AN APPROACH TOWARDS PRIVATE SEWER LATERAL CERTIFICATION IN REAL ESTATE TRANSACTIONS

FOR METRO VANCOUVER

February 12, 2013

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File Name: CP-18-04-014

Submitted to: Dave Dunkley, Metro Vancouver

Date: February 12, 2013
EXECUTIVE SUMMARY

Private sewer laterals may contribute significant quantities of rainwater inflow and infiltration (I&I) to the sanitary sewer system, resulting in potentially significant impacts such as sewage overflows onto streets or into waterways, sewage backups into buildings, unnecessary costs for pumping and treating large volumes of diluted sewage, and reduced capacity that limits the potential for new growth without re-developing and re-sizing the sewers. In Metro Vancouver, over 50% of the total length of pipe in the sewer system is on private property. Maintenance of the private portion of the sewer system is the responsibility of the property owner and, too often, property owners are unaware or unconcerned about this responsibility, leaving sewer laterals largely unmaintained until sewage backs up into the building, or until the property is re-developed.

Metro Vancouver and its member municipalities have committed to reducing I&I that originates from both public and private property. With public side plans developed and well into implementation, municipalities are now considering options to effectively manage the private portion of the system over the long-term.

Private sewer lateral programs in other jurisdictions

Studies and programs in other regions have demonstrated significant success at reducing overall rates of I&I infiltration by addressing both the public and private portions of the system. Numerous different approaches are available to municipalities to address private property I&I and include education campaigns, incentive rebate programs, certification programs, financial loan assistance, regulatory requirements based on various enforcement triggers, and the municipality itself undertaking work to bring laterals into good condition in identified areas of need. The Environmental Protection Agency in the US has determined that a regulatory approach is the most effective means of ensuring long-term elimination of sanitary sewer overflows, and thus has ordered numerous jurisdictions to employ a requirement for private sewer lateral inspection and repair at the time of property sale.

Purpose of this report

With the effectiveness of a regulatory approach demonstrated in other jurisdictions, the task undertaken in this project was to explore whether it would be feasible to implement a regulatory private sewer lateral certificate program in Metro Vancouver and what would be involved. This study reviews the municipal authority and programmatic steps necessary to implement a private sewer lateral certification program at the time of real estate transactions, with a focus on North Shore municipalities, but broadly applicable to Metro Vancouver municipalities.

This report identifies a process for implementing a private sewer lateral certification program that utilizes real estate transactions as a circumstance for requiring private property owners to prove the sewer lateral is in good condition, highlights key engagement activities for successful implementation and estimates potential resource requirements.

North Shore context

The three North Shore municipalities currently have varying approaches with respect to regulating private sewer laterals. The District of North Vancouver and City of North Vancouver both have sewer service bylaws establishing basic regulatory provisions (i.e. property owners are responsible for maintenance), while the District of West Vancouver does not have a sewer bylaw, but has some
provisions for laterals in its building bylaw. The City of North Vancouver requires major renovations to upgrade the City’s sanitary connection to reduce infiltration. The District of North Vancouver is currently amending its bylaw to require a new private service connection for all large renovations, with certain exceptions.

In comparison with select municipalities in Metro Vancouver and jurisdictions in the US, the North Shore bylaws are not currently proactive in creating or encouraging a system of regular monitoring, inspection or rehabilitation of private laterals with the exception of the District of North Vancouver bylaw amendment underway.

**Certificate program – a mechanism to track the condition of private laterals**

Municipalities maintain limited data about the state of the private portion of the sewer system, so it is not currently factored into broader I&I reduction and system maintenance plans (despite maintaining extensive data about the public system, including models for estimating capacity constraints under various rainstorms). Implementing a private sewer lateral certificate program would provide a mechanism for municipalities to improve their understanding of the state of private laterals, enabling improved planning. Municipalities in BC have clear authority to take action to steward the sanitary sewer system, and to impose requirements in relation to the sanitary sewer service, to require private owners to repair or replace defective laterals. This authority enables municipalities to implement a certificate program that requires property owners to inspect and, if necessary, rehabilitate or replace their sewer laterals to comply with a municipal bylaw. Key steps in setting up a certificate program involve:

- Establishing policy, identifying “trigger(s)” for certification (when is a certificate required?), updating sewer bylaws
- Defining program requirements and administrative processes (how does a lateral get certified?)
- Engaging external stakeholders (ensuring industry readiness and property owner awareness)
- Securing internal resources to administer the program
- Public education

**Property transfer – natural time to evaluate sewer lateral condition**

This study investigates time-of-sale or property transfer as the triggering circumstance for requiring a private sewer lateral certificate, because it is a natural time to assess the condition of a property and a potentially opportune moment at which to incorporate the associated costs of repair or replacement of a sewer lateral into purchase/sale negotiations. BC municipalities enjoy a flexible authority to choose the circumstances for regulating in relation to municipal services, and so are within their powers to identify time of sale as the trigger for a bylaw requirement for a lateral certificate. Other triggering circumstances, such as at the time of major renovation, at a set date, a defined geographic area, etc., might also be considered; a survey of programs elsewhere demonstrates a range of adopted approaches.

