**Retreat**

**Development Permits**

*Overview:*

Development permits regulate land use to ensure that areas are developed in a manner that aligns with environmental protection and the protection of ecosystems, biodiversity. 12 Development permits may also be used to protect a development from hazardous conditions. A Development Permit Area (DPA) may restrict development in areas except for any conditions also included in the permit.1 A DPA may also identify lands that are prone to coastal hazards so that these hazards can be addressed before the development of the land.2 Implementation of a development permit requires the designation of a DPA by the Official Community Plan which includes an amending bylaw and public hearing and approval by the local government.3 Challenges can occur if the background studies of hazards and environmentally sensitive areas are not well justified.4

Types of development permits:

* **Riparian protection development permits** are necessary for activities and development located with a riparian area of a wetland or a watercourse with fishes. A riparian area refers to the land or vegetation near a watercourse. 15
* **Geotechnical hazard development permits** are required for development in areas that are susceptible to geotechnical failures, e.g., landslides, and rolling rocks. Geotechnical hazards may be defined based on characteristics such as slope steepness. 16
* **Floodplain development permits** are required for development within a special flood hazard area. The permit is used to ensure that development is undertaken in accordance with a floodplain management ordinance.17
* **Shoreline development permits** seek to protect the resources and ecology of a shoreline or watercourse. A substantial development permit may be required for construction within 200 feet of a lake, river, or stream where the value of the construction exceed a market value threshold 18

*Benefits:*

* Enables the assessment of impacts of a proposed development to identify mitigation or conservation strategies to determine if a discretionary use should be permitted
* Enables municipalities to impose development permit conditions that promote environmentally sustainable development
* Allows the imposition of ongoing conditions, e.g., periodic monitoring requirements that are considered necessary for the protection of the natural environment, public health, and safety. 13
* Replaces site-specific planning with a more regional and visionary approach 14

*Challenges*

* Preparing background studies of hazards and environmentally sensitive areas to justify the development permit areas is resource-intensive
* May lead to **upzoning**, i.e., a development that departs from what conforms to the wishes of the community
* May lead to the removal of third-party rights to consult and appeal but retention of the applicant’s rights to appeal.
* May remove final authority for approval from public representatives and repose such authority in the hands of planning staff 14

*California Coastal Commission SLR Policy (CA, USA):*

In 2015, the California Coastal Commission in its Sea Level Rise Policy decided that all development in coastal areas should obtain a Coastal Development Permit (CDP).5 Generally, land use applications in locations that are susceptible to inundation, flooding, wave impacts, erosion, or saltwater intrusion require a review to determine the effects of sea-level rise.6 The policy lists general conditions where sea level rise should be considered in the analysis of an application including; location in a floodplain, exposure to flooding or erosion, existing flood protection, proximity to sensitive ecosystems, and water supply requirements.7 Also, an application for a proposed project is required to identify design alternatives that avoid or minimizes the effects of sea-level rise before the submission of a final project design and the CDP application itself.8

*Sidney’s Interim FCL Policy (Sidney BC, Canada):*

In 2018, the incorporation of sea-level rise into the determination of building setbacks and flood construction levels (FCL) in coastal areas was adopted in the Province of British Columbia Flood Hazard Area Land Use Management Guidelines.9 The Sidney Interim Flood Construction Level Policy was implemented to ensure that all new development is built to address sea-level rise and to ensure that all building and development permit applicants include a report and Flood Assurance Statement from a qualified engineer.10 The report should be submitted to the Town and accepted before the acquisition of a permit. This process serves to inform future owners of the property’s susceptibility to flooding and to remove culpability from the Town of Sidney.11

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*Images:*

**Retreat**

**Development Transfers**

*Overview:*

Transfer of Development Rights (TDR), also commonly referred to as Transfer of Development Credits (TDC), is a mechanism that is used to encourage high-density development on lands that are less susceptible to the impacts of built infrastructure within a defined region, while limiting development on ecologically sensitive lands. This is known as density transfer. Density transfer is generally a voluntary market-based concept that could be used to protect coastal resources.1 Density transfer is appropriate where development potential is measurable and can be typically applied to residential uses.2

*Types of transfer development rights:*

* **Zoning lot mergers** involve two or more lots adjacent to each other that can be grouped as one lot for the purpose of zoning. This practice is commonly referred to as “as of right” that is, city approval is not a requirement, providing that landowners adhere to prescribed procedural guidelines.
* **Landmark transfers** involve the designation of a building as a landmark. This prohibits any vertical additions or substantial architectural changes to the building. Landmark transfer rights can be sold to adjacent lots as well as lots across an intersection.
* **Special purpose district transfers** involve the preservation of an area because of its unique characteristics. In special purpose districts, development rights that are unused may be transferred to adjacent buildings as well as any property within a designated zone. 12

*Benefits:*

* Provides significant protection of open space, farmland, and environmentally sensitive areas.
* Promotes private financing of land protection rather than public financing.
* Ties private land conservation to growth management, downtown revitalization, and infrastructure efficiency by directing growth to appropriate areas.
* Provides incentives that encourage growth in receiving areas and disincentives for the development of sending areas.

