the proposed timing, location and phasing of trunk sewer and water services;

(g) the need for and provision of public facilities, including schools, parks and solid waste disposal sites;

(h) the location in schematic form of a major road system for the plan area;

(i) the location, amount and type of development to be permitted within 1 km of a controlled access highway designated under Part 6 of the Highway Act;

(j) the distribution of major land use areas and concentrations of activity in relation to the provision of existing or potential public transit services;

(k) a program identifying the actions required by the regional board to implement the official settlement plan; and

(l) other matters that may be required by the minister.

A settlement plan can only be deemed an "official" settlement plan once it has been adopted as a bylaw. An affirmative vote of a majority of the directors present at a meeting held in accordance with Section 809 (3) of the Municipal Act, is required.

The provincial government has ensured that all interested parties be given an opportunity to examine and comment on the proposed plan. Section 810 (4) and 811 of the Act requires that the plan be prepared in consultation with the member municipalities of regional districts, elected electoral areas representatives, the Minister and the public.

The Land Title Act and the B.C. Agricultural Land Commission Act are other sources of legislation which will now be considered in relation to the planners second statement. This will determine whether they can be used to implement a settlement plan in areas without zoning.

With respect to the subdivision of lands, the Land Title Act states a number of matters an approving officer must consider prior to making a decision on an application. Section 87 (c) of the Land Title Act specifically rules that all subdivisions must conform to an official settlement plan if one exists.

An example of the use of this legislation exists within the Regional District of Okanagan-Similkameen when the approving

officer refused to approve a subdivision because the settlement plan designated the land for park purposes (R.D.O.S. File D-82-24).

While a new subdivision must conform to the settlement plan, as far as lot size is concerned, the Land Title Act does not empower the control of land use.

In cases where a settlement plan had been adopted but the existing zoning bylaw had not been amended to reflect its intentions the zoning bylaw would take precedence over the Settlement Plan Bylaw. Thus, if application was made for a subdivision which was in conformity with the Settlement Plan but not the Zoning Bylaw, the subdivision would have to be held in abeyance.

The Agricultural Land Commission Act, governing areas with agricultural capability, does assist in the enforcement of a settlement plan. This comes in a form unlike that found in the Land Titles Act, for the settlement plan is subordinate to the Land Commission Act. For example, Section 16 (a) of the Land Commission Act states that "a municipality or regional district may not permit agricultural land to be used for other than farm use". Further, Section 31 (1) of the Act rules that no legislation be contrary to the Land Commission Act may be adopted. The end result is that the Ministry of Municipal Affairs requires all Settlement Plans to be approved by the Agricultural Land Commission prior to final adoption of the Settlement Plan Bylaw.

It must be remembered that the Land Commission Act does not govern lands which are unsuitable for agricultural production nor does it govern lands which comply with Section 19, exempting lands

from the reserve. It exempts lands which meet the following requirements.

> (1) Restrictions on the use of agricultural land do not apply to land that, on December 21, 1972, was, by separate certificate of title issued under the Land Registry Act, less than 2 acres in area.
>
> (2) The restrictions on the use of agricultural land do not apply to land lawfully used for other than farm use, established and carried on continuously for at least 6 months immediately prior to December 21, 1972, unless and until
>
> > (a) the use is changed, other than to farm use, without the permission of the commission;
> >
> > (b) an enactment made after December 21, 1972, prohibits the use, or
> >
> > (c) permission for the use granted under enactment is withdrawn or expires.

As a result of the legal exemptions and the vast amount of land that does not fall within the Agricultural Land Reserve, the Land Commission Act provides extensive power but only over limited areas.

In conclusion, the official settlement plan bylaw by itself does not have the legislative power to ensure its implementation. It has been shown that for a settlement plan to be most effective it should be implemented in conjunction with a zoning bylaw. Such a bylaw has the legislative authority to require landowners to comply with the provisions for the zoning districts in which they are located.

The Land Title Act and the Agricultural Land Commission Act both offer limited amounts of enforcement power of the Settlement Plan. The Land Title Act, dealing specifically with the subdivision of land, requires that all new subdivisions adhere to an official settlement plan if one exists. However, controlling subdivision lot size is only one aspect of the overall concept of

a settlement plan. Another major aspect is the control of land use, over which the Land Title Act has no legislative power.

The Agricultural Land Commission Act does offer legislation authority over land use to implement a settlement plan. However, this authority applies only to lands within the agricultural land reserve and those not exempted by the Act. Thus, this authority is extensive but limited in scope.

2.1.3 It is more expensive to service sprawl development than clustered developments.

Planners and government officials alike are becoming more concerned over the economic, social and environmental costs of sprawl (Council on Environmental Quality, 1975,266). Before analyzing the specific costs attributable to urban sprawl it is necessary to determine what urban sprawl is and the reasons for it.

Ottensmann defines urban sprawl as "the scattering of new development on isolated tracts, separated from other areas by vacant land" (1977,389). Harvey and Clark, on the other hand, define urban sprawl as " a heterogeneous pattern, with an overall density greatly less than that found in mature compact segments of the city" (1965,2).

As definitions vary slightly, so do the possible forms of urban sprawl. Harvey and Clark (1965,3) distinguish three forms of urban development. First, low density continuous urban development is described as being a gluttonous use of land. Secondly, ribbon development is composed of segments which extend axially and leave the interstice undeveloped. Finally, leap-frog development is the settlement of compact patches of urban uses.

The causes of sprawl vary according to the physical, social and economic characteristics of any particular region. Harvey and Clark (1965) advance a number of causes of sprawl including;

(1) The independence of decision among monopolistic competitors: the rapid expansion of the economic base of a housing area prompts many developers to respond to the demand for housing. This independent response produces a variety of discontinuous unrelated developments.

(2) Speculation: Speculation produces both the premature subdivision of some lands and the with-holding of other land. It is the lack of co-ordination of the decision to speculate which produces sprawl and not the speculation itself.

(3) Physical terrain: The pattern of development tends to utilize land which is most readily and economically available.

(4) Public regulations: Government legislation contributes to sprawl by imbalancing the attractiveness of competing areas. For example, differences in land use controls inside and outside the corporate limits of a municipality make the lesser controlled area more attractive (Harvey and Clark, 1965,4).

(5) Transportation networks: The location of highways or transit routes will affect the spread of urban sprawl.

(6) Public Policy: Property taxes accentuate urban sprawl because as soon as farmland is scheduled for development, it is immediately taxed at the higher values normally attributed to urban areas.

Empirical data concerning the actual costs of urban sprawl has been limited. One of the most comprehensive studies conducted on this subject is the 1974, Real Estate Research analysis, "The

Costs of Urban Sprawl". The study compared three types of community development patterns: low density sprawl, high density planned, and a combination of the two. The developments were analyzed by the following variables: land use, economic costs, environmental effects, and personal effects.

Results from the land use analysis show that quarter acre lots in a low density sprawl community may consume over half an acre per dwelling unit if land for infrastructure such as roads, is included (R.E.R., 1974,2). This is more than twice as much land as in a high density planned community. Another noteable factor is that high density areas use only half as much land for transportation as low density areas for the same number of people.

There is evidence that economic costs are substantially affected by development patterns. The study indicates that overall costs to public and private investors were 44 percent less in high density developments as compared to low density developments (R.E.R., 1974,3). The largest savings came from the costs of constructing roads and utilities.

An analysis of the environmental costs showed that air pollution is strongly affected by the development pattern. Two major sources of pollution studied were: automobiles and heating. The results indicate that a high density planned community generates approximately 45 percent less air pollution than a low density sprawl community housing the same number of people (R.E.R., 1974,8). The clustering of houses alone can reduce air pollution from automobiles by 20 to 30 percent. (R.E.R., 1974,8).

While personal effects are very difficult to quantify, it is possible to measure such aspects as commuting time and maintenance

time required for the differing residence types. As expected, when living in a high density development close to the city center, commuting time is shorter than if living in the suburbs. Also, maintenance of an apartment requires less time than maintenance of a house, which is no surprise either.

The study concludes that "higher densities result in lower economic costs, environmental costs and some personal costs for a given number of dwelling units" (R.E.R., 1974,6). The study shows that these costs can be reduced by better planning and increased density. However, the Council on Environmental Quality, notes that this study has failed to take into account the costs and benefits of personal preferences and those related to the revenues generated by different development types (1975,272).

Without analyzing specific economic, environmental or personal data from Electoral Area 'G', it can safely be said that the planners statement is true; it is more expensive to service sprawl development than clustered developments.

From this analysis comes another question: What are the costs of either not servicing sprawl development or simply providing low level servicing? To answer this question would involve research on using a lower standard of servicing than in the above analysis. Further investigation will be left to future rural development planners.

2.1.4 Without zoning, development can take place on hazard lands.

It is essential to explain just what the term "hazard lands" means. For the purpose of this statement, the definition shall include:

- land which is subject to erosion;
- land which may slip when developed, used or occupied;
- land, which when developed, used or occupied may cause adjacent parcels to slip;
- land which may be inundated by a landslip if land above another parcel slips;
- land which is subject to flooding;
- land which has inadequate drainage.

Before analyzing the extent to which existing provincial regulations control development on hazard lands it is important to know what local controls such as zoning and building bylaws could play if they were in effect.

The degree to which zoning can effect development on hazard land is governed by Section 716 (1)(b) and (c) of the Municipal Act. This section states that a council may by a zoning bylaw

> (b) regulate the use of land, buildings and structures, including the surface of water, within the zones, and the regulations may be different for different zones and for different uses within a zone, and for the purposes of this paragraph the power to regulate includes the power to prohibit particular uses in specified zones;
>
> (c) regulate the size, shape and siting of buildings and structures within the zones, and the regulations may be different for different zones and with respect to different uses within a zone;

Also, Section 716 (2)(a) requires that council, when making regulations, have due regard to

> (a) the promotion of health, safety, convenience and welfare of the public.

The above sections of the Municipal Act provide Municipal Councils or Regional District Boards with the legislative authority to include controls governing the development of hazard lands within their zoning bylaws. Typically, councils or boards include floodplain hazard regulation which specify;

(a) the distance a structure must be from any natural boundary of a lake, swamp or pond and from any natural watercourse,

(b) the elevation a structures floorboards must be above the 200 year flood level, where established by the Ministry of Environment, or the natural boundary of a lake, swamp, pond and watercourse.

Furthermore, if council deems an area to be hazardous to the public, Section 716 (1)(b) of the Municipal Act empowers them to zone the property to a use which is least hazardous. For example, a council could zone an area subject to landslip to an agricultural zone. Such a zone would eliminate the possibility of locating residential structures on it.

The statutory authority empowering the Regional Districts to regulate the construction of structures within their area is found in Section 734 (a) to (k) of the Municipal Act. From this delegation of authority, the Regional District of Okanagan-Similkameen has adopted Building Bylaw No. 688 governing building inspection. (See Appendix A)

With regard to the control of development on hazard lands, Section 8 (b) of the Bylaw, allows the building inspector to demand that a geo-technical study be completed if he feels the development is located on unstable land. If the results of the study are not to his satisfaction, the inspector may refuse the building permit.

Electoral Area 'G' has no zoning or building bylaw, so, the control development on hazard lands falls solely under the jurisdiction of existing provincial government regulations.

There are two possible situations which present opportunities for the control of devlopment on hazard lands. With respect to the Health Act, Section 2:06 of the Sewage Disposal Regulations

(B.C. Reg. 577/75), requires that a developer apply for a septic tank permit prior to construction. Section 5:01 demands that before applying for a permit, a percolation test be completed on the site by the owner of the property. Subsections (a) and (b) outline the method for conducting these tests. In short, a percolation test determines whether the soil is capable of absorbing the volume of effluent to be disposed of. Section 6:16 of the Sewage Disposal Regulations, states that a conventional absorption field shall not be located in an area where the ground water table is less than 4 feet below the natural ground level. Where the Medical Health Officer is concerned about a high water table, Section 5:02 of the regulations, lists the methods for determining the ground water table. The one last source of legislative means of controlling development in the Health Act is found in Section 6:19 of the regulations, which requires that an absorption field be located no less than "100 feet from the natural boundary of a lake or other or other body of non-tidal water".

If, in the opinion of the Medical Health Officer, a proposed sewage disposal system may affect the quality of any ground water or surface water to the extent that it may be hazardous to human health, Section 2:16 allows for the refusal of a permit.

The second situation which presents an opportunity for the control of development on hazard lands is when a developer applies for subdivision approval.

The Land Title Act contains specific regulations pertaining to the subdivisions of land subject to flooding. Section 82 (1) states:

> (1) Where land within a plan of subdivision is subject, or could reasonable be expected to be subject, to flooding, no approving officer shall approve the subdivision without the prior consent of the Deputy Minister of Environment who may require, as a condition of his consent, that the subdivider enter into such covenants registerable under Section 215 as the deputy minister considers advisable.

The Ministry of Environment covenants are specific. (See Appendix B) They regulate;

-the distance required between a home or a mobile home and the natural boundary of the watercourse;

-the elevation of the underside of the floorsystem;

-the means of acquiring the necessary elevation.

The key aspect of this covenant, which must be signed before the subdivision is approved, waives the right of the owner to claim damages from the province or regional district. The covenant provides an important source of control of development on hazard lands.

Section 86 (1)(c)(v) of the Land Title Act empowers the Approving Officer to refuse to approve a subdivision on hazard lands if he considers that

> (v) the land is subject, or could reasonably be expected to be subject, to flooding, erosion, landslip or avalanche.

The more specific, Local Services Act, contains a number of regulations which can and are being used in the control of development on hazard lands. Section 4.04 of the Act, states that land which is subject to erosion, landslip, avalanche or inadequate drainage may not be subdivided.

Section 4.05 of the Act, authorizes the approving officer to approve a subdivision but, by covenant, restrict or prohibit the construction of buildings on any part of a parcel which is subject

to the conditions cited in Section 4.04 of the Act. This regulation overlaps Section 82 (1) and 86 (1)(c)(i) of the Land Title Act, previously noted.

In order that a plan of subdivision can be dealt with comprehensively, the approving officer may require that an owner provide further information which will help determine the risk of potential hazards. Section 4.06 of the Local Services Act, gives the approving officer the right to demand that an owner provide any of the following:

(a) Topographic survey where the terrain is steep, irregular, or otherwise difficult to appraise in respect of the subdivision suiting the configuration of the land being subdivided:

(b) Spot elevations:

(c) A professional engineer's report on

(i) the effect on soil stability of disturbing natural growth, or changing the moisture content of the soil by developing, using, or occupying the land:

(ii) groundwater levels and conditions for as much of the year as is considered necessary:

(iii) the depth and extent of flooding and the likely frequency of its occurring.

Section 6.04 of the Act, requires that where a parcel in a proposed subdivision is less than 5 acres, a percolation test must be completed for each lot. Section 6.06 requires that the test results be forwarded to the Medical Health Officer for approval. And the Officers recommendation, based on the waste disposal capabilities of the soil, must then be forwarded to the approving officer.

In conclusion, the power to control development on hazard lands within an area with no local regulations, when the land is

not being subdivided, is limited to the strength of health regulations. Controlling development of hazard lands when a subdivision plan has been proposed is emminantly more successful.

For regional planners to state that without zoning, development on hazard lands can not be controlled, is partially true. Considering that any new subdivision will be adequately controlled and only existing parcels remain relatively uncontrolled, the planners statement might be somewhat overstated.

2.1.5 Without zoning, residents health and safety can not be protected.

Rather than re-analyzing regulations which have already been discussed, an attempt will be made to determine the validity of statement no. 5 by examining an existing Regional District of Okanagan-Similkameen zoning bylaw to see which regulations promote the health and safety of residents. It will also be noted whether these regulations are duplicated in any provincial Acts.

The words "health" and "safety" are identified in the Municipal Act as key elements when preparing a zoning bylaw. Section 716 (2)(a) states:

> (2) In making regulations under this section the council shall have due regard to
>
> > (a) the promotion of health, safety, convenience and welfare of the public;

Unfortunately, the Municipal Act fails to define what "health" and "safety" mean. Because this analysis will attempt to identify regulations which promote both, it is essential that a definition for each, be articulated.

For the purpose of planners statement no. 5, the promotion of "health", in the context of a zoning bylaw, will be defined as the

implementation of regulations which;

a) protect against noise and smell, and
b) protect against the spread of disease.

The meaning of "safety" is much more difficult to define, because that what constitutes a safe situation for one person may be looked on as being unsafe by another. The concept of risk analysis is one which will not be investigated in this study. Nonetheless, for the purpose of this statement, the promotion of "safety", in the context of a zoning bylaw, will be defined as the implementation of regulations which;

a) protect against the spread of fire,
b) protect against the location of land uses which could be hazardous to humans, and
c) protect against injury or accident on highways through improper location or construction of developments.

An analysis will now be made of the Regional District of Okanagan-Similkameen, Electoral Area 'D' Zoning Bylaw No. 100 to identify the regulations which promote the "health" and "safety" of the residents. More specifically, the analysis will focus on a zoning district normally found on the fringe areas outside municipalities. This district was selected because it is the one which should contain the greatest number of "health" and "safety" related regulations related to the pressures of higher density development. There will also be an analysis of the General Requirements section because it pertains to all lands governed under this Bylaw.

The Agricultural/Residential (A/R) District of Electoral Area 'D' Zoning Bylaw No. 100 is a zoning district normally found covering the fringe areas of communities within the Regional District. (See Appendix C) Subsection (2)(a)(i) and (ii) along

with subsection (11) are seen as health related regulations. By limiting the species of animal and the non-agricultural based operations, the District has recognized that both people and animals require adequate space for a healthy co-existance.

At the present time there are no provincial regulations which limit the number of animals similar to those found in the A/R zoning district.

Subsection (6)(d), under Yards and Setbacks, regulates the distance structures housing livestock shall be away from a property line and dwelling unit. Here again, increased densities in the fringe areas increase the likelihood of both health and safety problems. Dr. L. Copland, Medical Health Officer for the Boundary Health Unit in the Greater Vancouver area, stated that there is little likelihood of any disease resulting from the close proximity of humans to animals. He did, however, note that he considered both smell and noise of animals as a health problem and suggested that this was the reason that setbacks had been established for livestock operations. The safety of humans becomes more of a problem as densities increase because the probability of someone being scratched, kicked or bitten increases proportionately.

The provincial Sanitary Regulations (B.C. Regulation 149/59), adopted pursuant to the Health Act, provides a similar restriction to that found in the local bylaw. Section 44 of the regulation restricts hogs to a specified distance from a highway, house, well or stream. It also allows the Medical Health Officer to increase the isolation distance to 500 feet, if found necessary to prevent a nuisance or a menace to the public health. Dr. Copland stated

that the reason hogs have been regulated is because hog operations are very smelly and are consistently the most complained about farm operation in the province.

Overall, zoning regulations concerning the separation of livestock or animals from humans are more comprehensive than are the provincial regulations. The primary reason for this is that the zoning regulations are more related to problems specific to a particular area.

Subsection (6)(a) and (b) regulate the Yards and Setbacks required for principal and accessory buildings from the lot lines and each other. These regulations are designed to promote uniformity of structures for maintaining property values and to prevent the spread of fire from one building to another. Similar regulations are found under the British Columbia Building Code which requires that structures be varying distances apart depending on their fire resistance.

Subsection (4) regulates the Minimum Site Area and Minimum Site Width of properties within the A/R district. These regulations help promote the health of the residents in the area. Subsection (4)(a) legislates minumum parcel sizes which are designed to ensure that residents can dispose of their sewage and obtain water in a manner which is not harmful to their health. In the case of subsection (4)(a)(i), where both water and sewage are piped on and off the property, the minimum lot size is established to maintain the character of the area rather than for health reasons. Subsection (4)(a)(ii) requires a larger minimum lot size when the sewage is disposed of on the property to provide for a satisfactory absorption field. Subsection (4)(a)(iii) requires an

even larger area when water is obtained and sewage is disposed of on the same site. In order to prevent health problems adequate land is required to ensure that the sewage does not contaminate the drinking water.

Provincial regulations found in the Local Services Act, virtually duplicate the minimum lot size restrictions found in the zoning bylaw. The only difference between the two is found in the regulation concerning areas serviced by a community water system and not a community sewage system. In these areas, the zoning bylaw permits a parcel size of 9,000 square feet while the Local Services Act requires 7,500 square foot minimum lot size.