Because the process for real estate transfers in BC provides municipalities with little or imperfect access to buyers to alert them to regulatory bylaw requirements triggered by a transfer of property, municipalities will want to employ non-regulatory mechanisms to engage both current owners and prospective owner-buyers about bylaw requirements. A truly successful program will ensure both
the existing and prospective property owners are aware of certificate requirements well in advance of a sale, through engagement with real estate and legal professionals involved in real estate transactions. Steps for engaging the real estate industry include:

- Engaging the BC Real Estate Association and the Canadian Bar Association regarding amending the Property Disclosure Statement (PDS).
- Engaging with the Greater Vancouver Real Estate Board to raise awareness of the purpose, authority and processes of the program.
- Engaging the Canadian Real Estate Association in order to have the Multiple Listing Service (MLS) updated to identify the status of sewer lateral certificate compliance.

**Steps toward long-term regulatory management of private sewer laterals**

With sufficient planning and consultation, a private sewer lateral certificate program with a time-of-sale trigger is a feasible option for long-term management of I&I from private property sources for Metro Vancouver municipalities. Learning from BC’s experience with instituting a gradual shift to regulation of water-efficiency for plumbing fixtures, and in order to gain the broader public, property owner and political understanding needed to support a shift to regulatory oversight of private sewer laterals, municipalities may opt to undertake a market transformation approach that would involve staging several steps over time prior to implementing a regulatory program, as follows:

- First, ensuring clear standards of care are in place to demonstrate what is expected of property owners with respect to lateral maintenance (i.e. clear statement of responsibility and expected maintenance standards in the municipal bylaws).
- Second, providing education for existing and new property owners that links the poor condition of private sewer laterals to the costs and risks of excess I&I entering the public system (potentially provided through professionals such as real estate agents).
- Third, offering incentives to encourage early adoption of lateral inspection practices, such as rebates, grants or other recognition for having a lateral inspected.
- Fourth, identifying a plan to regulate private lateral maintenance and rehabilitation that supports the public side infrastructure practice of inspecting the system on a 20-year cycle, such as requiring inspections at the time of renovation, re-construction or property purchase, as outlined in this document.
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1 Purpose, Scope and Objectives

1.1 Problem Statement

Rainwater and groundwater that enters the sanitary sewer system through cracks or gaps that develop in pipes over time, through joints that are not sealed properly, and through storm drain pipes that are connected to the sanitary sewer system is called “inflow and infiltration”, or I&I. Excessive quantities of I&I in the sewer system can have significant impacts, including:

- sewage overflows onto streets or into waterways,
- sewage backups into buildings,
- unnecessary costs for pumping and treating large volumes of diluted sewage, and
- reduced capacity, limiting the potential for new growth without re-developing and re-sizing the sewers.

The Integrated Liquid Waste and Recovery Management Plan (ILWRMP) developed and adopted by Metro Vancouver and its member municipalities in 2010 identifies strategies and goals to reduce the amount of I&I entering the sanitary sewer system. Further to the Environmental Management Act’s Municipal Wastewater Regulation, Metro Vancouver must report progress on this plan to the BC Ministry of Environment, which requires local governments to implement a plan to eliminate Sanitary Sewer Overflows (SSOs) for storm events with less than a 5-year return period.

Metro Vancouver and member municipalities have made significant investments to inspect and rehabilitate the public sewer system, and have committed to inspecting public sanitary sewers on a twenty-year cycle\(^1\). Public side efforts have annual budgets totaling approximately $4 million for sanitary sewer system evaluation efforts alone\(^2\). These ongoing efforts are necessary, but they are not enough unless accompanied by improvements to the network of pipes on private property. Over 50% of the total length of pipe in the sewer system is on private property\(^3\). Maintenance of the private portion of the sewer system is the responsibility of the property owner and, too often, property owners are unaware or unconcerned about this responsibility. In Metro Vancouver, the private portion is largely left unmaintained until sewage backs up into the building, or until a home is torn-down and re-built (although new laterals are not always required at this time, it is often more practical to relocate the lateral when building a new home). Under current practices and bylaws in the North Shore of Metro Vancouver, an estimated 1% of private sewer laterals are repaired or replaced annually. However, municipalities maintain limited data about the state of the private portion of the sewer system, so it is not currently factored into broader I&I reduction and system maintenance plans (despite maintaining extensive data about the public system, including models for estimating capacity constraints under various rainstorms).

Studies and programs in other regions have demonstrated significant success at reducing overall rates of I&I infiltration by addressing both the public and private portions of the system. Volumes of I&I reduced by private side improvements on their own have ranged from 5-30%, and even higher percentages when coupled with improvements on the public side of the system\(^4\). Although private sewers are the responsibility of the property owner, other jurisdictions

\(^{1}\) Integrated Liquid Waste and Recovery Management Plan, May 2010, Metro Vancouver. Commitments 3.1.1(a) and 3.1.6(a).

