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CLIENT BULLETIN

Aeronautics Act Zoning Regulations

CBC News has recently reported that an overheight building at the Crown Isle Resort development near the Comox Valley airport could limit bad weather flights to the airport in future. Over the past couple of years our firm has come across two situations where development in fairly large cities in B.C. has been proceeding without regard to the effect of airport zoning regulations established by the Minister of Transport under the federal *Aeronautics Act*. In one case, the existence of the zoning regulations was noted on title to the affected properties; in the other, no such notices had been filed (the Land Title Act Regulation permits the federal Crown to apply to file such notices, requiring a surveyor's plan identifying all affected parcels by legal description and a fee of \$1 per parcel affected, but the *Aeronautics Act* does not oblige the Crown to file the individual notices on title). It appears that the federal government may be doing very little, if anything, to administer and enforce these regulations in some parts of the province.

Typically, airport zoning regulations establish building height limits in the vicinity of runway approach paths, and many local government zoning regulations appear to have been drafted so as to be consistent with these height limits. However, for some airports the Minister of Transport may have established other building height limits, applicable in a larger area wherein aircraft manoeuvres may be necessary in certain situations. In the instances that we have seen, local zoning regulations have not been consistent with this other aspect of the federal regulations. As a result, development that complies with local regulations may not be in compliance with federal law.

Local governments are under no duty to use their land use or building regulation powers to enforce federal law. The *Aeronautics Act* and complementary provincial regulations under the *Community Charter* and the *Local Government Act* enable local governments to enter into agreements with Canada for the administration and enforcement of airport zoning regulations, but such agreements are optional. While there may be practical reasons for local governments to synchronize their zoning regulations with federal airport zoning regulations, it is not mandatory that they do so. Developers wishing to construct buildings or erect temporary structures (such as tower cranes) in the vicinity of airports, or their consultants, should be checking for federal height regulations and either complying with them or obtaining exemptions (there is a federal variance process). Airport zoning regulations can be viewed on the Canada website at <http://laws-lois.justice.gc.ca/eng/acts/> (click on the "R" symbol beside *Aeronautics Act* to view an alphabetical list of regulations). The details of these regulations may also be available from local airport officials.

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