Section 28, the General Requirements section of Electoral Area 'D' Zoning Bylaw No. 100, is applicable to land within all districts of the zoning bylaw. (See Appendix D)

Subsection (1) is designed to promote the safety of motorists at highway intersections. It restricts the growth or construction of any obstruction between the levels of 3 and 10 feet above ground level and up to 15 feet back from the intersection the right of way.

A provincial regulation contained within the Highway Act provides a similar restriction to that found in the zoning bylaw. The only difference is that the provincial regulation requires a 20 foot setback from the intersection of the right of way. This is more stringent than the zoning bylaw.

Subsection (3), of the zoning bylaw, establishes specific regulations governing parking for the various land uses found in the Electoral Area. The regulation not only legislates the number of spaces required but also the construction material.

A provincial regulation found in the Local Services Act provides a similar requirement, but one which is not as comprehensive. For example, section 4.15 only requires that for any parcel in a proposed subdivision, there shall be an area on the parcel suitable for parking two vehicles. The Local Services Act regulation is only enforceable when a property is being subdivided. Whereas, the regulation contained within the zoning bylaw is applicable at all times. Therefore, if a property is developed without subdivision there is no regulation to ensure adequate parking on the site. This would leave vehicles no place to park but on the roadway, creating a safety problem.

Subsection(7) of the zoning bylaw establishes specific floodplain regulations designed to promote the safety of the public. Legislation governing the elevation above and the distance back that structures must be from a natural watercourse or highwater mark are covered by two similar provincial regulations. The first is the Health Act which, under the Sewage Disposal Regulations, establishes limits to the proximity of an absorption field to a watertable, a natural watercourse or a body of water. Section 6:16 requires that the ground watertable not be less than 4 feet below the natural ground surface in an area where an absorption field is located. Section 6:19 (e) regulates the distance an absorption field must be from the natural boundary of a lake or other body of water. While these regulations are oriented toward the promotion of health, they also serve to promote the safety of the public by forcing buildings away from low lying areas.

The second provincial regulation is the Land Title Act. Section 82 (1) of the Act allows the Approving Officer to request

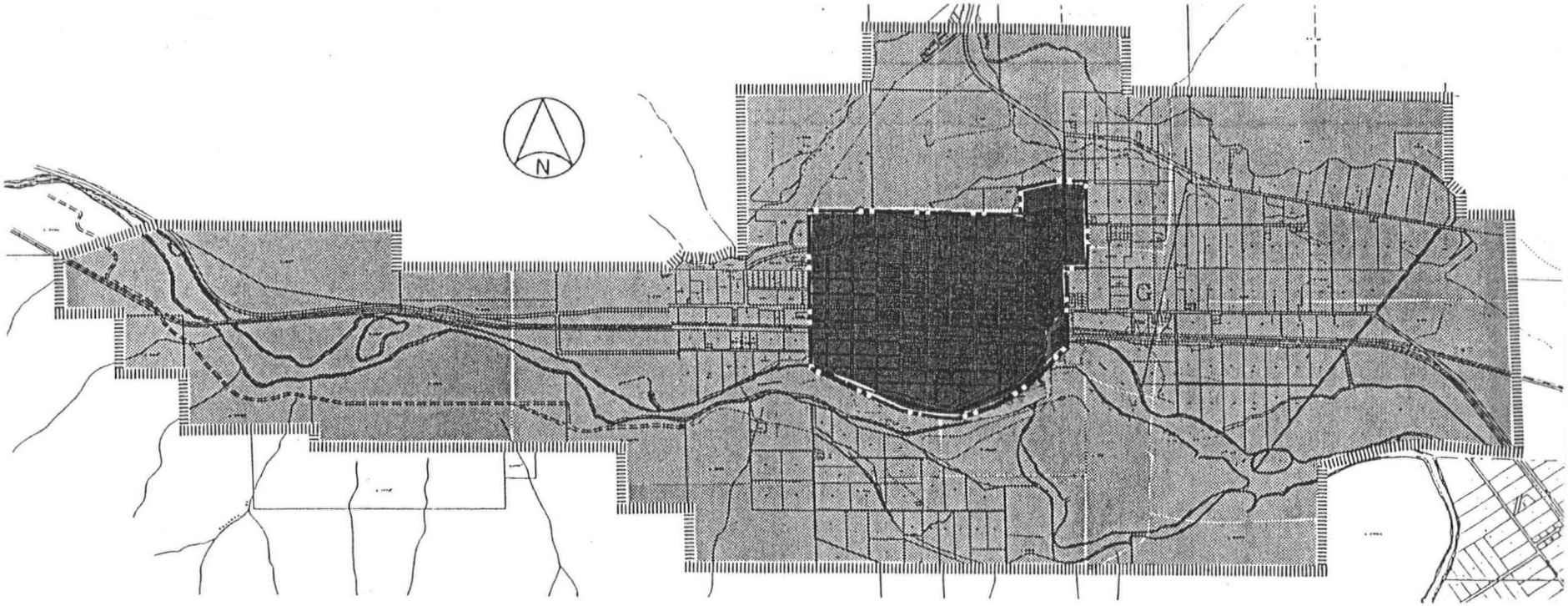
the prior consent of the Deputy Minister of Environment before approving a subdivision if the land is subject to flooding. It is then the perogative of the Deputy Minister to request that the subdivider enter into a covenant regulating setbacks from watercourses and elevations of structures above flood levels, similar to those contained in the zoning bylaw. These regulations, however, only pertain to lands being subdivided and do not apply to lands being developed.

In conclusion, this analysis has shown that zoning provides more specific and comprehensive control in the form of small animal, livestock, building, and floodplain regulation than those enforced by the province. The local controls have been developed as a result of specific problems which have arisen in the Electoral Area, whereas Provincial regulations are designed to control health and safety hazards on a province wide basis. Therefore, they can not be expected to control area specific problems.

Overall, one would have to disagree with the planners statement that the health and safety of Electoral Area 'G' residents can not be protected without zoning. Perhaps if densities were greater, the threat to health and safety would be of greater concern. The only regulation the zoning bylaw has that would be great benefit to Electoral Area 'G' is the floodplain regulation. Otherwise, the provincial regulations seem to provide adequate health and safety controls.

2.1.6 Unzoned areas become melting pots for undesirable land uses

In order to test the validity of this statement, the land use



KEREMEOS - COMMUNITY + SETTLEMENT PLANS

Official Community Plan Area

Official Settlement Plan Area

Figure 2

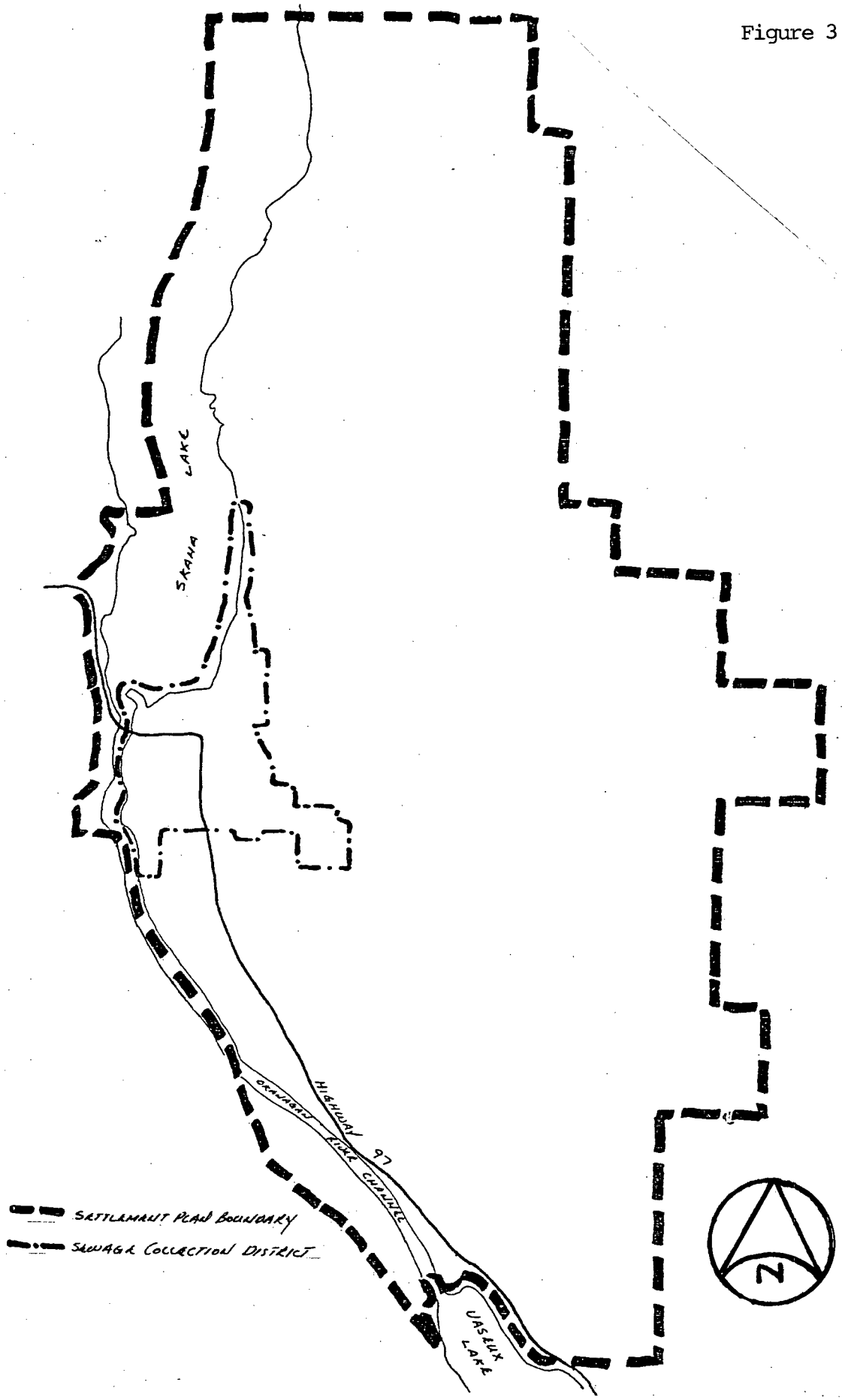
pattern of the unzoned Keremeos fringe area will be compared to a zoned fringe area with a similar population size. This will show the extent to which undesirable land uses are controlled by zoning.

The Keremeos fringe area is taken as the Settlement Plan Area shown in the "Technical Supplement to the Keremeos Settlement Plan". (See Figure 2) The land use pattern in the Keremeos area will be compared to the Okanagan Falls fringe area. While there are no municipal boundaries to legally distinguish the urban area from the fringe, it would seem appropriate to accept the lands inside the Okanagan Falls Sewage Collection District as urban and land outside it as the fringe. The outer boundaries of the fringe area are taken as the boundaries of the Okanagan Falls Settlement Plan Area in the "Technical Supplement to the Okanagan Falls Settlement Plan". (See Figure 3)

Prior to attempting the land use anlaysis, it is important that the term "undesirable " be defined. For the purpose of this study, the term undesirable includes land uses which fall under the heading of Commercial in the land use coding system of the Regional District "Technical supplement Maps". Under this heading are found industrial, commercial and tourist commercial uses. The reason these uses were chosen is because they generally create a nuisance in the form of traffic congestion, noise and smell. Granted, there are other land uses which create the same nuisance, however, this study simply attempts to sample a small cross-section of land uses in order to test the validity of the planners statement.

A problem which arises when conducting any comparison is that

Figure 3


SKAHA LAKE
HIGHWAY 97
OKANAGAN RIVER CHANNEL
UASLUX LAKE
SETTLEMENT PLAN BOUNDARY
SEWAGE COLLECTION DISTRICT
N

there are limitations which limit the validity of the study. Some limitations which affect this study are:

-the extent to which the Agricultural Land reserve has affected development in both fringe areas;

-the extent to which the abundance or lack of space in the urban areas has affected the development pattern in the fringe areas;

-the extent to which the land use pattens established prior to the establishment of the Agricultural Land Reserve and Electoral Area 'D' Zoning Bylaw have affected the development pattern in the fringe areas.

Figures 4 and 5 show the specific use and location of the undesirable land uses. It can be seen that the Okanagan Falls fringe area has 12 undesirable land uses (not including gravel pits). The Keremeos fringe, on the other hand, has a total of 23 undesirable land uses (not including gravel pits). To take the analysis a step further, it is possible to say that if the land uses are covered by a provincial Act, then, they can not be deemed undesirable. For example, fruit stands in the Keremeos fringe are are a legal use under B.C. Regulation 7/81 of the British Columbia Agricultural Land Commission Act. Section 2(1)(a) of the Act allows produce grown on the property to be sold from the property. Thus, the number of undesirable uses in the Keremeos fringe on this basis only numbers 10. At the present time, there are no provincial Acts which alter the number of undesirable designations of the land uses in the Okanagan Falls fringe area.

In conclusion, it is difficult to say whether unzoned areas become melting pots for undesirable land uses. In circumstances such as those examined here, there are numerous undesirable land uses prevalant in both the zoned and unzoned areas studied.

A map illustrating the zoning districts and the undesirable

Figure 4

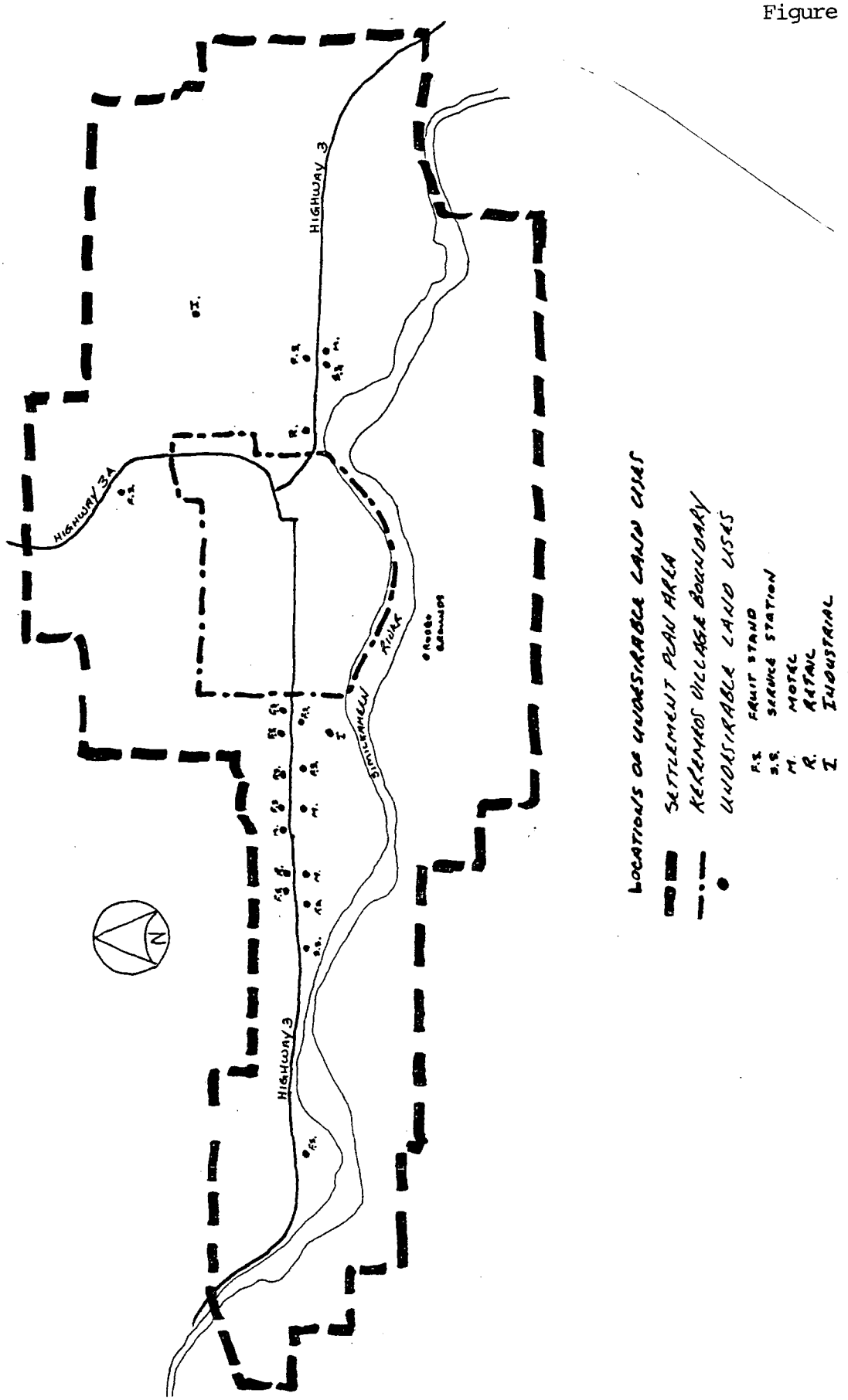
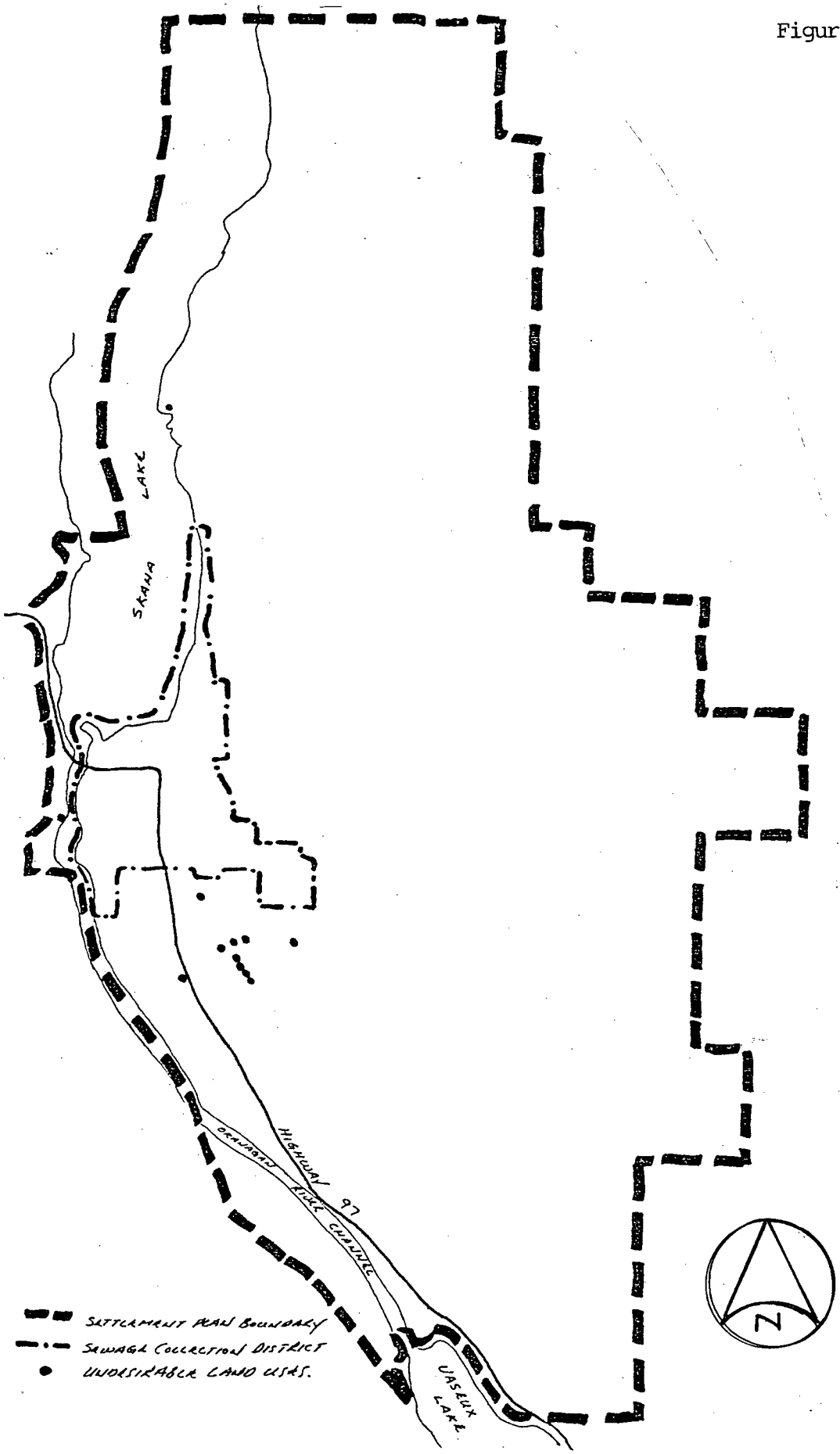

HIGHWAY 3A
HIGHWAY 3
HIGHWAY 3
SKITLAMEEN RIVER
N
LOCATIONS OF UNDESIRABLE LAND USES
SETTLEMENT PLAN AREA
RESERVES VILLAGE BOUNDARY
UNDESIRABLE LAND USES
F.S. FRUIT STAND
S.S. SERVICE STATION
M. MOTEL
R. RESTAURANT
I INDUSTRIAL

Figure 5


SKAHA LAKE
HIGHWAY 97
OKANAGAN RIVER CHANNEL
VASEUX LAKE
SETTLEMENT PLAN BOUNDARY
SEWAGE COLLECTION DISTRICT
UNDESIRABLE LAND USES.
N

land uses in the Okanagan Falls fringe area shows all but 4 of the land uses are specifically permitted under the zoning bylaw. (See Figure 6) It should be noted that one was in existence prior to the adoption of the zoning bylaw and is thus legally non-conforming.