*Challenges*

* It is possible that there are not enough credits, and/or the credits are too restrictive, as they often can only be used in the jurisdiction in which they were created.
* TDRs are technically complicated and require a significant investment of time and staff resources to administer, especially during the development stages of a program.
* Requires an extensive public education campaign that may not appropriately balance benefits to cost.
* Depends upon a properly functioning real estate market, which if depressed, will cause few rights to be sold. 11

*New Jersey TDR (NJ, USA):*

In 2010, New Jersey put together a 40-member Transfer of Development Rights Task Force which produced a report recommending changes to facilitate the use of transfer of development rights (TDR), clustering, and non-contiguous clustering.3 The development of TDR tools allow New Jersey Municipalities such as Chesterfield, Lumberton, Burlington, and Pinelands regions to have access to planning tools that help to preserve and protect environmentally sensitive land without relying on public funding.4 In the report of the TDR Task Force, TDR is defined as the process in which the landowners of the ‘sending areas’ sell their development rights to developers of the ‘receiving site’ with the intent of preserving and protecting the ‘sending site’ and for accommodating higher building density in the ‘receiving site’.5

*King County’s TDR Program (Kings County WA, USA):*

A transfer of development rights (TDR) program was adopted by King County in 2001 to preserve important resources such as environmentally sensitive areas, wildlife habitat, open space, and shoreline access.6 The program was initially designed to reduce urban sprawl by designating ‘urban separators in between the urbanized west and the rural/forested east.7 The sending areas were typically low-density urban separator areas, agricultural land, rural areas, and forest production districts while receiving areas were typically urban areas with some limitations for use.8 As of 2007, the program preserved more than 90,000 acres of land through the 48 private market transactions of 455 TDR’s.9

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*Images:*

**Retreat**

**Foreshore Tenure**

*Overview:*

In British Columbia, the foreshore is defined as the land that exists between the low and high watermarks of a stream, river, lake, or ocean. 9 Foreshore tenure is a legal instrument that authorizes the use of intertidal and subtidal areas. Foreshore tenure can work in conjunction with zoning to provide a more comprehensive approach to shoreline management1 that includes beach nourishment, dune or wetland creation, and/or rehabilitation. Foreshore tenures are generally authorized by the provincial government with some exceptions to the Canadian Marine Act which applies to harbors.2 Challenges may occur if targeted areas are unsuitable because of environmental, bathymetric, and other constraints.3 In British Columbia, Land and Water BC is the agency charged with the responsibility to grant land act tenures including, licenses, leases, easements, and permits. 10

*Types of land tenure:*

* A **Lease** is issued where substantial improvements are to be made to land, or where it is necessary to establish boundaries to avoid conflicts with neighboring owners. Foreshore leases have a standard term of 30 years. 9 13
* **Crown grant or fee simple disposition** refers to instances where crown land is converted to private ownership. In such instances, the crown does not give up its right to the foreshore or beds of contiguous bodies of water by a grant of fee simple. Such lands are retained for the public trust.
* **Statutory rights of way over riparian rights of waterfront property** exist where the crown acquires a statutory right of way that is superior to the riparian rights of a waterfront parcel. This allows the crown to hold the rights to a waterfront parcel.
* **Temporary permits** are intended for the occupation of aquatic crown land and may be issued for an investigation to be conducted before the authorization of a temporary use. Temporary permits are usually issued for commercial or industrial operations in the foreshore13

*Benefits:*

* Could enable a local government to undertake a broader range of shoreline management and adaptation measures in response to coastal hazards.
* Could enable environmental enhancement to occur with less reliance on structural protection, such as beach nourishment, artificial reefs, or the creation of off-shore islands and sand dunes.
* Can be used to support the objectives of zoning bylaws

*Challenges*

* Individuals cannot build on or develop aquatic Crown land, including Crown foreshore, without the Province's authorization, even if they own the adjacent property or "upland."
* The upland owner's consent is required if the tenure will affect access to deep water from his or her property.
* The tenure holder will be required to meet all applicable regulations imposed by government agencies, federal, provincial, and local.
* Limited suitability due to environmental, bathymetric, and other constraints
* Administrative procedures may be complex and time consuming 12