Being legally zoned has the effect of changing undesirable land uses to desirable ones. The reasons being that:

A) the zoning process provides the public with the opportunity to be heard if the land use is not a desirable one, and

B) zoning provides regulations concerning the siting, shape and size of structures which makes living next to a commercial or industrial use not quite as undesirable as if there were no regulations.

Whether the number of undesirable land uses would be fewer if zoning were in effect in the Keremeos fringe area is subject to conjecture. The limitations of this analysis make it impossible to come to any firm conclusions about this statement.

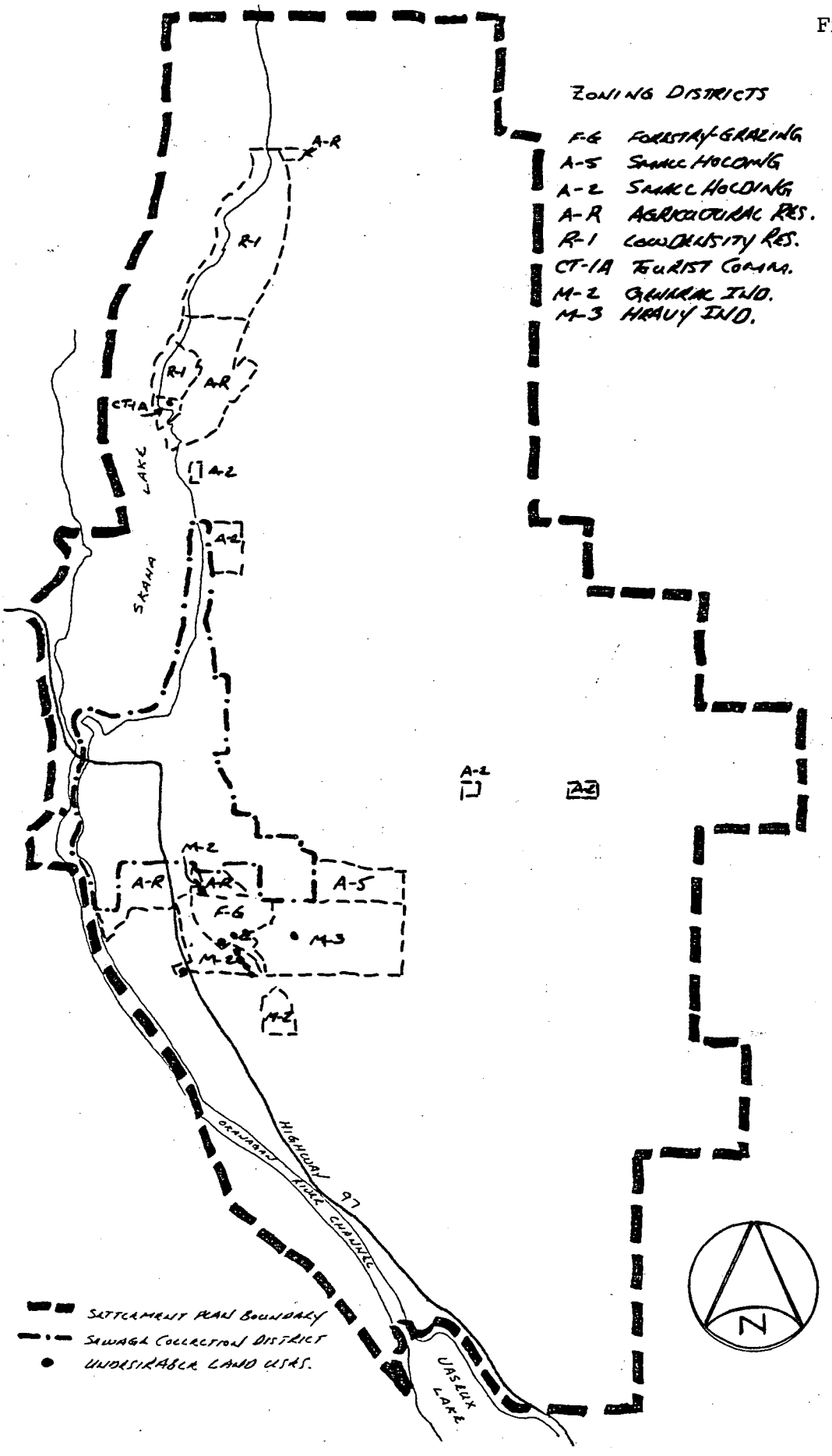
2.2 RESIDENTS STATEMENTS

2.2.1 Increased governmental regulation will result in a loss of the rural lifestyle

For the purpose of analyzing this statement, it is necessary to review the rural sociological literature because first-hand empirical evidence is not available.

Since World War II the differences between urban and rural environments have diminished. Changes which are said to have produced the decline in the rural environments effects on values includes industrialization (kerr et al, 1960), organizational revolution (Boulding, 1968; Hart and Scott, 1975), and development of post industrial society (Bell, 1968).

Figure 6


ZONING DISTRICTS
F-G FORESTRY-GRAZING
A-5 SINGLE HOUSING
A-2 SINGLE HOUSING
A-R AGRICULTURAL RES.
R-1 LOW DENSITY RES.
CT-1A TOURIST COMM.
M-2 GENERAL IND.
M-3 HEAVY IND.
A-R
R-1
A-R
CT-1A
LAKE
SKAHA
A-2
A-2
A-2
A-2
M-2
A-R
A-R
A-5
F-G
M-3
M-2
M-2
HIGHWAY 97
OKANAGAN RIVER CHANNEL
UASLUX LAKE
SETTLEMENT PLAN BOUNDARY
SEWAGE COLLECTION DISTRICT
UNDESIRABLE LAND USES.
N

Mass communication systems and modern transportation methods are examples of how these changes have caused a levelling effect on the differences between urban and rural lifestyles (Willits et al, 1973,36). Television, radio, newspapers, magazines and movies provide a common experience to persons throughout the land. Willits et al (1973), argues that isolation, which historically permitted the development of differences in lifestyles, has been replaced by a continuous interchange throughout the culture. This has resulted in the elimination of distinctive subcultural patterns within society.

While improved modes of transportation make it easier for farmers to travel to the urban areas, it has also made access to rural areas easier for urbanites. Glenn and Hill (1977) note that there are now two types of rural resident; those that live and work in a rural area and those who live in a rural area but work and socialize in urban areas. The effect of this urban-rural migration has furthered the elimination of the rural-urban differences (Glenn and Hall, 1977; Smith and Petersen, 1980).

In conclusion, a review of the rural sociological literature would indicate that the residents statement is wrong. Increased governmental regulation does not bring about a loss of the rural lifestyle. However, it is very difficult to conclude that a person or group of persons are wrong when dealing with human perceptions. Therefore, regardless of the factual information cited in this analysis, one can not disprove the way the rural residents of Electoral Area 'G' perceive their situation. Residents simply respond to the resulting effects.

2.2.2 Increased bureaucracy means increased taxes.

To better conceptualize this statement a comparison will be made of the costs of providing regional governmental services to Electoral Area 'G', which has very few services, with another Electoral Area which uses most services offered by the Regional District. Before analyzing the costs of the functions a description of the process used to acquire the operating funds for the individual functions is in order.

Since the Regional District is not a taxing authority, the normal procedure used to acquire the funds for particular functions is as follows. The Regional District must first finalize its budget for the coming year which must include specific cost breakdowns for the individual functions in each electoral area. They then submit this requisition to the Ministry of Municipal Affairs. The requisition is then forwarded to the Surveyor of Taxes who combines the amount needed for regional functions with that required for other provincial government functions. A total is then established for each electoral area. The Surveyor of Taxes then fixes a tax rate for residential, commercial, industrial and agricultural lands specific to each electoral area. The taxes are then calculated for each property. The Regional District is then alotted the funds which it requested. Of course, this is a simplified version, but it does give an indication of the process which is followed.

Table 1 itemizes the estimated costs for each function within the Regional District of Okanagan-Similkameen for 1983. For the purpose of analyzing this statement, the costs required to

ANALYSIS OF 1983 REQUISITION BASED ON 1983 ASSESSMENT

Municipalities	Hospital	General Admin.	Elect. Admin.	Fire Prot.	Building Insp.	Recycling Refuse Disposal	Planning Zoning	Economic Development	O.K. Falls Sewer &	Knapweed Pest Control	Arenas Recreation	OBWB	Transit	Fiscal Services	RDOS Office	TOTAL
Penticton	292,240	64,407				161,847	86,037	16,685		2,782 (1978 pests) 31,833		122,750		1,810,438	20,715	2,609,734
Summerland	72,605	16,003					21,376	4,146		5,915		30,496		562,033	5,147	717,721
Princeton	36,775	8,109			11,720		10,833	2,100		500	21,241			144,872	2,608	238,758
Oliver	24,501	5,400			7,806	25,944	7,214	1,398		4,283	79,553	10,292		25,179	1,737	193,307
Osoyoos	40,295	8,884					11,868			7,046	82,693	16,926		55,689 457,899	2,858	684,158
Keremeos	10,241	2,263		25,854		11,092	3,022	590		1,794				273,757	728	329,341
Total	476,657	105,066		25,854	19,526	198,883	140,350	24,919		54,153	183,487	180,464		3,329,867	33,793	4,773,019
Electoral Areas																
A	19,910	4,393	3,175		6,349	23,100	5,868			3,484	40,885			30,224	1,413	138,801
B	7,197	1,585	1,146		2,291		2,118	410		1,258				2,300	510	18,775
C	42,098	9,281	6,708		13,415	44,590	12,398	2,405		7,360	162,519	17,679		8,044	2,985	329,482
D	67,310	14,830	10,718		21,436		19,810	3,842		11,762				41,726	4,770	196,204
E	19,088	4,211	3,043		6,087		5,626	1,090		3,340		8,022	3,246	28,990	1,354	84,097
F	16,177	3,567	2,578		5,156		4,766	924		2,829		6,795		20,832	1,147	64,771
G	16,351	3,600	2,602		5,204		4,809	932		2,856					1,158	37,512
H	84,397	18,612	13,450		26,902	13,400	24,863	4,822		120	48,755			1,808	5,986	243,115
				175,900		69,491			26,828			34,744		87,263	Ø	394,226
Total	272,488	60,079	43,420	175,900	86,840	150,581	80,258	14,425	26,828	33,009	252,159	67,240	3,246	221,187	19,323	1,506,983
GRAND TOTAL	749,145	165,145	43,420	201,754	106,366	349,464	220,608	39,344	26,828	87,162	435,646	247,704	3,246	3,551,054	53,116	6,280,002

Table 1

maintain the functions of Electoral Area 'F' will be compared to those of Electoral Area 'G'. Figure 7 shows that Electoral Area 'F' is located just west of the City of Penticton and the District Municipality of Summerland. Electoral Area 'G' has been selected for this analysis for the reasons that it has a population similar to that of Electoral Area 'G' and because it is governed by both a zoning and building bylaw, which according to Electoral Area 'G' residents, will increase taxes.

After reviewing Table 1 it can be seen that the amount of money needed to maintain most functions within both electoral areas is similar. There are, however, four aspects of the table which are in need or further explanation.

Firstly, it should be noted that Electoral Area 'F' is a part of the Okanagan Basin Water Board (OBWB) and taxpayers must contribute $6,795 towards this function. Electoral Area 'G' is not a part of this function and thus, does not contribute.

Secondly, the same is true for the Fiscal Services function. Included under this function are the contributions the residents of electoral Area 'F' make to the Penticton Recreation Centre, the Penticton and District Retirement Centre and the Penticton Dog Control service. Electoral 'G' does not contribute to these services.

Thirdly, it is quite surprising that considering Electoral Area 'G' does not have a building inspection bylaw and thus no building inspector, they contribute approximately the same amount as Electoral Area 'F', for this function. Upon further investigation, a regional district employee said that the Supplementary Letters Patent for the Regional District states that

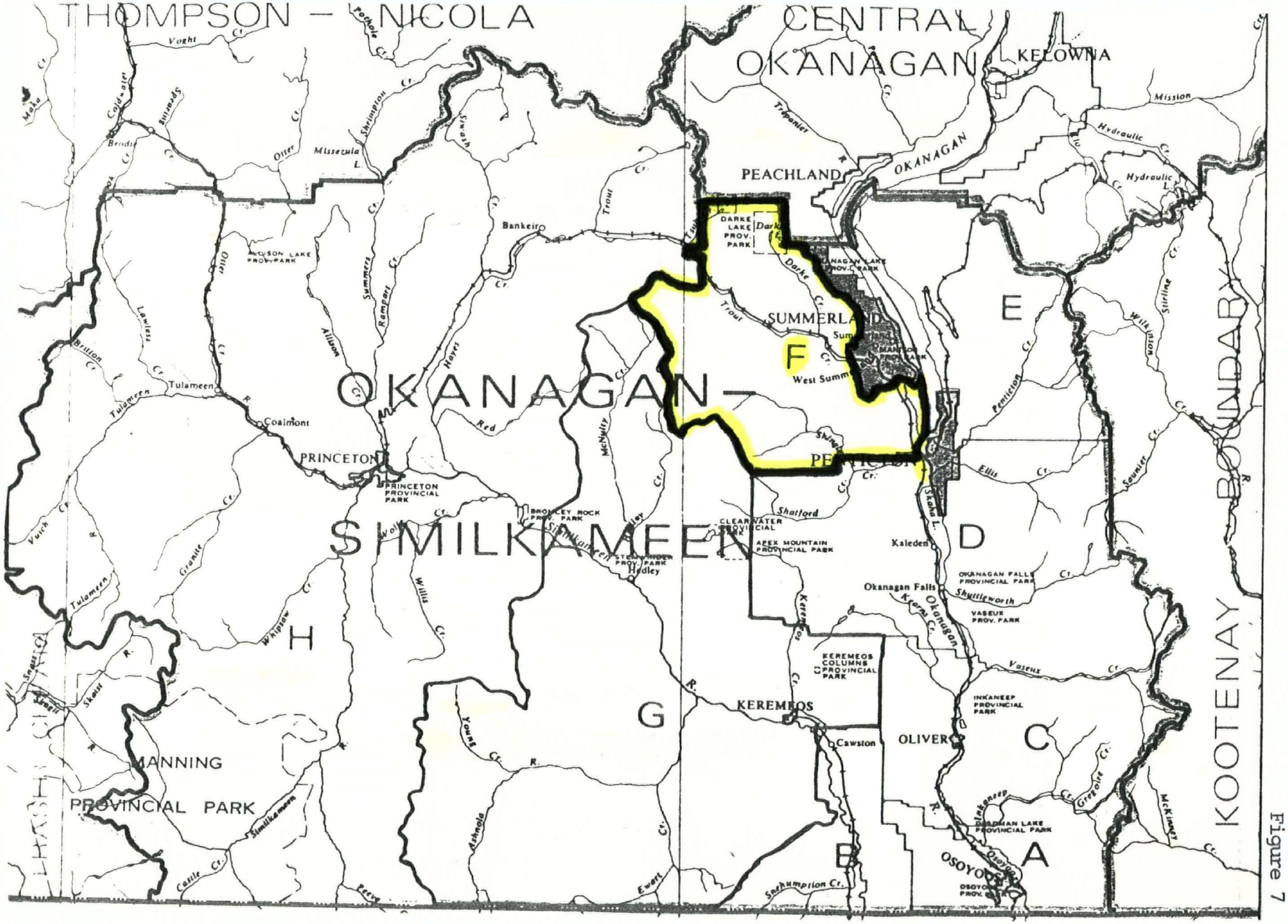

THOMPSON – NICOLA
CENTRAL OKANAGAN
KELOWNA
PEACHLAND
OKANAGAN
SUMMERLAND
West Summerland
PENTICTON
OKANAGAN–
SIMILKAMEEN
PRINCETON
Coalmont
Tulameen
Bankeiro
Missezula L.
Hedley
Kaleden
Okanagan Falls
KEREMEOS
Cawston
OLIVER
OSOYOOS
MANNING
PROVINCIAL PARK
KOOTENAY
BOUNDARY
A
B
C
D
E
F
G
H

Figure 7

all areas must contribute to certain functions regardless of their participation in them. Therefore, a sum determined by the assessed value of land and improvements is levied on Electoral Area 'G'.

Finally, the same questions are raised regarding the amounts required for the Planning and Zoning functions. Electoral Area 'G' does not maintain a zoning bylaw but contributes more to this function than does Electoral Area 'F'. Again, further investigation found that the Supplementary Letters Patent for the Regional district requires that every electoral area contribute to this function regardless of their participation in it.

Overall, the residents statement that "increased bureaucracy means increased taxes," is generally true. However, in this case when dealing specifically with Electoral Area 'G' and the costs of maintaining the zoning and building functions, the statement is false.

2.2.3 Zoning regulations are designed for urban areas and do not consider rural values.

To determine whether rural residents are correct in their assumption, I will analyze an existing Regional District of Okanagan-Similkameen Zoning Bylaw. Because most Regional District bylaws contain both urban and rural zoning district, I will analyze the most rural zoning district within the bylaw. It should be noted that there is no one distinctive boundary between what is an urban or rural zone. However, by offering an explanation of the purpose of the regulation, some insight will be gained into its urban or rural orientation.

Before analyzing a specific bylaw, a brief overview of the

history of zoning in North America is in important establishing the context of zoning today.

New York adopted the first comprehensive municipal zoning ordinance in 1916, which regulated height, area and land use (Contemporary Studies Project, 1983, 1091). This enactment had a profound effect because soon after, most major American cities adopted some form of zoning bylaw (Contemporary Studies Project, 1983,1094). Zoning quickly became an instrument of municipal land use control but gained relatively slow acceptance in rural, unincorporated areas. It wasn't until 1929 that Wisconsin became the first state to authorize county zoning (Contemporary Study Project, 1983,1094).

Zoning was designed to preserve existing or evolving neighborhoods and prevent the deterioration of urban living conditions. As a result, liveability regulations or regulations designed to collectively contribute to the quality of living, have become a major concern (Goodman and Freund, 1968,429). Rural residents, however, question the need for these liveability regulations because to them, distance is the buffer which protects their quality of living (Getzel and Thurow, 1979,54).

This analysis will now shift to the investigation of whether an existing rural zoning district of the Regional District of Okanagan-Similkameen contains any liveability regulations which are questionable as to their rural practicality. The bylaw which will be studied is Electoral Area 'D' Zoning Bylaw No. 100, adopted in July of 1971. The most rural oriented land use district in the bylaw is the Forestry-Grazing District. (See Appendix E) This district has the largest minimum parcel size (50

acres) of all the land use districts and usually applies to lands farthest from the urban centres. Those aspects of the bylaw which rural residents cited as urban oriented will now be identified.[1]

Section 12 (2)(e) deserves some comment. It regulates the establishment of a "Home Occupation" and states:

(e) Home occupations, provided that

(i) a home occupation shall be conducted wholly within a building or accessory building;

(ii) there shall be no exterior display or advertisement, except as provided by subsection (10);

(iii) there shall be no exterior storage of materials, commodities, or finished products;

(iv) the use shall not generate traffic or parking problems within the District;

(v) the use shall not produce public offense or nuisance of any kind, by any means;

These are the same regulations which apply to a home occupation in a single family residential zone and is questionable why these regulations don't change in accordance with the closeness or remoteness of a home occupation to an adjacent property or dwelling. In that way regulations governing home occupations in rural areas would take account of the size of the properties, and be less stringent than that required for smaller sized properties in urban areas.

Section 12 (6) regulating the "Yards and Setbacks" of all buildings constructed on land within this zoning district, has baffled many a rural resident. Subsection (a) in particular, sets this out as an urban oriented regulation.

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(1) information obtained while employed by the Regional District of Okanagan-Similkameen

> (a) On any lot or site, all buildings shall be setback from the front and rear lot lines a distance equal to the height of the building, or thiry (30) feet, whichever is greater, and not less than fifteen (15) feet from an interior or exterior side lot line.

While such a regulation may be worthwhile in an urban area, so that all houses are uniformly placed on the property, residents question the need for uniformity when the lots are 50 acres in area and over.

Section 12 (7), regulating "Site Coverage" is also questioned. This regulation states:

> (7) On any lot or site, principal and accessory buildings together shall not occupy more than twenty (20) percent of the lot or site area.

Realistically, 20 percent of 50 acres is 10 acres and given the permitted uses cited within subsection (2) of this zoning district, it is unlikely that a structure that big would ever be built.

Section 12 (8), regulating "Height Limitations" is another regulation which is more urban oriented than rural. It states:

> (8) On any lot or site, no building shall exceed a height equal to twenty-five (25) percent of the lot or site depth, or sixty (60) feet, whichever is less, except that in no case shall dwellings exceed a height of thirty-five (35) feet.

Again, we see a regulation which is more suited to an urban, situation where conformity of structures may be preferred. As far as a rural regulation, rural residents question its practicality. They say that people have good reasons for building structures the size and shape they do, so why regulate them. Furthermore, the size of rural lots usually allows enough space between neighbors so that the height of someones structure will not interfere with

an adjacent property owners right to light or air.

The final regulation of this zoning district to be questioned is subsection (9) which regulates the "Minimum Floor Area". It states:

> (a) No dwelling unit, other than a mobile home, shall have floor area of less than seven hundred fifty (750) square feet.
>
> (b) No mobile home shall have a floor area of less than two hundred forty (240) square feet.

This uniformity seeking regulation is more urban oriented than rural. Rural residents have noted that if a person wants to build a small house, why shouldn't it be allowed? In an urban area, a smaller than average house could have a negative effect on the value of adjacent houses. However, in an area where the minimum parcel size is 50 acres it is unlikely that the size of one house will affect the a value of a neighboring parcel.

Overall, one would have to agree with the residents statement that "zoning regulations are designed for urban areas". After studying the most rural zoning district of Electoral Area 'D', Zoning Bylaw No. 100, it can be said that there were numerous reulations which could be questioned for their practical application in a rural area. But this does not necessarily invalidate any form of zoning in rural areas.

3.0 REVIEW OF ALTERNATIVES TO THE STANDARD ZONING BYLAW

This chapter will investigate five alternatives to the standard zoning bylaw. A review of the literature on each alternative will provide insights on their various definitions along with their positive and negative aspects. The chapter will conclude with a discussion of the suitability of implementing each alternative as a land use control in

Electoral Area 'G'.

One important limiting factor which should be mentioned at the outset is that many of the reports cited in the reviews have been written from the perspective of American land use law. This can make a significant difference in how these alternative land use controls are described. The reason for this, is that in Canada, land owners are viewed as tenants of the crown, whereas, in the United States, the Bill of Rights has helped entrench the attitude that land owners are outright owners of their property. Therefore, throughout this chapter, an attempt will be made to identify aspects which are only applicable in the United States.

3.1 DEVELOPMENT PERMIT

The development permit has had an off and on history in British Columbia. It was first introduced in 1968 as Section 702A of the Municipal Act and was to provide for more innovative municipal land use and development controls (Porter, 1973,104). But the concept failed to gain the active interest as expected due to some confusion and doubt as to what it was (Porter, 1973,106). So, in the spring of 1971 the government repealed the development permit legislation and replaced it with the land use contract. After only six years, legislation authorizing land use contracts was replaced by new development permit legislation in 1977 which remains in force today, Since 1977, a number of reports have been written which describe the positive and negative aspects of the development permit as a land use control technique.

The development permit has been defined by a number of authors. Gary Harkness (1973,43) describes it as a supplementary regulation which allows variations to be made to the existing development control bylaw. This allows Councils to better accomodate projects requiring special treatment, considering such elements as siting, design, servicing or environmental

features (Harkness, 1979,43).

Wilson (1979) and Urban Land Management Ltd. (1979) describe two types of development permits which may be used in British Columbia. The first is the voluntary or site development permit which allows the developer, at his option, to apply for the waiving, changing or augmenting of certain aspects of the zoning or subdivision control bylaws (Urban Land Management Ltd., 1979,19). While the development permit may allow more flexibility than the zoning bylaw, it may not vary the permitted uses or densities of the land use perscribed by the zoning (Wilson, 1979,39).

The second type of development permit is the compulsory or area development permit. In this case, Council designates areas with special environmental, design or siting conditions as development permit areas (Urban Land Management Ltd., 1979,19). In development permit areas, property owners must apply to council to obtain a development permit in addition to the normal building permit or subdivision approval (Urban Land Management Ltd., 1979,19). Once again, the development permit can only regulate design and siting and can not vary use or density perscribed by the applicable zoning or subdivision control bylaw (Wilson, 1979,39 and Urban Land Management Ltd., 1979,19).

As with all forms of land use control, there are positive and negative aspects. The most often cited benefit of the development permit is its flexibility. Goldberg and Horwood (1980,96) praise this alternative for its flexibility in allowing proposals to be evaluated on their own merits. While Harkness (1979,43) is encouraged that imaginative and innovative proposals, which might not have been acceptable under the standard zoning bylaw, may be approved. Wilson (1979,41) sees the development permit legislation as a step in the right direction because it allows minor variances that do not affect the use and density regulations of a zoning bylaw without the necessity of public hearings.

It is rare that when a land use control confers a benefit on some that others don't view it negatively. Such is the case with the development permit. Harkness (1979,43) recognizes that flexibility can lead to uncertainty which creates delay and higher costs. This problem is expanded on by Urban Land Management Ltd. (1979,20) who state that details of construction always vary from original plans. Thus, with the Municipal Act requiring that the development be "strictly in accordance with the development permit," it may be necessary for the developer to return to council on numerous occasions to obtain permission to change minor items.

The fact that no public hearing is required for each development permit issued has been noted as a positive aspect of the legislation. However, Urban Land Management Ltd. (1979,19) questions its legal validity considering that it is a form of zoning.

The final negative aspect noted pertains to the fact that registering the development permit designation on the property's title is not required. Urban Land Management Ltd. (1979,20) call attention to the fact that development permits may affect the value of the land. Therefore, all parcels governed by a development permit should have this fact listed on the land title.

Overall, of those who have stated an opinion, most look favourably upon development permits as a form of land use control. Goldberg and Horwood (1980,96) even go as far as to say that "of all the zoning alternatives, we advocate this one".

3.2 FLOODPLAIN ZONING

Since the beginning of recorded time, floods have been reported with regularity. Early civilizations used to depend on floods to deposit new, rich soil on the floodplain in order to grow their crops. Over the years,

man has converted these agricultural and open space uses to residential, commercial and industrial uses.

In the past, the most common method of protecting these floodplain uses was to build dams, channels and levees. Unfortunately, these schemes are very costly and are not always effective (Burnett and Hansen, 1982,3). Lauf (1970,69) expands on this aspect by stating that not only is the cost of flood control projects very high, but so are the costs associated with rescue and relief efforts, periodic cessation of business, pollution and contamination hazards and disruptions of transportation. Today, administrators are turning to zoning ordinances as the method of preventing losses to people and property from flooding.

Hinds et al (1979,34) state that there are three broad purposes which floodplain zoning will accomplish.

1) To prevent obstructions to the flow of flood waters along fresh water streams.

2) To prevent losses of life and property from:
   a) fresh water flooding,
   b) tidal flooding, and
   c) storm driven waves along exposed coasts

3) To minimize governmental expenditures for protective works, rescue, relief and reconstruction.

There are two techniques employed in floodplain zoning to protect against flood damages. The first is a structural technique. The Rhode Island Statewide Planning Program "Technical Paper" (1979,4) notes that this technique requires houses and other structures to be built on pilings. The second technique is non-structural, it encourages development away from areas susceptible to flooding. In this way, excess water can run off without endangering property or human life (Crawford, 1969,148).

Crawford (1969,148) and the Rhode Island Statewide Planning Program (1979,4) support the non-structural method of floodplain zoning and suggest

the floodplain areas be designated as agricultural, recreational and conservation zones. In this way, the uses would only sustain limited damage from high waters. The United States Environmental Protection Agency (1977) see non-structural methods as a positive measure but not from the point of protecting people and structures. They view it from the perspective that without buildings, flood waters will not be blocked (U.S.E.P.A., 1977,3.10).

A negative aspect of the non-structural technique is that some ordinances in the United States, have been held to deprive the property owner of any reasonable use of his land (U.S.E.P.A., 1977,3.10).

Overall, the literature cited in this review has indicated that the non-structural zoning technique is the method that is espoused. Burnett and Hansen (1982,4) confirm that non-structural technique are the favoured and most cost effective measures for preventing flood damage. Hinds et al (1979,34) do caution that government floodplain regulations should vary according to:

1) the local importance placed on flood hazard, and
2) the extent of existing development in the floodplain.
3) floodplain regulations should represent a compromise between goals and realities.

3.3 SPOT ZONES

There is a considerable amount of literature on spot zoning as a method of land use control. Most definitions of the technique are similar. However, two distinct definitions continually arise which provide an indication of whether the authors view spot zoning favourably or not.

Firstly, Crawford (1969,92) and Hinds et al (1979,53) define this technique as an act which creates an island or a district of a small parcel when it is zoned in a manner substantially different from the land which

surrounds it. Secondly, Rafert (1982,457) and the United States Environmental Protection Agency (1977,3.7) take a more opinionated view of spot zoning when they define it as the rezoning of a small parcel of land done for the benefit of the property owner rather than for the benefit of the neighbors or the public as a whole.

There have been reports written which note both the advantages of the technique and reasons for justifying its use as a land use control. Goldberg and Horwood (1980,97) indicated four advantages of spot zoning as a land use control.

> 1) By rezoning individual parcels as interesting and high quality development proposals come forward, we allow for innovation and experimentation, while moderating the negative effects that accompany unsuccessful attempts.
>
> 2) To contain risk, rezoning individual parcels allows for small scale experiments with minimal disruptions to surrounding properties and neighbourhoods.
>
> 3) Spot zoning erodes the quasi-monopoly position that zoning has bestowed on property owners and allows for competitions among innovators.
>
> 4) The experiment is within well defined boundaries so that the entrepeneurs not society suffers if the experiment proves unsuccessful.

The literature reviewed cited five reasons for justifying the use of spot zoning as a land use control technique. Perhaps the most basic reason was supplied by both Platt (1969,249) and Hughes (1982,34) who stated that spot zoning is an important tool for decision makers because it adds flexibility to the zoning process. Hinds et al (1979,54), Crawford (1969,92), Rafert (1982,458), Mandelker (1970,83) and Wright and Webber (1978,115) agree that spot zoning is a valuable instrument in bringing about zoning changes in compliance with the Community Plans. Hughes (1982,35) agrees and stated that the courts in the United States are more receptive to spot zoning if the zoning is related to something broader,

such as the community plan. Almost all felt that spot zoning was justified if it is proposed to further public health, safety and welfare (Crawford, 1969,92; Rafert, 1982,459; Platt, 1969,249; Mandelker, 1979,83; Wright and Webber, 1978,116). The fourth reason was supplied by Platt (1969,250) and Wright and Webber (1978,116) who felt that it was a useful technique provided that a zoning issue had been fairly debated. In other words, that public hearings had been held and that the public was given ample opportunity to be heard. An finally, Platt (1969) and Mandelker (1970) note that the size of the area to be rezoned has a bearing on the justification of spot zoning by the courts. It would appear that U.S. Courts are more favourably inclined to approve rezoning when the parcel is large (Platt, 1969,250). Mandelker (1970,83) explains that the size of the site is percieved as useful in protecting neighbours from any harmful consequences.

The negative aspects have received about as much attention from the authors as have the positive. One of the primary criticisms of the technique is that it is abused. Hinds et al (1979,54) state that spot zonings are sometimes motivated by those who want personal gain or political power. Similarly, Wright and Webber (1978,115) and Crawford (1969,92) complain that spot zoning singles out a parcel for special treatment and sets up a monopoly situation. Goldberg and Horwood (1980,97) argue that spot zoning is the ultimate bane of the zoners existence. They view it as a compromise of the basic principles of zoning and land use controls (Goldberg and Horwood,1980,97). Hinds et al (1979,53) agree and state that spot zoning flies in the face of the basic U.S. Constitutional justification of zoning as a device for classifying similar properties and uses and regulating development in a similar manner within each classification. Spot zoning obviously represents anything but uniform

treatment (Hinds et al,1979,53). Finally, Hughes (1982) and Rafert (1982) criticize spot zoning for its approach to planning. Rafert (1982,457) notes that American courts have condemned spot zoning as the antithesis of planned development, as the proposed use is either inconsistent with the surrounding uses or does not conform with the comprehensive plan. Hughes (1982,34) on the other hand, denounces spot zonings piecemeal approach to planning.

Overall, the practice of spot zoning has been percieved as a method of avoiding rigidity and has even been espoused by Canadian courts as being necessary (Milner, 1962b,47). Whereas, in the United States, the courts have not achieved uniformity in defining spot zoning and thus, view it with sinister connotations (Rafert, 1982,465; Hinds et al, 1979,53). Regardless of its seeming acceptance by the Canadian judicial system, planners have generally been hesitant in recommending its use (Milner, 1962b,47).

3.4 CONTRACT ZONES

Contract zoning was introduced in British Columbia in early 1971 after the government recinded legislation authorizing an early form of development permit. This legislation gave Councils the authority to enter into contracts with developers which contained conditions which may be mutually agreed upon. Meshenberg (1976,40) notes that the community usually agrees not to change the zoning either in perpetuity or for a certain period of time. Hinds et al (1979,108) cite that the developers part in the contract usually involved restricting usage, or height, or the provision additional setbacks over and above what is required in the text of the bylaw. The expected result is a cooperative effort between a private party and the municipal zoning authority to accommodate the needs

and desires of the local government, the property owner and the neighboring land owners (Bailey, 1965,914).

Of all the literature reviewed, there have been only a small number of positive aspects noted. Meshenberg (1976,41) has observed that the U.S. Courts are now upholding more contract zones than ever before. There are three reasons for this:

1) that the agreement was between the developer and the planning commission rather than the governing body,

2) that the contract protected the interests of the neighbors as well as the developers, and

3) that the contract was for good purpose (Meshenberg, 1976,41).

Bailey (1965), on the other hand, sees contract zoning as a way of saving time for developers. It accomplishes this in two ways. First, it avoids the lengthy and confusing statutes which would be required if a specific use classification were to be set up for each parcel which needed to be treated differently from the norm (Bailey, 1965,914). Secondly, it would allow the needs and desires of all interested parties to be expressed and accommodated after a public hearing (Bailey,1965,914).

While the literature has outlined the positive aspect of this technique, the overall tone of the discussion has generally been negative. One of the most serious allegations levelled against this technique is that it bargains away the councils police power (meshenber, 1976,41). Crawford (1969,150) and Bailey (1965,903) both note that a legislative body any not sell its right to legislate.

Land use contracts were only in existence for a short period of time in British Columbia. In 1977, the Provincial government repealed land use contract legislation in the Municipal Act and replaced it with Section 702AA authorizing a new form of development permit. Reasons for the repeal are varied, however, Wilson (1979,42) implied that the key reason was that

the Provincial government was unhappy with the wide ranging negotiation of development permitted by the land use contracts.

3.5 CONDITIONAL ZONING

In reviewing the literature, conditional zoning has received a great deal of attention from American authors through the 1970's. Definitions of this land use control tend to vary only slightly and is best described by Porter (1973,78) as "the municipal practice of granting rezoning subject to conditions as agreed between the parties". Individual definitions tend to stress certain aspects of the technique. For example, Miller (1972,99) and McGrath (1978,11) emphasize that the conditions imposed are uniquely applicable to one piece of property and vary from the regulations for the surrounding lands. The United States Environmental Protection Agency (1977,3.6) highlights the fact that the owner does not receive a binding promise from the legislating body stating that they will not rezone this property as in contract zoning. Crawford (1969,151) further emphasizes this is a one-way agreement by noting that if the conditions are not met within a specific time, the zoning change could be reversed, or voided.

While every author had positive comments about this technique, they can be categorized under two basic thoughts. First, conditional zoning is considered a useful and flexible tool for land use control. Wright and Webber (1978,125) and Miller (1972,105) concur that conditional zoning provides a source of flexibility which affords a middle ground between absolute denial and complete approval of an application. Meshenberg (1976,36) laudes this technique because the comprehensive plan can be used as the source of policies on which to base specific conditions. McGrath (1978,11) sees conditional zoning as a flexible land use tool, particularly;

1) in rural areas facing new and significant development pressures especially if the area has few other sophisticated tools available, and

2) for review of significant, large, and complex development proposals

Secondly, conditional zoning is looked upon favourably for its ability to protect adjacent properties. Wright and Webber (1978,126) point optimistically to the fact that a conditional agreement requires the owner to make improvements which will justify a different classification and avoid harm to neighbouring property or to the planned use of the surrounding area. Meshenberg (1976,36) goes even farther to say that the conditions attached to the classifications create a buffering effect which will protect adjacent properties from negative impact and loss of value which could result from a rezoning.

As can be imagined when conditions are attached to land use control mechanisms, there are also negative aspects. One noted by Crawford (1969,151), McGrath (1978,22), Meshenberg (1976,38) and Scott (1973,94) is that the courts are skeptical of conditional zoning because by the very nature of the process the rezoning lacks uniformity, constituting spot zoning and thus, violates the Eucludian concept. Another obstacle to validating conditional zoning is the threat that legislative police powers are being bargained away by collateral agreements with private individuals (McGrath, 1978,20; Millrt,1972,100; and Scott,1973,95). A third negative aspect is that since a rezoning may involve considerable negotiation over exact conditions to be applied, the opportunities for abuse are severe (Meshenberg, 1976,38). Thus, the lack of standards, both procedural and substantive, controlling conditional rezoning creates considerable difficulty with the use of this technique (McGrath,1978,23 and Meshenberg,1976,38).

Overall, it appears that the general concensus is that conditional zoning is a land use control which has merit. The primary obstacle to having this technique accepted as a viable land use control appears to be the courts. As most of the literature on conditional zoning is written by American authors a true perception of how this technique would fend in Canada is not known. However, in view of the way spot zoning and development permits have been accepted by the Canadian judicial system, conditional zoning would likely fair well.

3.6 SUITABILITY OF ALTERNATIVES AS LAND USE CONTROL TECHNIQUES IN ELECTORAL AREA 'G'.

As the literature review has indicated, all of the land use control techniques cited have numerous positive and negative aspects. The question which must now be addressed is whether any are suitable as a land use control technique for Electoral Area 'G'. The following discussion should provide helpful insight into which, if any, are the most suitable.

As already noted in the review of the literature pertaining to development permits, provincial legislation authorizing this technique is already in place. The legislation, however, contains a number of sections which limit the use of this control technique in Electoral Area 'G'. Section 717 (3) and (5) of the Municipal Act authorizes development permits to be used as a supplementary regulation to an existing zoning bylaw. As a result, a zoning bylaw which is acceptable to the residents of Electoral Area 'G' would first have to be adopted and then the development permit process could be instituted as part of the zoning bylaw.

Section 717 (3) of the Municipal Act, restricts the use of development permit areas to areas where special conditions prevail with respect to the physical environment or in design or siting considerations. This prohibits the outright designating of the entire electoral area or large portion

therein as a development permit area.

Existing provincial legislation if it is accepted as a constraint, limits the application of development permits as an alternative to the standard zoning bylaw in Electoral Area 'G'.

Floodplain zoning is seen as necessary regulation in all of the literature that was reviewed. The non-structural control of land uses was considered to be the most effective and efficient technique for preventing damage and injuries resulting from floods. As can be seen on the area map of Electoral Area 'G' (Map 1), there are numerous creeks and two rivers which flow in the through this area. Of note is the fact that the Similkameen and Ashnola rivers along with the Keremeos Creek are all prone to flooding.

At the present time, provincial legislation exists under the Land Titles Act requiring that all new subdivisions adhere to floodplain regulations imposed by the Ministry of Environment. These regulations, however, are not applicable to developments on existing parcels. Therefore, floodplain zoning should be considered as an alternative to the standard zoning bylaw or in conjunction with another alternative.