*Nanaimo Port Authority British Columbia (Head Lease)*

The Nanaimo Port Authority, NPA an agency of the government of Canada is incorporated according to the Canada Marine Act. The authority is currently operating under a lease with a maximum term of twenty years that was granted in 2002. Under the agreement, the province of BC has the authority to; 1) review the tenure activity of the NPA, 2) discontinue the lease after the expiration of a term of 20 years. The NPA has entered into a memorandum of agreement with the province which places restrictions on what it is authorized to do with the leased area. For example, the lease agreement allows the NPA to issue log storage tenures to industry users. Within the 20-year term, the BC government review the head lease every 5 years. 14

*West Vancouver Head Lease (Vancouver BC, Canada):*

The West Vancouver Head Lease has been held by the District of West Vancouver and the Province of B.C. since 1974. The lease covers the management of land under the high water level.4 The head lease extends 1,000 meters into the Burrard Inlet except for the areas controlled by the Vancouver Port Authority and the B.C. Ferries Terminal.5 The lease facilitates the establishment of public infrastructure (walkways, seawalls, boat ramps, piers, wharves, and marinas) and natural enhancements (groynes, rock reefs, rip-rap).6 Also, the head lease is accompanied by the adoption of an Official Community Plan and a 5-year foreshore protection plan to protect the foreshore.7

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*Images:*

**Retreat**

**Subdivision Regulation and Development Control**

*Overview:*

A subdivision regulation is a planning tool that can be used to establish conditions for the protection against environmental hazards, e.g., coastal hazards related to sea-level rise.1 A subdivision is defined as a separate title of land (bare land strata lot, strata unit, townhouse, row house, or a condominium unit).2 The tool works in conjunction with zoning where the administrative responsibility of the subdivision of land is usually given to an Approving Officer who has the power to refuse or approve a subdivision plan.3 Subdivision regulation can be complementary to other development control measures. For example, development agreements may require a development to conform to design criteria to ensure public safety. Additionally, development agreements may require developers to demonstrate that a project is not harmful to ecologically sensitive areas. 5

*Types subdivision regulations:*

* **Cooperative association/shared interests** derive authority from the Real Estate Development Marketing Act. It allows developers to sell shares in a landowning company
* **Fee simple subdivision** relates to a land estate where the owner is entitled to the whole property including unconditional powers of disposition except where a limitation is outlined in another grant or disposition from the crown
* **Air space parcels** relate to the ownership of the space below and above a parcel of land. Although the limits have not been clearly established in law, in BC, it is generally accepted by the courts that the rights to air space below and above land exist insofar as it is necessary for a landowner to ordinarily use and enjoy his or her property.
* **Strata** apply where fee simple land is then subdivided into multiple units and where all unitholders have the right to use common elements. There are three types of strata, **Bare land, Building, and Phased**. 4

*Benefits:*

* Empowers local governments with a legal mandate to enact bylaws to establish the conditions for the subdivision of land
* Enables the protection of the public interest by separating political influence from the approval process. For example, an approving officer has the authority to refuse approval.
* Enables the establishment of conditions for the regulation of future development. 1
* Ensures the conformity of proposals for development to official plans and zoning regulations within a prescribed area. It also enables conformity with provincial regulations and policies 1

*Challenges*

* Could lead to less development because of the potential loss of value to developers. Hence, should be supported by guiding policy or strategies.
* If coastal hazard areas are not clearly established, it may result in difficulty for an approving authority to decline a subdivision in coastal areas based on safety concerns.
* The effectiveness of subdivision approval is contingent on the ability of those appointed to manage the process. This is because the approval process could be quite discretionary and subject to the prescribed scope of authority. 6

*Halifax Regional Municipality development agreements (Halifax Nova Scotia)*

In Halifax Nova Scotia, the Regional Municipality has included in the 2006 regional plan a provision for developments to be constructed with a minimum height that is above the ordinary high watermark. One of the other provisions of the plan is the inclusion of development agreements where areas are designated as zones require negotiations before development projects proceed. The terms and conditions for such negotiations are specified in local bylaws including consideration for a range of issues related to environmental protection. The process of negotiating a development agreement allows planners and developers to share information on wave activity and storm surges to inform resilient project designs. 5

*Toronto’s Green Standard (Toronto, Ontario, Canada):*

The Toronto green standards outline a set of measures to regulate the site and building design, energy and water efficiency, ecological services and solid waste management, and air and water quality. The standards work in tandem with existing development approvals and processes for inspection. The green standards apply to subdivision and site controls for new development related to zoning amendments. The Toronto green standards are useful tools for addressing climate change concerns in the city of Toronto. For example, the standards mandate that new developments retain no less than 5 mm of rainwater for reuse. This helps to reduce stormwater runoff. 5

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