The literature has indicated that the Canadian judicial system is relatively receptive to spot zoning. However, in most cases, spot zoning has been initiated in areas that are governed by an existing zoning bylaw. The use of spot zoning as an alternative in Electoral Area 'G', presents a somewhat different situation. As described in chapter I, spot zoning was used to restrict the further subdivision of the 360 acre block of land just north of the Village of Keremeos. The important factor here is that the rest of the Electoral Area is unzoned. As a result, the developer did not have to comply with or apply for zoning, it was imposed on him by the Regional District. The implications of this fact are significant because

when zoning is imposed on one property while the adjacent properties remain unzoned, the developer has a reasonable claim that he has been discriminated against.

Another limitation to the use of spot zoning in an unzoned area is that it is always imposed after the fact. As in the example cited above, spot zoning was only imposed after the developer has submitted his subdivision application to the Department of Highways for approval. Since the subdivision was proposed prior to the initiation of the zoning bylaw, the subdivision does not have to comply with the proposed regulations.

Overall, spot zoning in an unzoned area, such as Electoral Area 'G', would not appear to be reasonable alternative.

As outlined in the literature review, contract zoning was legislated into use in British Columbia in 1971 but was repealed in 1977 when the provincial government wanted to stop the wide ranging negotiation over developments. As a result, instituting the land use contract technique in Electoral Area 'G' would require a re-introduction of land use contract legislation in the Municipal Act. Also, considering the binding committments councils are required to endorse, when using such a land use control technique, this alternative is not considered suitable.

The literature is quite positive in its review of conditional zoning. The fact that it is mentioned as a technique which is flexible and suited to rural areas facing growing development pressure make it appear even more suitable. However, much like the development permit, overall zoning would have to exist in the area prior to implementation of a conditional zoning process. Unlike development permits, no provincial enabling legislation exists for conditional zoning, therefore, if this technique were to be implemented, provincial legislation would have to be amended.

Overall, from the positive aspects noted in the review, this land use

control technique should be considered as an alternative for Electoral Area 'G'.

4.0 AN ALTERNATIVE: THE PROPOSED RURAL MAINTENANCE BYLAW

4.1 INTRODUCTION

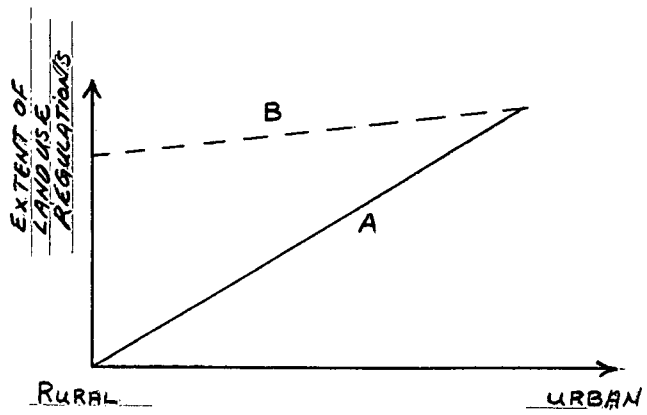
The rural maintenance bylaw has been designed to provide rural residents with a suitable method of controlling undesirable land uses resulting from the spread of urbanization. At the same time, this control technique will respect the characteristics of an environment which is essentially rural.

In an effort to make the Rural Maintenance Bylaw as easily understood as possible, the chapter has been divided into seven sections. Following this introduction, the second section will outline the factors which have molded the design of the Bylaw. The third section will provide a general overview of the alternative which will discuss who will administer it and what the major differences are between it and the Standard Zoning Bylaw. The fourth section is perhaps the most important because it provides a detailed analysis and justification of the proposed bylaw. The fifth section describes the method by which an amendment bylaw would be processed. The next section details how the Rural Maintenance Bylaw will be policed. The chapter will conclude with a sample of an actual Rural Maintenance Bylaw. Prior to delving into the technical aspects of the Rural Maintenance Bylaw it is important to understand the concept behind the alternative which is proposed.

As we have seen in Chapter I, the reaction of both planners and politicians to the first signs of land use conflicts is to impose a very restrictive Standard Zoning Bylaw. The reaction of rural residents shows that they would rather let a few property owners suffer the effect of land

use conflicts rather than subject the entire Electoral Area to stringent regulations which they believe are more suited to an urban area. Chapter II, the "Analysis of Statements" shows that even without local land use controls, provincial regulations provide a certain amount of control over land use but not enough to control urban type developments.

The following graph illustrates the situation within Electoral Area 'G'.



Line 'A' on the graph shows that as the rural area experiences the urbanization process, there should be incremental increases in the land use regulations which are required to adequately control potential urban-type conflicts. Line 'B' on the graph depicts the quantum leap to urban style land use regulations proposed in Electoral Area 'G' after only the first indication of conflicts resulting from urbanization. While it is impossible to plot where the Rural Maintenance Bylaw would be situated on the graph, it has been designed to increase land use regulations on an incremental basis rather than in quantum leaps.

4.2 FACTORS AFFECTING THE DESIGN

There are four factors which will guide the design of this alternative land use control technique. Firstly, the analysis of statements made by the Regional Planners and Electoral Area residents in chapter two, will be considered. While the statements made by the planners and residents were

in response to questions pertaining to a specific electoral area, it is considered that the views expressed would be similar to those which would be obtained in other electoral areas or Regional Districts in British Columbia. Thus, the intention is to draw from what has been learned in Electoral Area 'G' and apply it to the design of an alternative which would be applicable in rural areas throughout the province.

Secondly, the information obtained from the review of the literature on alternative forms of land use control in chapter three will be used. The review has illustrated both the positive and negative aspects of the alternatives along with aspects of the technical feasibility of each in British Columbia. Thus, the intention is to draw from what has been learned in Electoral Area 'G' and apply it to the design of an alternative which would be applicable in rural areas throughout the province.

Secondly, the information obtained from the review of the literature on alternative forms of land use control in chapter three will be used. The review has illustrated both the positive and negative aspects of the alternatives along with aspects of the technical feasibility of each in British Columbia.

The third factor is Section 716 (2) of the Municipal Act. In order that the alternative may be technically feasible within this province, the alternative must have due regard for

(a) the promotion of health, safety, convenience and welfare of the public;

(b) prevention of the overcrowding of land and preservation of the amenities peculiar to any zone;

(c) the securing of adequate light, air and access;

(d) the value of the land and the nature of its present and prospective use and occupancy;

(e) the character of each zone, the character of the buildings already erected and the peculiar stability of the zone for particular uses; and

(f) the conservation of property values.

The fourth factor is the writers own planning experience. Years of both practical and academic experience will provide a subjective factor which will affect what is included and what does not.

4.3 GENERAL OVERVIEW OF THE ALTERNATIVE

Prior to the detailed analysis of the alternative, it is important that a number of basic principles of the Rural Maintenance Bylaw be presented. This brief description of the alternative should provide a better understanding of the structure of the bylaw.

There will be three points discussed in this section. First, who will administer the bylaw, who will have the decision-making power, and finally, what is the relationship of the alternative to the standard zoning bylaw. Due to the fact that the structure of the standard zoning bylaw is well known, it provides a good reference for constructing a mental image of what the alternative will entail.

4.3.1 Administration of the Alternative

The Regional Districts are felt to be best suited for administering the alternative. Due to the fact that most Regional Districts presently oversee the administration of the standard zoning bylaw, in some or all of their Electoral Areas, their experience should be used in the administration of the Rural Maintenance Bylaw.

4.3.2 Relationship of the Alternative to the Standard Zoning Bylaw

A knowledge of the basic differences between the Rural Maintenance Bylaw and the Standard Zoning Bylaw will provide an important reference for those trying to understand the structure of the alternative.

First, unlike the standard zoning bylaw, where numerous zoning districts are the norm, the Rural Maintenance Bylaw is designed around only a two district concept. Rural District I is comprised of lands located within the settlement plan area or lands which encompass the fringe area just outside a municipality's boundaries. It also includes land which is made up of low density residential areas which are not incorporated. Examples of areas such as this would be Hedley and Olalla within Electoral Area 'G'.

Rural District II is comprised of lands outside the settlement or fringe areas. Characteristically, these areas contain larger lots and receive less pressure for small lot development.

The second major departure from the structure most often found in the standard zoning bylaw is the use of a list of "prohibited uses" rather than a list of "permitted uses". While a more detailed explanation for the use of prohibited uses will be found in the "Detailed Analysis of the Alternative", it can be said that the use of a list of prohibited uses more adequately suits the rural bylaw concept and the "positive" image this land use control is trying to create.

Thirdly, the primary form of flexibility built into the standard zoning bylaw is the development permit. Provincial legislation currently limits the use of this technique to areas or sites where special conditions in the physical environment or in design or siting considerations exist. As well, the development permit may not vary the permitted uses or densities or the land use. The Rural Maintenance Bylaw, however

proposes to incorporate a conditional zoning technique to provide flexibility. While the details of this technique are explained in a later section, it can be said that it will allow for the varying of land uses and densities on some parcels provided the site specific details satisfy all concerned.

Finally, while a major deviation from the use of Standards in the Bylaw is not proposed, it should be noted that there will be alterations made to the standards normally found in a zoning bylaw. The analysis of statements in chapter 2 has highlighted the fact that rural areas are regulated by numerous provincial Acts and regulations which are often dupicated in Regional District zoning bylaws. The streamlining or eliminating of some standards, forms an integral part of the Rural Maintenance Bylaw.

4.4 DETAILED ANALYSIS OF THE ALTERNATIVE

This section explains and justifies the three major components of the Rural Maintenance Bylaw. The first component is the use of a list of prohibited uses, the second is the method of providing flexibility, and third is the standards which are to be included in the Bylaw.

It should be noted that a Rural Maintenance Bylaw has been developed for Electoral Area 'G' to serve as an example of how the following components would appear if written in bylaw form. The Rural Maintenance Bylaw can be viewed in the last section of this chapter.

4.4.1 Prohibited Uses

The basic intent of the proposed land use control is to permit all uses except those which are seen to need special restrictions. By incorporating a list of prohibited uses, property owners will, on one hand, be allowed to develop their

property with limited restrictions. While on the other hand, they can be assured that an adjacent property owner will be restricted in the development of any undesirable land use which could adversely affect neighbouring property.

The Prohibited use restriction is designed with two of the Regional Planners statements in mind. The first is that, "without zoning, it is difficult to preserve the character of the neighborhood or area". By prohibiting land uses which are markedly different from that which exists at the present time, it will allow for the continuity of the area to be preserved. Secondly, the planners fear that, "unzoned areas would become melting pots for undesirable land uses", would be quelled. The analysis of this statement in chapter two showed that rural areas which are zoned, also contain undesirable land uses. However, by requiring the developer to go through the zoning process, objections are heard and if the application is considered too undesirable then it can be refused. If there are no major objections, obviously the land use is not generally viewed as undesirable and will be permitted.

Two residents statements have also been considered in the decision to implement a list of prohibited uses rather than a list of permitted uses. The first is that "increased governmental regulations will result in a loss of the rural lifestyle". While the analysis, in chapter two, showed that there are other factors which have a greater role in the loss of the rural lifestyle, the public still perceives that government regulation is a leading factor. Regardless of the results of the analysis, what the public perceives must be taken into account. Therefore, by noting that "all uses are permitted except the

following", it may have a more positive impact than if they are told that "no other uses except the following are allowed" as is often found under lists of permitted uses. The fact that, while in unzoned areas, the proposal will increase the amount of government regulation, it is hoped that this approach will help people perceive it in a positive manner.

The second resident statement which has been considered in the design of this land use concept was that "zoning regulations are designed for urban areas and do not consider rural values". While the prohibited uses and permitted uses techniques are similar in many ways, there are differences which promote the prohibited uses technique as the one which is best suited to the rural area. Perhaps the best method of noting these aspects is to identify why the permitted uses technique is urban oriented. For one, a list of permitted uses would appear to be better suited to a zoning bylaw that has numerous land use districts. In urban areas where the pressure to develop a property to its most lucrative use is more intense than in rural areas, zoning bylaws contain numerous zoning districts. Many of these districts are created with only minor differences. For example, there could be a multi-family zoning district which permits only row houses, whereas, another multi-family zoning district might not. In such cases, listing the permitted uses is shorter and less confusing than if the prohibited uses were listed.

In the rural areas, where there is less pressure to develop the same number of wide-ranging land uses, it is more practical to list the prohibited uses.

As for the method selecting prohibited uses to be included on the list, the planner should enlist the help of the Area Director, the Area Advisory Planning Commission and all other groups with an interest in land use. In this way, the residents themselves play an important part in the future development of their area.

The reality of compiling any list, especially one listing the prohibited uses, is that it is almost impossible to note all potential undesirable land uses. Therefore, one or two "catch-all" phrases must be included to protect area residents from any "surprises".

4.4.2 Flexibility of the Alternative

Flexibility will be built into the Rural Maintenance Bylaw in the form of conditinal zoning. As noted in the literature review in chapter 3, the conditional zoning technique provides flexibility but does not bargain away a councils legislated powers. The onus is on the devloper to abide by the conditions imposed by the council or the rezoning is not approved.

Conditional zoning provides even more flexibility than the technique presently used in British Columbia, the development permit. The reason is that section 717 (3) of the Municipal Act states that the development permit can only be used when council believes special conditions prevail in the physical environment or in design or siting considerations of an application. As well, section 717 (4) of the Act, states that the development permit shall not vary the permitted uses or densities.

The conditional zoning technique would be applicable to all land within Rural District I and II of the Rural Maintenance Bylaw, for it deems all parcels as "special". While the development permit can not vary a permitted use, this is exactly what the conditional zoning is meant to do. Its expressed purpose is to be used as a device which will help find a way to allow even the most undesirable uses on a property. In this way it can be considered as being both flexible and a positive land use control technique.

Unlike the development permit, conditional zoning can vary densities. As will be explained later in this section, lands within the Rural District II zoning district, will have a very high minimum site area requirement in order to coincide with the large acreages that exist in the district at the present time. The conditional zoning technique will provide the only method for property owners to reduce the minimum parcel size in order to subdivide their property.

4.4.3 The Standards

The Standards which will be included in the Rural Maintenance Bylaw are discussed in this section. The standards, in typical zoning bylaws, includes sections such as Minimum Lot Sizes, Minimum Lot Widths and Minimum Floor Areas to name a few. Discussion here will focus on justifying the inclusion or exclusion of certain standards from the Rural Maintenance Bylaw.

A decision on whether a specific standard will be included or excluded from the bylaw will arise out of the analysis which took place in chapter two. The analysis of existing Provincial Acts and Regulations which affect the use of land along with the

analysis of a standard zoning bylaw, provide the basis for deciding what standards are needed and which are not, in a rural area.

As alluded to in the analysis of statements in chapter two, many of the standards in a standard zoning bylaw are also found in a number of provincial Acts and Regulations. Table 2 lists the standards which are found in a typical zoning bylaw. It also indicates whether these standards or similar ones found in a Provincial land use. As this table provides quick and easy reference to the relationship between the standards and Acts, it will be referred to frequently.

While the table may give the appearance that there is duplication of standards, this is not necessarily true. It was found that local zoning bylaws can be more or less stringent than a similar provincial regulation. This difference can be explained by the fact that the local bylaw takes into consideration the needs and desires of the local population, whereas, provincial regulations are established to control only the most pressing situations in the province.

The standards will now be commented upon.

a. Minimum Site Area and Minimum Site Width

Table 2 shows that the minimum site areas and minimum site widths of lots are governed in rural areas by two provincial Acts. The Agricultural Land Commission Act can, through section 20 (1), impose the terms that it considers advisable. This regulation, however, only applies to lands which are within the Agricultural Land Reserve. The Local Services Act is the other

provincial regulation which controls site area and site width. As described in chapter two, the regulations contained within sections 6.01, 6.02 and 6.03 closely mirror those found in a fringe area district in a standard zoning bylaw.

It is proposed that this standard be incorporated into the Rural Maintenance Bylaw. However, the actual minimum requirements can be varied depending on the lot sizes which are desired by the area residents in each district.

The sample bylaw which has been designed for Electoral Area 'G', shows that the rural District I minimum site area and minimum site width are the same as found in the Local Services Act. Whereas, Rural district II minimum site area has been set at 50 acres, as desired by the ranchers in that area.

Flexibility has been built into the bylaw by incorporating the conditional zoning process as a method of altering the minimum site area and width which are required in Rural District II only. Any developer wishing to reduce the minimum site area or site width for his property would have to enter into the conditional zoning process to do so.

Sections 4 (c) and (d) of the Rural Maintenance Bylaw are housekeeping measures to cover lots created prior to the adoption of the bylaw and Agricultural Land Commission approvals.

b. Buildings per Lot

The regulation concerning the number of buildings allowed on a single parcel of land is governed by one provincial regulation. Table 2 shows that when there is no zoning in an area, the Agricultural Land Commission Act is the only regulation which can restrict the number of dwellings per parcel. Section 16 (a) of

Table 2

TYPICAL STANDARDS FOUND IN STANDARD ZONING BY-LAW

	PROVINCIAL ACTS								
	AGRICULTURAL LAND COMMISSION ACT	LOCAL SERVICES ACT	LAND TITLE ACT	HEALTH ACT	HIGHWAY ACT	FIRE SERVICES ACT	ELECTRICAL SAFETY ACT	B. C. BUILDING CODE	MOTOR VEHICLE ACT
MIN. SITE AREA	X	X							
BUILDINGS PER LOT	X								
YARDS & SETBACKS					X				
HEIGHT LIMITATIONS									
MIN. FLOOR AREA								X	
SIGNS									X
LIVESTOCK				X					
FLOODPLAIN REGS.		X	X						
PARKING		X							
FENCING	X				X				
WRECKED CARS	X								
SITE COVERAGE				X					

the Act prohibits a municipality or Regional district from permitting a building on agricultural land, except for farm use or as permitted by Agricultural Land Commission regulations. Thus, second dwellings must be approved by the Agricultural Land commission. Of course, these regulations only pertain to lands that fall within the Agricultural Land Reserve. Lands which are unzoned and are outside the land reserve are not restricted in the numbers of dwellings which can be constructed on a parcel.

This writers experience in dealing with more than one residence on a parcel has shown that second dwellings are usually constructed to house relatives. Due to the fact that constructing additional dwellings on a single parcel of land usually hinders the sale of the property, most residents are quite prudent about deciding to build more than one. Regardless, in order to protect the rural character of the area, the Rural Maintenance Bylaw will allow for two dwellings to be constructed on one parcel provided that the property is over two acres in area. This regulation will apply to both Rural District I and II. Parcels within the Agricultural Land Reserve, of course, are only allowed one house per parcel except that where permitted by the Agricultural Land Commission.

c. Yards and Setbacks

Table 2 notes there is one provincial Act which regulates these standards. Section 4.01 of the Highway Act prohibits the "placing of a building within a distance of fifteen (15) feet from the property line fronting on any highway in an unorganized territory except that where a public lane or alley provides secondary access to the property the distance is reduced to ten

(10) feet". While it is not the intention to increase standards which are already established, it is felt that in the name of "future planning", the Highway Act requirements are not stringent enough. In many cases, rural roads are only 50 feet wide and with a 15 foot setback from the dwelling to the property line, it can hardly provide enough room for future widening without hampering the usefulness of the dwelling. For this reason, in both Rural District I and II a setback of 25 feet from any highway is proposed. As well, for the convenience of future subdivision and possibly increased densities, there is a "good neighbor" setback of 10 feet on the side lot lines for dwelling units.

d. Site Coverage

There is one provincial Act which limits the site coverage on a parcel of land. Table 2 shows that the Health Act can limit site coverage, but it does so in a round about way. What this means is that the area consumed by buildings can be limited only by the amount of ground necessary for an adequate absorption field when there is no community sewer in the area.

Realistically, when dealing with rural areas where lots are generally large, it is felt that there is no need to incorporate this standard into the Rural Maintenance Bylaw. Experience has shown that most problems concerning site coverage take place in urban areas where lots are smaller.

e. Height Limitations

Table 2 indicates that there are no provincial Acts regulating the height of structures. The regulation is primarily designed to ensure adequate light access to adjacent properties.

This is felt to be more of a concern in urban areas where lots are smaller. For this reason, no height limitations are included in the Rural Maintenance Bylaw.

f. Minimum Floor Area

The British Columbia Building Code, which is the same as the National Building Code, is shown on Table 2 as the only provincial regulation which controls this standard. While many zoning bylaws establish minimum floor areas for dwellings, it is felt that the requirements legislated under the Building Code are adequate. In urban areas where houses are more closely situated, there may be a need for dwellings to be of similar size that an adjacent large house would not be devalued. However, in rural areas where there are large lots, this is not felt to be of major concern. Therefore, the Rural Maintenance Bylaw does not contain regulations governing the minimum floor area.

In areas such as Electoral Area 'G', where there is no building bylaw and thus, no building inspection, it is left to the individual to comply with the National Building Code.

g. Signs

The regulation of signs falls under the jurisdiction of the Provincial Motor Vehicle Act. Section 213 (4) and (5), of the Act, "prohibits the erection of any sign within 300 metres from the boundary line of a highway in the rural areas of the province without the written consent of the Minister of Highways and Transportation or a person authorized by him".

Some Regional Districts incorporate sign regulations into the standards section of their zoning bylaws. For the purposes of the rural Maintenance Bylaw, regulations concerning signs will

not be included. The reason is that, most signs that would typically be found in a rural area are allowed. Problems can be foreseen with commercial signs, however, a developer would normally be apprised of the provincial sign regulations when he applies for an access permit for a business use. In an effort to minimize confusion, it is better that a provincial government agency regulate signs so that continuity can be maintained throughout the province.

h. livestock

To protect adjacent property owners from obnoxious smells, the Rural Maintenance Bylaw proposes that shelter and cages for livestock be setback from the property lines a distance of twenty-five feet in both Rural district I and II. It will also require that all livestock be properly caged and housed. This would only seem fair to adjacent property owners.

i. Parking

As noted in Table 2, parking requirements are legislated under the Local Services Act. Section 4.15 requires that it be possible to accommodate two vehicles on every parcel in a proposed subdivision. One weakness of this regulation is that it is only applicable when a parcel is being subdivided. It does not affect parcels that are being developed without subdivision.

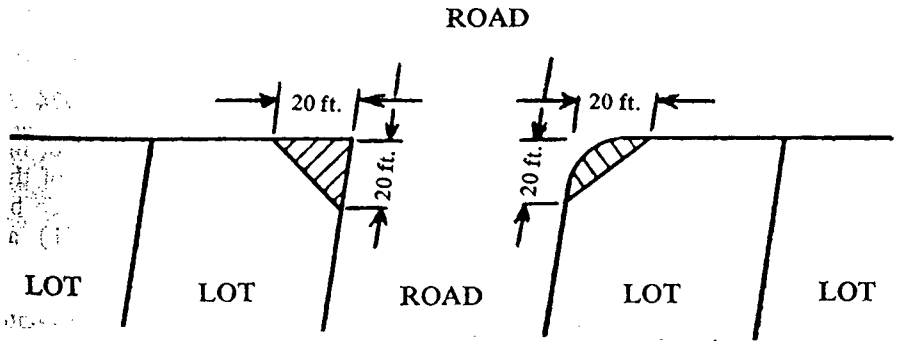
Most zoning bylaws expand on these regulations to include parking requirements for all uses including commercial and multi-family residential developments. But, even though these regulations exist they are very difficult to enforce. After all, if it is more convenient to park on the road, that's where people will park.

As for the Rural Maintenance Bylaw, no parking regulations are proposed beyond what already exist in the Local Services Act. There are two reasons for this, first, the Rural Maintenance Bylaw is designed to govern a rural area where lots are larger and an access can usually be found on all parcels which will meet the Local Services Act requirements. Realistically, only a few people would ever build a structure on a large lot without any access off a roadway. Secondly, if a commercial or multi-family use is ever applied for, it would have to be approved by conditional zoning which would take the parking requirements into consideration.

j. Fencing

Table 2 notes that fencing regulations can be found in two provincial Acts. The Agricultural Land Commission can impose fencing restrictions in their approvals. Section 15 (2) of the Act authorizes the Land Commission to impose terms on the use of the agricultural land when it is not being used for farm use. Of course, this only applies to lands which are governed by the Agricutural Land Commission Act.

The other provincial regulation governing fencing is found in the Highway Act. As noted in a previous chapter, section 4.03, of the Act, prohibits the placing of a fence "within horizontal dimension exceeding two (2) feet within the site triangle above an elevation such that an eye three (3) feet above the surface elevation of one highway cannot see an object three (3) feet above the surface elevation of the other highway". The following diagram taken from the Highway Act illustrates what is meant by the above regulation.



Often, zoning bylaws expand upon these regulations by limiting the height of a fence to 6 feet overall and 4 feet along the front yard line and back to 25 foot along the side lot lines.

The Rural Maintenance Bylaw does not proposes any fencing restrictions. In rural areas, where large lots are the norm, there is no need to impose further restrictions above and beyond what already exist in the Highway Act.

k. Floodplain Regulations

Table 2 indicates that floodplain regulations are provincially legislated in the Local Services Act and the Land Title Act. It also notes that these regulations may only be imposed at the time of subdivision. As alluded to in the analysis of the planners statement about development on hazard lands, the Ministry of Environment can impose floodplain regulations in the form of a restrictive covenant on lands being subdivided. In areas where there is no zoning, and development is taking place without subdivision, structures may be built without regard to any floodplain regulations.

Most zoning bylaws include a section on floodplain regulations so that all new structures, must conform to the floodplain requirements. An example of such regulations is found

in Appendix D, the General Requirements Section, which include the floodplain regulations found in all the Regional District of Okanagan-Similkameen Electoral Area Zoning Bylaws.

As it is felt that flooplain regulations play an integral part in the promotion of a safe environment, it is proposed that they be included in the Rural Maintenance Bylaw. The floodplain regulations in the Sample Rural Maintenance Bylaw are the same as those found in all Regional District of Okanagan-Similkameen Zoning Bylaws.

1. Wrecked Cars

The only provincial regulation to control the storing of wrecked cars is the British Columbia Agricultural Land Commission Act. Section 15 (2) of the Act, empowers the Commission to control the use of agricultural lands.

Zoning bylaws often include sections governing the use of land for the wrecking or storing of derelict automobiles. These regulations are incorporated into the zoning bylaws to protect adjacent property owners from having to live next to an unsafe and unsightly premises.

The Rural Maintenance Bylaw proposes to implement similar regulations. Experience has shown that derelict cars on properties raise the ire of adjacent property owners in both urban and rural areas.

4.5 METHOD OF PROCESSING CONDITIONAL ZONING

The method of processing the conditional zoning application will not vary significantly from that used for processing the development permit or standard rezoning.

The application form will require that the developer provide both a written description of the proposed development along with a site plan. Applications to amend the minimum lot size within the rural District II would have to include a site plan showing the location of proposed lot lines as is normally required for a subdivision application.

The application would then be processed by Regional District staff and forwarded in bylaw form to the Regional Board for first reading. If the Board feels the proposal has merit or is interested in determining its feasibility, they will give it first reading. The bylaw will then be distributed to other government agencies who may have an interest. By the time the next board meeting takes place, the government agencies will have responded. If the proposed use is totally opposed by the government agencies, the Regional Board may decide to deny the rezoning at this point. If the comments are somewhat favorable and the Board is interested in obtaining public input, they will give the bylaw second reading and set a date for a public hearing. It is at this point in the conditional zoning process that public participation becomes a key factor. Copies of the bylaw, including details of the development, would be mailed to adjacent property owners and other interested parties. Notices would be placed in the appropriate newspapers in the manner required by section 720 of the Municipal Act including a map so that all interested parties will clearly understand the location of the proposed rezoning. This procedure is currently not required by the Municipal Act. It is felt that if maps were required, more people would understand the whereabouts of the property and respond accordingly. The elected director for the area in which the proposal is located would ask his Advisory Planning Commission for comments and recommendations. In all it is hoped that all interested parties will be informed of the proposal so that their input can be obtained.

The public hearing would focus on two main issues. The first would be to determine the public acceptance of the proposal. Secondly, any objections would be classified into two types;

a) those which could be resolved by applying conditions such as buffers, setbacks and the like, or

b) those which cannot be resolved through the implementation of conditions.

If most of the opposition could not be resolved by special conditions and were voiced by adjacent property owners, then the bylaw would probably be denied. If, however, most of the objections were of the type which could be resolved by special conditions, then the planner would negotiate a solution. It is at this point that the conditional zoning technique truly comes into play. For the bylaw, as negotiated by the planner with all concerned, would be presented to the Regional Board for third reading. The developer would then have to agree to the development package prior to final adoption.

It is felt that the process would proceed smoothly because the developer would be involved in the negotiation process from the start. In this way, he would be aware of the special conditions and the reasons for them.

While it is felt that the Ministry of Municipal Affairs plays an important role in providing continuity on zoning matters throughout the province, it is not neccessary for them to be involved beyond the initial contact after first reading. Therefore, they would simply be sent a copy of the final bylaw so that they are kept abreast of the rezoning taking place throughout the province.

4.6 POLICING THE ATLERNATIVE

The policing of a conditional rezoning of a prohibited use is

essential for the Rural Maintenance Bylaw to succeed as a positive and flexible land use control. Therefore, in areas where there is no building inspection, such as in Electoral Area 'G', it would be necessary that the construction of structures on parcels which have been conditinally rezoned or are in a floodplain, be policed by a Regional District building inspector. This would ensure that all aspects of the conditional rezoning are adhered to.

Construction of structures of land uses which are not on the list of prohibited uses or are not in floodplain areas would not be subject to policing by the building inspector. Unless, of course, the area residents wanted building inspection and adopted a building bylaw.

4.7 THE UNCERTAINITY CREATED BY THE ALTERNATIVE

While a list of prohibited uses is felt to be more applicable to rural areas than a list of permitted uses, its legal certainty can be called into question. A list of permitted uses ensures the public that those uses and no others will be allowed. While a list of prohibited uses does not provide the same kind of certainty, it does provide a sufficient degree of certainty. For example, the public will know that the undesirable uses on this list will only be allowed if conditions, which they help establish, are agreed to by the developers.

4.8 REVIEW OF THE ALTERNATIVE

The alternative should be reviewed periodically with a view towards increasing land use regulations if development pressures warrant it.

Rather than reviewing on specific time periods such as every five years, it would seem sensible to simply have the regional planners monitor the growth of development and initiate changes when necessary.

4.9

SAMPLE

RURAL MAINTENANCE BYLAW

RURAL DISTRICT I

(1) PURPOSE:

To provide development control regulations which ensure the safe, healthy and convenient development of Electoral Area 'G'.

(2) PROHIBITED USES;

The following uses are prohibited unless specifically approved by Conditional zoning.

(a) Amusement Parks
(b) Dude Ranches
(c) Horse and Auto Racing Circuits
(d) Riding Academies
(e) Commercial Kennels
(f) Mink Farms
(g) Feedlots
(h) Piggeries or other non-agricultural, product-based operations
(i) Multi-family Dwellings
(j) Mobile Home Parks
(k) Motels
(l) Hotels
(m) Resorts
(n) Campsites
(o) Service Stations
(p) Restaurants
(q) Retail Stores
(r) Commercial or Professional Business Offices
(s) Museums
(t) Industries with over 10,000 square feet of floor area
(u) Industries which are obnoxious by reason of smoke, fumes, dust, vibration, noise or odour
(v) Automobile Wrecking and Storage Yards
(w) Industrial uses on parcels over 2 acres in area

(3) STANDARDS

Every use of land and every building or structure in the Electoral Area shall comply with the provisions of Subsections (4) to (9) inclusive.

(4) MINIMUM SITE AREA AND MINIMUM SITE WIDTH:

(a) Where both an approved community or municipal water system and a municipal sewage collection system are provided, the minimum site area shall be Seven Thousand and Five Hundred (7,500) square feet and the minimum site width shall be Fifty (50) feet;

(b) Where an approved community or municipal water system is provided, but a municipal sewage collection system collection system is not provided, the minimum site area shall be Nine Thousand (9,000) square feet and the minimum site width shall be Seventy (70) feet;

(c) Where neither an approved public water system nor a community or municipal sewage collection system is provided , the minimum site area shall be Eighteen Thousand (18,000) square feet and the minimum site width shall be Seventy (70) feet.

(d) Lots created prior to the adoption of this Bylaw, regardless of area or dimensions, may be used provided the method by which sewage is disposed of is satisfactory to the Medical Health Officer.

(e) Notwithstanding the above, where permission for a HOMESITE SERVERENCE has been granted by the British Columbia Agricultural Land Commission, the area and dimensions of such HOMESITE shall be as permitted by the Commission.

(5) BUILDINGS PER LOT:

(a) A maximum of two (2) dwelling units on each parcel over two (2) acres in area.

(6) YARDS, SETBACKS:

(a) On any lot or site, dwelling units shall be twenty-five (25) feet from the front yard line and ten (10) feet from any side lot line.

(b) All buildings housing livestock shall be setback twenty-five (25) feet from any property line.

(7) LIVESTOCK:

(a) All livestock other than household pets shall be properly caged and housed.

(8) WRECKED CARS:

(a) No parcel shall be used for the wrecking or storage of derelict automobiles or as a junk yard.

(9) FLOOD CONTROLS:

(a) Notwithstanding any other provisions of this Bylaw, on floodable land no building or any part thereof shall be constructed, reconstructed, moved or extended nor shall any mobile home or unit, modular home or structure be located;

(i) within seven point five (7.5) metres of the natural boundary of a lake, swamp or pond;

within thiry (30) metres of the natural boundary of the Similkameen or Tulameen Rivers;

within thirty (30) metres of the design water level boundary of the Okanagan River channel;

within fifteen (15) metres of the natural boundary of any other nearby watercourse;

(ii) with the underside of the floor system of any area used for habitation, business, or storage of goods damageable by floodwaters, or in the case of a mobile home or unit the ground level on which it is located: lower than zero point six (0.6) metres above the 200 year flood level where it have been determined by, or to the satisfaction of, the Ministry of Environment;

nor lower than three (3) metres above the natural boundary of the Similkameen or Tulameen Rivers;

nor lower than one point five (1.5) metres above the design water surface profile of the Okanagan River channel;

nor lower than one point five (1.5) metres above the natural boundary of any other watercourse, lake, swamp or pond, with the exception of Okanagan, Osoyoos, Skaha, Tug ul Nuit and Vaseux Lakes, where the minimum elevation at which a building may be constructed or mobile unit located shall be:

Okanagan Lake	343.66 metres G.S.C. datum
Osoyoos Lake	280.70 metres G.S.C. datum
Skaha Lake	339.24 metres G.S.C. datum
Tug ul Nuit Lake	299.50 metres G.S.C. datum
Vaseux Lake	329.49 metres G.S.C. datum

(b) Clause (a) (ii) shall not apply to:

(i) a renovation of an existing building or structure used as a residence that does not involve an addition thereto:

(ii) that portion of a building or structure to be used as a carport or garage;

(iii) farm buildings other than dwelling units and closed-sided livestock housing. Farm dwelling units on parcel sizes 8.1 hectares or greater and within the Agricultural Land Reserve are exempted from the requirements of Clause (b) (ii) but if in a floodable area shall be elevated one (1) metre above the natural ground elevation. Closed-sided livestock housing behind 1 in 200 year standard dykes as approved by the Ministry of Environment is exempted from the requirement to floodproof but if not behind 200 year standard dykes shall also be elevated on (1) metre above the natural ground elevation;

(iv) light or heavy industrial development which is required to floodproof to an elevation zero point six (0.6) metres less than

the Flood Construction Level as determined by the Ministry of Environment;

(v) heavy industry behind 1 in 200 year standard dykes as approved by the Ministry of Environment. Heavy industry includes such uses as manufacturing or processing of wood and paper products, metal, heavy electrical, non-metalic mineral products, petroleum and coal products, industrial chemicals and by-products and allied products;

(vi) the required elevation may be achieved by structural elevation of the said habitable, business, or storage area or by adequately compacted landfill on which any building is to be constrcted or mobile home located, or by a combination of both structural elevation and landfill.

Where landfill is used to achieve the required elevations stated in Clause (b)(ii) above, no portion of the landfill slope shall be closer than the distances in Clause (b)(i) from the natural boundary, and the face of the landfill slope shall be adequately protected against erosion from floodwaters.

Provided that, with the approval of the Deputy Minister of Environment, or his designate to ensure that adequate protection from flood or erosion hazard is provided, these requirements may be reduced.

RURAL DISTRICT II

(1) PURPOSE:

To provide development control regulations which ensure the safe, healthy and convenient development of Electoral Area 'G'.

(2) PROHIBITED USES;

The following uses are prohibited unless specifically approved by Conditional zoning.

(a) Amusement Parks
(b) Dude Ranches
(c) Horse and Auto Racing Circuits
(d) Riding Academies
(e) Commercial Kennels
(f) Mink Farms
(g) Feedlots
(h) Piggeries or other non-agricultural, product-based operations
(i) Multi-family Dwellings
(j) Mobile Home Parks
(k) Motels
(l) Hotels
(m) Resorts
(n) Campsites
(o) Service Stations
(p) Restaurants
(q) Retail Stores
(r) Commercial or Professional Business Offices
(s) Museums
(t) Industries with over 10,000 square feet of floor area
(u) Industries which are obnoxious by reason of smoke, fumes, dust, vibration, noise or odour
(v) Automobile Wrecking and Storage Yards
(w) Industrial uses on parcels over 2 acres in area

(3) STANDARDS

Every use of land and every building or structure in the Electoral Area shall comply with the provisions of Subsections (4) to (9) inclusive.

(4) MINIMUM SITE AREA AND MINIMUM SITE WIDTH:

(a) Unless revised by a Conditional Zoning, the minimum site area shall be fifty (50) acres and the minimum site width shall be one thousand (1,000) feet.

(b) Lots created prior to the adoption of this Bylaw, regardless of area or dimensions, may be used provided the method by which sewage is disposed of is satisfactory to the Medical Health Officer.

(c) Notwithstanding the above, where permission for a HOMESITE SEVERENCE has been granted by the British Columbia Agricultural Land Commission, the permitted area and dimensions of such HOMESITE shall be as permitted by the Commission.

(5) BUILDINGS PER LOT:

(a) A maximum of two (2) dwelling units on each parcel over five (5) acres in area.

(6) YARDS, SETBACKS:

(a) On any lot or site, dwelling units shall be twenty-five (25) feet from the front yard line and ten (10) from any side lot line.

(b) All buildings housing livestock shall be setback twenty-five (25) feet from any property line.

(7) LIVESTOCK:

(a) All livestock other than household pets shall be properly caged and housed.

(8) WRECKED CARS:

(a) No parcel shall be used for the wrecking or storage of derelict automobiles or as a junk yard.

(9) FLOOD CONTROLS:

(a) Notwithstanding any other provisions of this Bylaw, on floodable land no building or any part thereof shall be constructed, reconstructed, moved or extended nor shall any mobile home or unit, modular home or structure be located;

(i) within seven point five (7.5) metres of the natural boundary of a lake, swamp or pond;

within thiry (30) metres of the natural boundary of the Similkameen or Tulameen Rivers;

within thirty (30) metres of the design water level boundary of the Okanagan River channel;

within fifteen (15) metres of the natural boundary of any other nearby watercourse;

(ii) with the underside of the floor system of any area used for habitation, business, or storage of goods damageable by floodwaters, or in the case of a mobile home or unit the ground level on which it is located: lower than zero point six (0.6) metres above the 200 year flood level where it have been determined by, or to the satisfaction of, the Ministry of Environment;

nor lower than three (3) metres above the natural boundary of the Similkameen or Tulameen Rivers;

nor lower than one point five (1.5) metres above the design water surface profile of the Okanagan River channel;

nor lower than one point five (1.5) metres above the natural boundary of any other watercourse, lake, swamp or pond, with the exception of Okanagan, Osoyoos, Skaha, Tug ul Nuit and Vaseux Lakes, where the minimum elevation at which a building may be constructed or mobile unit located shall be:

Okanagan Lake	343.66 metres G.S.C. datum
Osoyoos Lake	280.70 metres G.S.C. datum
Skaha Lake	339.24 metres G.S.C. datum
Tug ul Nuit Lake	299.50 metres G.S.C. datum
Vaseux Lake	329.49 metres G.S.C. datum

(b) Clause (a) (ii) shall not apply to:

(i) a renovation of an existing building or structure used as a residence that does not involve an addition thereto:

(ii) that portion of a building or structure to be used as a carport or garage;

(iii) farm buildings other than dwelling units and closed-sided livestock housing. Farm dwelling units on parcel sizes 8.1 hectares or greater and within the Agricultural Land Reserve are exempted from the requirements of Clause (b) (ii) but if in a floodable area shall be elevated one (1) metre above the natural ground elevation. Closed-sided livestock housing behind 1 in 200 year standard dykes as approved by the Ministry of Environment is exempted from the requirement to floodproof but if not behind 200 year standard dykes shall also be elevated on (1) metre above the natural ground elevation;

(iv) light or heavy industrial development which is required to floodproof to an elevation zero point six (0.6) metres less than the Flood Construction Level as determined by the Ministry of Environment;

(v) heavy industry behind 1 in 200 year standard dykes as approved by the Ministry of Environment. Heavy industry includes such uses as manufacturing or processing of wood and paper products, metal, heavy electrical, non-metalic mineral products, petroleum and coal products, industrial chemicals and by-products and allied products;

(vi) the required elevation may be achieved by structural elevation of the said habitable, business, or storage area or by adequately compacted landfill on which any building is to be constrcted or mobile home located, or by a combination of both structural elevation and landfill.

Where landfill is used to achieve the required elevations stated in Clause (b)(ii) above, no portion of the landfill slope shall be closer than the distances in Clause (b)(i) from the natural boundary, and the face of the landfill slope shall be adequately protected against erosion from floodwaters.

Provided that, with the approval of the Deputy Minister of Environment, or his designate to ensure that adequate protection from flood or erosion hazard is provided, these requirements may be reduced.

5.0 CONCLUSION

This chapter is intended to reflect on this study and the alternatives it proposes. The first part outlines a number of limitations of the study. The second part discusses the limitations of the alternative. Part three discusses the validity of the alternative.

5.1 LIMITATIONS OF THE STUDY

One of the primary limitations of the study is found in Chapter two, the "Analysis of Statements", where it is acknowledged that an indepth investigation into each statement may have yielded more complete information. For example, detailing the costs of servicing sprawl in the study area could have provided actual dollar figures. Or, a more technically precise method of analyzing the spatial relationships of the undesirable land uses in the Okanagan Falls area compared to the Keremeos Area may have provided more depth to the study. However, in defence of the methods which were used, it must be emphasized that insight into the general trends was all that was desired. If an indepth analysis using more sophisticated methods were utilized the examination of each of the statements, could have been a major research project in itself.

Another limitation is the extent of the writers planning experience. Using the experience gained as a Planning Technician in just one Regional District has limited the writers insights on how zoning is viewed, used and abused in only one area of the province. If, for example, the writer had had experience in both public and private planning positions, in various parts of the province, a more wholistic perception of zoning may have been acquired. This may have resulted in a more favourable view of the present system, however, this was not the case.

5.2 LIMITATIONS OF THE ALTERNATIVE

As the literature review of the zoning bylaw alternatives has shown, there are limitations found in any land use control. The Rural Maintenance Bylaw is no different.

The problems and concerns expressed by rural residents in the study area are taken as representative of those experienced in other rural areas. Perhaps, if the writer had been employed at the Ministry of Municipal Affairs where planning is seen on a province-wide scale, a broader perspective may have been gained and a different alternative proposed.

Another limitation is that the proposal has not been tested. A written description of the alternative leaves the reader with the sense that the alternative is plausible. However, it is only when it is tested in a real life situation that its true value will be known. The success or failure of any land use control technique is largely dependant on the reception it receives from the politicians and the public. It is hoped that this alternative will be taken through that process in order to ascertain its potential.

5.3 THE VALIDITY OF THE PROPOSED ALTERNATIVE

This study has tried to address the concerns expressed by both the Regional Planners and the rural residents. In doing so, an alternative land use control technique has been developed. It contains a number of features which give it the potential to be a more appropriate land use control than the Standard zoning methods presently used in the province.

Two significant features of this technique are its strength. Firstly, the list of prohibited uses (all others being permitted) with the proviso than even these uses could be acceptable, gives the bylaw a positive appearance. It is felt that in a regulatory situation, a positive perspective is perhaps the most one can hope to achieve.

Secondly, and perhaps the feature which above all else makes this a worthwhile alternative is the conditional zoning technique. It provides a solution to many of the complaints which are heard time and time again about standard zoning. Under this proposal, the developer has the flexibility to create a development which is not restricted by the stringent regulations found in a Standard Zoning District. For the residents, it encourages participation in the development process of their area. Too often we hear disgruntled residents complain that they have little say over the development of their area. The conditional zoning technique encourages these residents to become involved in the process. For the Planner, it requires that he get involved in the grass roots level of planning. In other words, it requires that he get out of his office into the rural areas to meet with developers and residents alike to try and negotiate the best possible development for future generations.

This alternative should be considered as a potentially viable land use control technique, designed with the needs and desires of rural British Columbians in mind. If nothing else, it should be considered as an idea deserving of objective examination by fellow planners, politicians and the public.

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APPENDIX A

REGIONAL DISTRICT OF OKANAGAN-SIMILKAMEEN

BYLAW NO. 688

BUILDING BYLAW

A Bylaw for the administration and enforcement of the building code.

WHEREAS Section 740 of the Municipal Act provides that the regulations made thereunder and the building code established thereby apply to the Regional District of Okanagan-Similkameen.

Now therefore, the Board of the Regional District of Okanagan-Similkameen in open meeting assembled enacts as follows:

1. TITLE

This Bylaw may be cited for all purposes as the "Regional District of Okanagan-Similkameen Building Bylaw No. 688, 1982".

2. DEFINITIONS

In this Bylaw,

"agent" includes a person, firm, or corporation representing the owner, by designation or contract, and interalia includes a hired tradesman and contractor who may be granted permits for work within the limitations of his licence.

"authority having jurisdiction" means the Regional District Board and the agent thereof that have authority over the subject that is regulated.

"building code" means the building code established by the regulations made under Section 740 of the Municipal Act.

3. APPLICATION

(1) The provisions of this Bylaw apply to that portion of the Regional District of Okanagan-Similkameen contained within Electoral Areas A,B,C,D,E,F and H, and more precisely as described in the Letters Patent, as amended, incorporating said District:

(2) Except as otherwise provided in Subsection (3) of this Section, where

(a) A building is built, this Bylaw applies to the design and construction of the building.

(b) The whole or part of a building is moved, either into or from the Electoral Area or from one property to another within the Electoral Area, this Bylaw applies to the building or part thereof moved and to any remaining part affected by the change.

(c) The whole or part of a building is demolished, this Bylaw applies to the demolition and to any remaining part affected by the change.

(d) A building is altered, this Bylaw applies to the alterations, and to all parts of the building affected by the change.

3. (2) continued

(e) Repairs are made to a building, this Bylaw applies to such repairs.

(f) The class of occupancy of a building or part thereof is changed, this Bylaw applies to all parts of the building affected by the change.

(3) (a) This Bylaw does not apply to farm buildings other than those used as residential buildings on land classified as Farmland by the Provincial Assessor.

(b) This Bylaw does not apply to minor non-structural alterations valued at less than One Thousand Dollars ($1,000.00) as described by the Building Inspector, made to buildings used or intended for

(i) single family houses;

(ii) private garages or residential accessory buildings;

(iii) agricultural or horticultural purposes;

(iv) animal raising; or

(v) pountry raising.

(c) This Bylaw does not apply to repairs made to buildings used or intended for

(i) single family houses;

(ii) private garages or residential accessory buildings;

(iii) agricultural or horticultural purposes;

(iv) animal raising; or

(v) pountry raising.

(d) This Bylaw does not apply to buildings on a mining property as defined in the Mineral Act, except that the Bylaw applies to buildings on a mining property used or intended for housing or residential accommodation of persons.

(4) Swimming Pools

(a) "Pool" includes any artificial pool in which the depth of water could attain at least sixty (60) centimeters which is intended for recreational use.

(b) Public pools shall conform to those mandatory provisions of the B.C. Provincial Regulations-289/72 Health Act-Governing Swimming Pools, the Zoning Bylaws of the Regional District, and the regulations of this Bylaw; in case of design variance, the aforementioned mandatory provisions of the B.C. Provincial Regulations shall apply.

(c) Private pools shall conform to the regulations of this Bylaw and the Zoning Bylaws of the Regional District.

3. (4) continued

(d) Construction permits are required in accordance with the provisions of this Bylaw.

(e) Construction shall meet the structural requirements of the Building Bylaw of the Regional District, to withstand all forces anticipated:

(i) provide fencing or equivalent barrier in a manner so that unsuspecting persons or small children cannot obtain entrance into the pool area, also being provided with a gate closure and latch;

(ii) the pool floor shall have a slope not greater than thirty (30) centimeters in two point four (2.4) meters where the water depth is less than one point zero five (1.05) meters. The pool basin shall be a light colour.

(iii) At no time to create a public health nuisance.

4. RESPONSIBILITY OF OWNER

Neither the granting of a permit nor the approval of the drawings and specifications, nor inspections made by the Building Inspector during the erection of the building shall, in any way, relieve the owner of such building from full responsibility for carrying out the work in accordance with the requirements of this Bylaw.

5. PROHIBITION

(1) No person shall commence or continue any part of the work referred to in Subsection (2) of Section 3 unless a building permit has been obtained.

(2) The written approval of the Building Inspector shall be obtained before:

(a) the placing or pouring of any concrete;

(b) a foundation below land surface is backfilled or covered;

(c) the structural framework of a building or structure is covered or concealed.

6. PERMITS

(1) Where:

(a) an application has been made, and

(b) the proposed work set out in the application conforms to this Bylaw and all other applicable bylaws,

the Building Inspector shall issue the permit for which the application is made.

(2) The application referred to in Subsection (1) of Section 5 shall:

(a) be made on the form prescribed by the Building Inspector;

6. (2) continued

(b) be signed by the applicant;

(c) state the intended use of the building;

(d) include copies in triplicate of the specifications and scale drawings of the building with respect to which the work is to be carried out showing -

(i) the dimensions of the building;

(ii) the proposed use of each room or floor area;

(iii) the dimensions of the land on which the building is, or is to be, situated;

(iv) the grades of the streets abutting the land referred to in Subclause (iii);

(v) the position, height, and horizontal dimensions of all buildings on the land referred to in Subclause (iii); and

(e) contain any other information required by this Bylaw or by the Building Inspector.

(3) The schedule of fees to be charged for the issuance of a permit under this Bylaw is as follows:

(a) A fee of Ten Dollars ($10.00) for the first One Thousand Dollars ($1,000.00) or fraction thereof of the estimated value of the work covered by the permit, and Three Dollars ($3.00) for each additional One Thousand Dollars ($1,000.00) or fraction thereof of the estimated value of the work covered by the permit up to an estimated value of Fifty Thousand Dollars ($50,000.00); and One Dollar ($1.00) for each One Thousand Dollars ($1,000.00) or fraction thereof of the estimated value of the work in excess of Fifty Thousand Dollars ($50,000.00). The estimated value of the work shall be determined by the Building Inspector;

(b) A fee of Five Dollars ($5.00) for moving a building;

(c) A fee of Two Dollars ($2.00) for each plumbing fixture up to ten (10) fixtures and One Dollar ($1.00) per fixture after the first ten (10) fixtures.

(4) Every permit is issued upon the condition that:

(a) construction is to be started within six (6) months from the date of issuance of the permit;

(b) construction must proceed in a diligent manner and be completed within eighteen (18) months of the date of issuance of the permit - otherwise the permit becomes null and void;

(c) the exterior of any building shall be finished in durable, weather-resistant materials prior to employment in the particular use for which the building is intended. Prior to occupancy of the building, an occupancy permit must be obtained from the Building Inspector.

6. continued

(5) A permit shall not be issued where, in the opinion of the Building Inspector, the results of the tests referred to in Clause (b) of Subsection (1) of Section 8 are not satisfactory.

(6) Where a single storey residential building having a floor area of less than forty-six (46) square meters to be placed or erected on the land will be occupied only as seasonal accommodation for temporary farm help engaged in farming on the land owned or leased for farm purposes, the owner of the land or his authorized agent may make application for a Building Permit Exemption Certificate and upon issuance, the provisions of this Bylaw shall not apply to such building during such use.

7. DOCUMENTS ON THE SITE

(1) The person to whom the permit is issued shall, during construction, keep

(a) posted in a conspicuous place on the property, in respect of which the permit was issued, a copy of the building permit or a poster or placard approved by the Building Inspector in lieu thereof; and,

(b) a copy of the approved drawings and specifications referred to in Clause (d) of Subsection (2) of Section 6, on the property in respect of which the permit was issued.

8. POWERS OF THE BUILDING INSPECTOR

(1) The Building Inspector may:

(a) enter any premises at any reasonable time for the purpose of administering this Bylaw;

(b) direct that tests of materials, devices, construction methods, structural assemblies or foundation conditions be made, or sufficient evidence or proof be submitted at the expense of the owner, where such evidence or proof is necessary to determine whether the material, devices, construction or foundation meets the requirements of this Bylaw. The records of such tests shall be kept available for inspection during the construction of the building and for such a period thereafter as required by the Building Inspector;

(c) direct by written notice, or by attaching a placard to premises, the correction of any condition where, in the opinion of the Building Inspector, such condition violates the provisions of this Bylaw;

(d) revoke a permit where there is a violation of the provisions of Subsection (4) of Section 5.

9. PENALTY

(1) Any person who contravenes any provision of this Bylaw is guilty of an offence punishable by way of summary conviction.

(2) Each day during which such contravention is continued shall be deemed to constitute a new and separate offence.

10. CLIMATIC DATA

When climatic data is required for the design of buildings, it shall be the data provided by the following table:

		ELECTORAL AREA			APPLY TO B.C BUILDING CODE 1980.
		A,B,C	D,E,F	H	
1.	January 2½% Design Temperature	-16°C	-16°C	-27°C	2.3.1.1.
2.	January 1% Design Temperature	-18°C	-18°C	-30°C	2.3.1.1.
3.	July 2½% Design Drybulb Temperature	33°C	33°C	32°C	2.3.1.1.
4.	July 2½% Design Wetbulb Temperature	20°C	20°C	20°C	2.3.1.1.
5.	Annual Total Degree-days below 18°C	3295	3513	4554	2.3.1.1.
6.	Maximum Fifteen Minute Rainfall	10mm	10mm	10mm	2.3.1.1.**
7.	Maximum One Day Rainfall	35mm	45mm	37mm	2.3.1.1.
8.	Annual Total Precipitation	342mm	296mm	359mm	2.3.1.1.
9.	Maximum Snow Load on the Ground (KN/M^2)	1.4	1.3	2.3	2.3.1.1.
10.	Wind Effects: Probability 1/10 (KN/m^2)	.30	.40	.24	2.3.1.1.
	" 1/30 "	.43	.50	.32	2.3.1.1.
	" 1/100 "	.59	.68	.42	2.3.1.1.
11.	Seismic Zone	Zone 1	Zone 1	Zone 1	2.3.1.1.
12.	Horizontal Design Ground Acceleration (A)	.02	.02	.02	2.3.1.1.

** B.C. Plumbing Code, 1980.

11. The following Bylaws are hereby repealed:

RDOS Building Bylaw No. 265, 1975.
RDOS Building Bylaw No. 265, Amendment Bylaw No. 326, 1976.
RDOS Building Bylaw No. 265, Amendment Bylaw No. 389, 1977.
RDOS Building Bylaw No. 544, 1980.

APPENDIX B

Province of
British Columbia

OFFICE OF THE
DEPUTY MINISTER

Ministry of the
Environment

Parliament Buildings
Victoria
British Columbia
V8V 1X4

April 11, 1983

Our File: 0305030-22
Your File: 24-21-78(1348)

Ministry of Transportation
& Highways,
380 Cherry Avenue,
Penticton, British Columbia.
V2A 3L7

Attention: District Highways Manager

Dear Sir:

Re: Proposed Subdivision of Part of DL. 392, SDYD - Similkameen River

This letter is in reply to your correspondence of December 17, 1982.

Pursuant to Section 82(1) of the Land Title Act, consent is given for the approval of the above-mentioned plan of subdivision, subject to the subdivider entering into a covenant registrable under Section 215, which shall run with the land and shall effect the following conditions for each lot created, including any remainder of the property:

"1. Hereafter, no building shall be constructed, nor mobile home located within thirty (30) metres of the natural boundary of Similkameen River or within seven point five (7.5) metres of the landward toe of any dyke, whichever is the greater setback.

2. Hereafter, no area used for habitation, business, or storage of goods damageable by floodwaters shall be located within any building at an elevation such that the underside of the floor system thereof is less than 412.0 metres G.S.C. datum. In the case of a mobile home, the ground level or top of concrete or asphalt pad on which it is located shall be no lower than the above described elevation.

3. The required elevation may be achieved by structural elevation of the said habitable, business, or storage area or by adequately compacted landfill on which any building is to be constructed or mobile home located, or by a combination of both structural elevation and landfill. No area below the required elevation shall be used for the installation of furnaces or other fixed

. . . 2

APPENDIX C

Section 13 AGRICULTURAL/RESIDENTIAL DISTRICT (A-R)

(1) PURPOSE:

The purpose of this District is to establish an area which is in transition from agricultural use to low-density residential use, and to ensure that future development is in keeping with the prevailing land use.

(2) PERMISSIVE USES:

The following uses and no others shall be permitted in the A-R District:

(a) Agriculture, subject to the following:

(i) Except as provided by subclause (ii), on any lot or site of less than one-half (½) acre, only household pets are permitted and no horse, donkey, mule, hinny, cow, goat, sheep or pig shall be a household pet whether or not it is owned by occupants of the residence and not kept for remuneration, hire or sale;

(ii) On any lot or site, commercial kennels, stables, mink farms, feedlots, piggeries, or other similar service or non-agricultural, product-based operations shall be prohibited, save and except the raising of fowl, rabbits, and other small fur-bearing animals as a home occupation pursuant to the provisions of subclauses (i) to (v), inclusive, of clause (e) of subsection (2) of section 12;

NOTE: See Section 13 (11) (a) (i) - Livestock (Special provisions)

(iii) The processing, packing, and sale of agricultural produce grown on the same lot or site or land of the same ownership only shall be permitted.

(b) Single-family dwellings:

(c) Mobile homes provided they have a floor area of not less than seven hundred fifty (750) square feet and have a minimum width as originally designed and manufactured of not less than sixteen (16) feet and are placed on permanent foundations with full skirting blending in with the unit and subject to the provisions as outlined in subsection (11) of Section 12.

On sites of five acres or more in area, any mobile home or factory built unit home having a floor area of not less than four hundred and eighty (480) square feet, sited not less than twenty-five (25) feet from any property line, and in the case of mobile homes subject to the provisions of subsection (11) of Section 12.

(d) Picker's Cabins;

(e) Home occupations, subject to the provisions of clause (e) of subsection (2) of Section 12, provided that on any lot or site of less than one-half (½) acre, the area used for home occupations shall not exceed five hundred (500) square feet;

(f) Public or private schools, including kindergartens;

(g) Churches;

(h) Community halls;

(i) Public open-land recreational and institutional uses, including parks, playgrounds and cemeteries;

(j) Public service or utility buildings and structures, with no exterior storage of any kind and no garages for the repair and maintenance of equipment;

(k) Buildings and structures accessory to the uses permitted under clauses (a) to (i), inclusive.

(3) STANDARDS:

Unless otherwise specified, every use of land and every building or structure permitted in the A-R District shall comply with the provisions of subsections (4) to (11),inclusive, and section 28.

(4) MINIMUM SITE AREA and MINIMUM SITE WIDTH:

Amended by authority of Zoning Amendment Bylaw No. 384, 1977 adopted by the Regional Board, December 15, 1977.

(a) (i) Where both an approved community or municipal water system and a municipal sewage collection system are provided, the minimum site area shall be Six Thousand (6,000) square feet and the minimum site width shall be Fifty (50) feet;

(ii) Where an approved community or municipal water system is provided, but a municipal sewage collection system is not provided, the minimum site area shall be Nine Thousand (9,000) square feet and the minimum site width shall be Seventy (70) feet;

(iii) Where neither an approved public water system nor a community or municipal sewage collection system is provided, the minimum site area shall be Eighteen Thousand (18,000) square feet and the minimum site width shall be Seventy (70) feet.

(b) In the case of uses permitted under clauses (g) and (h) of subsection (2), the minimum site area shall be one-half (1/2) acre;

(c) In the case of uses permitted under clause (j) of subsection (2), the minimum site area shall be fifteen hundred (1,500) square feet and the minimum site width shall be twenty-five (25) feet;

(d) Lots created prior to the adoption of this Bylaw, regardless of area or dimensions, may be used for any of the permitted uses of the A-R District, provided the method by which sewage is disposed of is satisfactory to the Medical Health Officer.

(5) BUILDINGS PER LOT:

(a) Not more than one (1) single-family dwelling shall be permitted upon a lot, except that where the lot exceeds one-half (½) acre in area, or forms part of a site which exceeds one-half (½) acre in area, one (1) additional single-family dwelling or mobile home shall be permitted for each five (5) acres or fraction thereof of lot or site area in excess of one-half (½) acre, provided that any dwelling units in excess of two (2) on any lot or site shall be used solely to accommodate families engaged in agruculture on the same lot or site.

(b) Picker's cabins shall be limited to one (1) for each five (5) acres of lot or site area or land of the same ownership used for agricultural purposes.

(6) YARDS, SETBACKS:

(a) On any lot or site, principal buildings shall be set back from the front and rear lot lines a distance equal to the height of the building, or twenty-five (25) feet, whichever is greater, and not less than five (5) feet from an interior side lot line, fifteen (15) feet from an exterior side lot line, or twenty (20) feet from any other principal building on the lot.

(b) Accessory buildings shall be set back from the front lot line the distance specified or principal buildings in clause (a), and not less than three (3) feet from a rear lot line and interior side lot line, fifteen (15) feet from an exterior side lot line, and ten (10) feet from a principal building on the lot if detached from such building.

Replaced by authority of Bylaw No. 551, 1980 adopted by the Board August 21, 1980.

(c) Where there is no rear lane, no building or structure or part thereof shall be located within ten (10) feet of one side lot line, except that open, attached carports which provide through access to the rear yard may be located within five (5) feet of a side lot line.

(d) Notwithstanding clauses (b) and (c), all buildings and structures housing livestock shall be located a minimum distance of twenty-five (25) feet from any property line and forty (40) feet from any dwelling unit.

(e) In no case shall a building be located closer to a street centre line than fifty (50) feet.

(7) SITE COVERAGE:

(a) On any lot or site of less than one-half (1/2) acre, principal and accessory buildings together shall not occupy more than thirty (30) percent of the lot or site area.

(b) On any lot or site of one-half (1/2) acre or more, principal and accessory buildings together shall not occupy more than twenty-five (25) percent of the lot or site area.

(8) HEIGHT LIMITATION:

(a) On any lot or site of less than one-half (1/2) acre,

(i) principal buildings shall not exceed a height of thirty (30) feet;

(ii) accessory buildings shall not exceed a height of fifteen (15) feet.

(b) On any lot or site of one-half (1/2) acre or more, no building shall exceed a height equal to twenty-five (25) percent of the lot or site depth, or fifty (50) feet, whichever is less, except that in no case shall dwellings exceed a height of thirty (30) feet.

(c) On any lot or site, no fence shall be -

(i) more than six (6) feet in height for that portion of fence that does not extend beyond the minimum required front yard setback line on the lot or site; or

(ii) more than four (4) feet in height for that portion of fence that does extend beyond the minimum required front yard setback line on the lot or site.

(9) MINIMUM FLOOR AREA:

(a) No dwelling unit, factory built unit home or mobile home shall have a floor area of less than seven hundred fifty (750) square feet.

(b) No picker's cabin, other than a travel trailer used for such purpose, shall have a floor area of less than one hundred ninety-two (192) square feet nor more than four hundred eighty (480) square feet.

(10) SIGNS:

Subject to the Motor-Vehicle Act and the regulations made thereunder:

(a) No signs or advertising displays shall be permitted other than the following:

(i) those denoting a home occupation;

(ii) those denoting the name of the owner or the name or address of the property;

(iii) those advertising the sale or rental of property;

(iv) those advertising the sale of agricultural produce grown on the same lot or site or land of the same ownership;

(v) public utility and institutional signs,

provided that such signs shall not exceed six (6) square feet in area or eight (8) feet in length and shall be limited to one (1) for each street frontage upon which the lot or site abuts, except that on any lot or site of less than one-half (½) acre, signs listed under subclauses (i) and (ii) of this clause shall not exceed one and one-half (1½) square feet in area.

(b) Notwithstanding clause (a), one (1) sign only advertising the sale of lots within a residential subdivision, not exceeding fifty (50) square feet in area or twelve (12) feet in length, may be erected.

(c) Roof signs and illuminated or flashing signs shall be prohibited.

(d) All signs advertising the sale of seasonal produce shall be permitted only during the period between June 1 and November 15 in any year.

(e) No sign shall project over a public right-of-way.

(11) LIVESTOCK (Special Provisions):

(a) On any lot or site of less than two (2) acres,

(i) the total number of horses, sheep, or other similar large animals shall not exceed one (1) for each one-half (½) acre or fraction thereof of lot or site area in excess of one-half (½) acre;

(ii) the total number of fowl, rabbits, or other small fur-bearing animals, or the number of colonies of bees, shall not exceed twenty-five (25), plus one (1) for each five hundred (500) square feet or fraction thereof of lot or site area in excess of one-half (½) acre.

(iii) notwithstanding subclause (ii) above, in the case of chinchillas, the maximum number allowed on a lot or site less than one half (½) acre shall not exceed five hundred (500) while there are no restrictions to the number of chinchillas on lots in excess of one half (½) acre.

Amendment Bylaw No. 1 Adopted Sept. 21/72

(b) All livestock other than household pets shall be properly caged or housed.

APPENDIX D

Section 28 GENERAL REQUIREMENTS

(1) At any highway intersection, no obstruction to sight shall be permitted between the levels of three (3) feet and ten (10) feet above ground level within the triangular area formed by two intersecting right-of-way lines and the line joining the points on such right-of-way lines fifteen (15) feet from the point of intersection.

(2) Buildings shall not be sited in such a manner as to make impracticable the future legal subdivision of a lot.

(3) Off-Street Parking:

(a) Every required off-street parking space shall have a minimum area of one hundred eighty (180) square feet, and shall be so shaped and sited as to provide convenient access to the premises and to a public street;

(b) For commercial and public uses, all required parking spaces shall be surfaced with all-weather, dust-free material;

(c) All required parking spaces shall be kept clear and unobstructed when not occupied by vehicles;

(d) Off-street parking space shall be provided as follows:

(i) single-family dwellings - two (2) spaces per dwelling unit

(ii) Multi-family dwellings - one and one-half (1½) spaces per dwelling unit;

(iii) General commercial use - one (1) space per 500 square feet of service, office, or retail floor space; Amendment Bylaw No. 161 Adopted June 21/73

(iv) Motels, resorts, camp-sites - one (1) space per rental unit;

(v) Public, institutional use - one (1) space for every five (5) seats provided for public seating and/or one (1) space per 100 square feet of floor space for recreation or social purposes, whichever is applicable.

(4) One (1) travel trailer only may be permitted in conjunction with a permitted residential use on any lot or site, which may be used for the accommodation of guests or visitors during the period between June 1 and September 15 in any year.

(5) No lot or site shall be used for the wrecking or storage of derelict automobiles or as junk yard, and any vehicle which has not been licensed for a period of one (1) year and which is not housed in a garage or carport shall be deemed to be a derelict vehicle and junk.

(6) Temporary or mobile buildings or hoarding, the sole purpose of which is incidental to the erection or alteration of a principal building for which a building permit has been granted, shall be permitted provided removal of same shall take place upon completeion of the principal building or within a period of six months, whichever comes first. Amendme Bylaw No. 161 Adopte June 2

(7) No building shall be erected closer to the bank of the Shuttleworth Creek than 50 feet. Amendment Byl No. 149 Adopted January 18/73

Section 28 GENERAL REQUIREMENTS

(Substituted by authority of Bylaw No. 652, 1981 adopted by the Board, June 17, 1982)

(7) (a) For the purposes of this section the following definitions shall apply:

(i) "Natural Boundary" - means the visible high water mark of any lake, river, stream or other body of water where the presence and action of the water are so common and usual and so long continued in all ordinary years as to mark upon the soil of the bed of the lake, river, stream or other body of water a character distinct from that of the banks thereof, in respect to vegetation, as well as in respect to the nature of the soil itself.

(ii) "Watercourse" - is any natural or man-made depression with well defined banks and a bed zero point six (0.6) metres or more below the surrounding land serving to give direction to a current of water at least six months of the year or having a drainage area of two (2) square kilometres or more upstream of the point of consideration, or as required by a designated official of the Ministry of Environmen of the Province of British Columbia.

(b) Notwithstanding any other provisions of this Bylaw, on floodable land no building or any part thereof shall be constructed, reconstructed, moved or extended nor shall any mobile home or unit, modular home or structure be located;

(i) within seven point five (7.5) metres of the natural boundary of a lake, swamp or pond;

within thirty (30) metres of the natural boundary of the Similkameen or Tulameen Rivers;

within thirty (30) metres of the design water level boundary of the Okanagan River channel;

within fifteen (15) metres of the natural boundary of any other nearby watercourse.

(ii) With the underside of the floor system of any area used for habitation, business, or storage of goods damageable by floodwaters, or in the case of a mobile home or unit the ground level on which it is located: lower than zero point six (0.6) metres above the 200 year flood level where it has been determined by, or to the satisfaction of, the Ministry of Environment;

nor lower than three (3) metres above the natural boundary of the Similkameen or Tulameen Rivers;

nor lower than one point five (1.5) metres above the design water surface profile of the Okanagan River channel;

nor lower than one point five (1.5) metres above the natural boundary of any other watercourse, lake, swamp or pond, with the exception of Okanagan, Osoyoos, Skaha, Tug ul Nuit and Vaseux Lakes, where the minimum elevation at which a building may be constructed or mobile unit located shall be:

Okanagan Lake	343.66 metres G.S.C. datum
Osoyoos Lake	280.70 metres G.S.C. datum
Skaha Lake	339.24 metres G.S.C. datum
Tug ul Nuit Lake	299.50 metres G.S.C. datum
Vaseux Lake	329.49 metres G.S.C. datum

Section 28 (7) continued

(c) Clause (b)(ii) shall not apply to:

(i) a renovation of an existing building or structure used as a residence that does not involve an addition thereto;

(ii) that portion of a building or structure to be used as a carport or garage;

(iii) farm buildings other than dwelling units and closed-sided livestock housing. Farm dwelling units on parcel sizes 8.1 hectares or greater and within the Agricultural Land Reserve are exempted from the requirements of Clause (b)(ii) but if in a floodable area shall be elevated one (1) metre above the natural ground elevation. Closed-sided livestock housing behind 1 in 200 year standard dykes as approved by the Ministry of Environment is exempted from the requirement to floodproof but if not behind 200 year standard dykes shall also be elevated one (1) metre above the natural ground elevation;

(iv) light or heavy industrial development which is required to floodproof to an elevation zero point six (0.6) metres less than the Flood Construction Level as determined by the Ministry of Environment;

(v) heavy industry behind 1 in 200 year standard dykes as approved by the Ministry of Environment. Heavy industry includes such uses as manufacturing or processing of wood and paper products, metal, heavy electrical, non-metallic mineral products, petroleum and coal products, industrial chemicals and by-products and allied products;

(vi) the required elevation may be achieved by structural elevation of the said habitable, business, or storage area or by adequately compacted landfill on which any building is to be constructed or mobile home located, or by a combination of both structural elevation and landfill.

Where landfill is used to achieve the required elevations stated in Clause (b)(ii) above, no portion of the landfill slope shall be closer than the distances in Clause (b)(i) from the natural boundary, and the face of the landfill slope shall be adequately protected against erosion from floodwaters.

Provided that, with the approval of the Deputy Minister of Environment, or his designate to ensure that adequate protection from flood or erosion hazard is provided, these requirements may be reduced.

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(8) Temporary or mobile buildings and structures, the sole purpose of which are incidental to the following uses: logging, milling, mining - including gravel extraction and processing, - construction of utility services, movie filming, shall be permitted for a period not to exceed the life of the aforementioned permitted use or six months, whichever comes first, and shall be located at a distance greater than one thousand (1,000) feet from any adjacent residence on any adjacent site. Use and storage of said temporary or mobile buildings and structures shall be only by permit, which may be cancelled when there is a valid and proven objection to the temporary use.

As per Amendment Bylaw No. 330, 1976, adopted by the Regional Board on March 24, 1977.

APPENDIX E

Section 12 FORESTRY/GRAZING DISTRICT (F-G).

(1) PURPOSE:

The purpose of this District is to establish an area which has long been utilized as an extensive forestry/grazing district, and to ensure that future development proceeds in an orderly and economical fashion.

(2) PERMISSIVE USES:

The following uses and no others shall be permitted in the F-G District:

(a) Agriculture;

(b) Processing and packing of agricultural produce grown on the same lot or site or land of the same ownership;

(c) Forestry;

(d) Single-family dwellings, factory built unit homes and mobile homes;

(e) Home occupations, provided that

(i) a home occupation shall be conducted wholly within a building or accessory building;

(ii) there shall be no exterior display or advertisement, except as provided by subsection (10);

(iii) there shall be no exterior storage of materials, commodities, or finished products;

(iv) the use shall not generate traffic or parking problems within the District;

(v) the use shall not produce public offence or nuisance of any kind, by any means;

(f) Open-land recreational and institutional uses, including cemeteries, golf courses, public recreation areas, stables and kennels, and ancillary uses thereto, but excluding amusement parks, dude ranches, horse or auto-racing circuits, riding academies and privately owned camp-sites operated for reward;

(g) Public service or utility buildings and structures, with no exterior storage of any kind and no garages for the repair and maintenance of equipment;

(h) Buildings and structures accessory to the uses permitted in clauses (a) to (f), inclusive.

(3) STANDARDS:

Every use of land and every building or structure permitted in the F-G District shall comply with the provisions of sub-sections (4) to (11) inclusive, and section 28.

Substituted by authority of Bylaw #675/81 adopted Mar. 18/82

(4) MINIMUM SITE AREA AND MAXIMUM SITE WIDTH:

(a) The minimum lot area shall be Fifty (50) acres and the minimum width shall be One Thousand (1,000) feet, except that:

(i) Lots with a minimum area of 1,500 square feet and a minimum width of twenty-five (25) feet may be created to accommodate uses under clause (g) of subsection (2) of this section; and

(ii) Lots with a minimum area of two (2) acres may be created to accommodate public uses under clause (f) of subsection (2) of this section.

(b) Lots created prior to the adoption of this Bylaw, regardless of area or dimensions, may be used for any of the permitted uses of the F-G District, provided the method by which sewage is to be disposed of is satisfactory to the Medical Health Officer.

(c) Notwithstanding the above, where permission for a HOMESITE SEVERANCE has been granted by the British Columbia Agricultural Land Commission, the permitted area and dimensions of such HOMESITE shall be as permitted by the Commission.

(5) BUILDINGS PER LOT:

Not more than one (1) single-family dwelling, factory built unit home or mobile home shall be permitted upon a lot, except that where the lot exceeds twenty (20) acres in area, one (1) additional single-family dwelling or mobile home shall be permitted for each ten (10) acres or fraction thereof of lot area in excess of twenty (20) acres, provided that any dwelling units in excess of two (2) on any lot shall be used solely to accommodate families engaged in agriculture on the same lot or site.

(6) YARDS, SETBACKS:

(a) On any lot or site, all buildings shall be set back from the front and rear lot lines a distance equal to the height of the building, or thirty (30) feet, whichever is greater, and not less than fifteen (15) feet from an interior or exterior site lot line.

(b) Notwithstanding clause (a), all buildings housing livestock shall be located a minimum distance of twenty-five (25) feet from any property line and forty (40) feet from any dwelling unit.

(c) On any lot or site, commercial kennels, stables, mink farms, feedlots, piggeries, or other similar service or non-agricultural, product-based operations shall be located a minimum distance of two thousand (2,000) feet from any A-R District and two hundred (200) feet from the centre line of any watercourse used as a domestic water supply.

(d) The processing and packing permitted under clause (b) of subsection (2) shall be located a minimum distance of two thousand (2,000) feet from any A-R District.

(e) In no case shall a building be located closer to a street centre line than fifty-five (55) feet.

(7) SITE COVERAGE:

On any lot or site, principal and accessory buildings together shall not occupy more than twenty (20) percent of the lot or site area.

(8) HEIGHT LIMITATION:

On any lot or site, no building shall exceed a height equal to twenty-five (25) percent of the lot or site depth, or sixty (60) feet, whichever is less, except that in no case shall dwellings exceed a height of thirty-five (35) feet.

(9) MINIMUM FLOOR AREA:

(a) No dwelling unit, other than a mobile home, shall have a floor area of less than seven hundred fifty (750) square feet.

(b) No mobile home shall have a floor area of less than two hundred forty (240) square feet.

(10) SIGNS:

Subject to the Motor-Vehicle Act and the regulations made thereunder:

(a) No signs or advertising displays shall be permitted other than the following:

(i) those denoting a home occupation;

(ii) those denoting the name of the owner or the name or address of the property;

(iii) those advertising the sale or rental of property;

(iv) those advertising the sale of agricultural produce grown on the same lot or site or land of the same ownership;

(v) public utility and institutional signs,

provided that such signs shall not exceed six (6) square feet in area or eight (8) feet in length and shall be limited to one (1) for each street frontage upon which the lot or site abuts;

(vi) those identifying uses permitted under clause (f) of subsection (2), provided that such signs shall not exceed fifty (50) square feet in area, twelve (12) feet in length, or the height of the principal building on the lot or site, or twenty (20) feet, whichever is less, and shall be limited to one (1) for each street frontage upon which the lot or site abuts. Necessary directional signs within the lot or site not exceeding one and one-half (1½) square feet in area shall be permitted.

(b) Roof signs and illuminated or flashing signs shall be prohibited.

(c) All signs advertising the sale of seasonal produce shall be permitted only during the period between June 1 and November 15 in any year.

(d) No sign shall project over a public right-of-way.

(11) MOBILE HOMES:

(a) No person shall locate a mobile home except on a well-drained site that is above high-water line, is at all times free of stagnant pools, and is graded for rapid drainage.

(b) All installed mobile homes shall be restrained from moving and be securely anchored against the effect of high winds.

(c) All foundations for the support of mobile homes or permissible additions shall be designed and installed in accordance with the building regulations in effect in the regulated area.

(d) No person shall connect a mobile home to a community or municipal water system or sewage-collection system unless the mobile home has a plumbing system designed and installed according to recognized standards with a vented trap for each fixture.

(e) All mobile homes shall be connected to a municipal sewage-collection system, where available, or a private sewage-disposal system designed and installed in accordance with the provincial Regulations Governing Sewage Disposal, 1967, as amended.

(f) No mobile home shall be installed and occupied

(i) if its electrical installations fail to meet the requirements of the Electrical Energy Inspection Act;

(ii) if the standard of ventilation of its rooms is less than the requirements of the building regulations in effect in the regulated area;

(iii) if its heating installations fail to meet the requirements of the building regulations in effect in the regulated area.

(g) The

(i) installation and maintenance of all oil-burning equipment and appliances using inflammable liquids as fuel; and

(ii) the storage and disposal of inflammable liquids and oils; and

(iii) the installation, maintenance, carriage, and use of compressed-gas systems

shall be in accordance with the regulations of the Fire Marshal Act,

(h) All additions and alterations thereof to mobile homes must be in accordance with the building and plumbing regulations in effect in the regulated area.

(i) No additions to a mobile home shall be permitted except

(i) skirtings, but only if an easily removable access panel of a minimum width of four (4) feet provides access to the area enclosed by the skirtings;

(ii) carports;

(iii) shelters against sun or rain (ramadas);

(iv) vestibules of a maximum size of thirty (30) square feet;

(v) rooms (cabanas) added to a mobile home, provided that any such added room shall have an exit or access other than through the mobile home, and, further, that any such additional room shall not be used as an exit or access to exit from any mobile home.

(j) No additions to a mobile home shall exceed in plan area the plan area of the mobile home to which they are attached.

(k) All additions to a mobile home shall be of a modular design and shall be constructed and finished in durable, weather-resistant materials similar in quality to those used in the construction and finishing of the principal unit to which they are attached.

(l) No outdoor storage of any kind ancillary to any mobile home shall be permitted within thirty (30) feet of any lot line. All such storage shall be effectively screened and may not be piled higher than the required screen, and such screen shall consist of a well-maintained fence or wall not exceeding eight (8) feet in height, or it may consist of a compact evergreen hedge not less than six (6) feet in height which shall be maintained in good condition at all times. Such storage area shall be not more than twelve (12) feet by twenty (20) feet in area.