\(^{2}\) Metro Vancouver LWMP 2010 Biennial Report, 2010, Appendix E


have dedicated significant efforts to implementing programs that ensure this portion of the system is properly maintained in order to reduce occurrences of sewage overflows and backups, and to reduce unnecessary pumping and treatment costs.

Numerous different approaches are available to municipalities to address private property I&I and include education campaigns, incentive rebate programs, certification programs, financial loan assistance, regulatory requirements based on various enforcement triggers, and the municipality itself undertaking work to bring laterals into good condition in identified areas of need. Programs that have been employed elsewhere vary greatly between regions, indicating that the most effective and/or feasible program is dependent on the local situation (age of infrastructure, identified sources of I&I, local government authority, political will, budget, etc.). However, the Environmental Protection Agency in the US has determined that a regulatory approach is the most effective means of ensuring long-term elimination of sanitary sewer overflows (and compliance with the Clean Water Act), and thus has ordered numerous jurisdictions to employ a requirement for private sewer lateral inspection and repair at the time of property sale. These regulatory programs ensure that laterals become a standard part of building maintenance, as opposed to being a forgotten pipe that property owners are not even aware of. Based on a review of BC legislation, municipalities in BC do have the authority to implement regulatory programs for the management of private sewer laterals\(^5\). However, what is less clear is what steps are involved in implementing a regulatory private sewer lateral program that requires inspection and/or repair of private laterals at the time of sale in Metro Vancouver municipalities and ensures laterals become part of building maintenance considerations.

1.2 MARKET TRANSFORMATION

In Canada there is no federal legislation comparable to the US Clean Water Act that requires elimination of sanitary sewer overflows, and thus there is no equivalent federal order for jurisdictions to implement regulatory programs for managing private sewer laterals. Without such a requirement, Metro Vancouver and member municipalities are left to determine how to encourage, influence or require property owners to undertake regular maintenance of their sewer laterals to ensure I&I from private property sources is minimized over the long-term. Over the last two decades, agencies have struggled with a similar problem in other sectors: how to encourage, influence or require energy efficiency and water conservation in buildings. An approach that has taken shape in those contexts is “Market Transformation”, where strategic interventions have been undertaken to “catalyze changes in the marketplace that accelerate the acceptance of energy-saving products and services”\(^6\). In order to transform the behaviour and purchase habits of building owners to adopt more efficient practices, Market Transformation approaches identify the need for public agencies to implement effective policies to first educate, then incentivize, and then ultimately regulate the desired behaviours and technologies.

This approach may be useful for developing a private sewer lateral program that will result in a system where property owners consider sewer laterals a regular part of building maintenance, and

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also, when purchasing existing properties, consider the costs of rehabilitation as a regular cost associated with such a purchase. What can local governments do to catalyze such a transformation?

• First, ensure clear standards of care are in place to demonstrate what is expected of property owners with respect to lateral maintenance (i.e. clear statement of responsibility and expected maintenance standards in the municipal bylaws).
• Second, provide education for existing and new property owners that links the poor condition of private sewer laterals to the costs and risks of excess I&I entering the public system (potentially provided through professionals such as real estate agents).
• Third, offer incentives to encourage early adoption of lateral inspection practices, such as rebates, grants or other recognition for having a lateral inspected.
• Fourth, identify a plan to regulate private lateral maintenance and rehabilitation that supports the public side infrastructure practice of inspecting the system on a 20-year cycle, such as requiring inspections at the time of renovation, re-construction or property purchase.

This approach was implemented in BC to prompt the shift to more water efficient plumbing fixtures. The key factors to success in this market transformation included technological advancements in low-flow products, rebate programs offered by municipalities for a limited time, retailers that provided the products and educated customers about the advantages and rebates available, and consumers becoming aware of the programs and purchasing the more efficient equipment. In BC, after these initial pieces were in place for several years, the final piece of the puzzle implemented was a requirement for low-flow fixtures in the BC Building Code.

1.3 Scope of This Study

The first strategy identified in the ILWRMP is to reduce liquid wastes at their source in support of the primary goal to “Protect public health and the environment”. This will require new efforts to evaluate and rehabilitate the private portion of the system, in addition to continued efforts on the public portion of the system. Local governments have authority to employ a number of different tools to encourage, incentivize or require private property owners to inspect and rehabilitate their sewer laterals. As discussed earlier, in order to catalyze property owners into maintaining their sewer laterals, municipalities would likely take a staged market transformation approach that begins with ensuring standards and bylaws are clear about the maintenance standards and responsibilities, then undertake concerted education, then offer focused incentives such as rebates, prior to rolling out a regulatory requirement for certification.

This study focuses on understanding what would be involved in setting up a regulatory program that requires the certification of private laterals as being in good condition. Action 1.1.7 of the ILWRMP addresses the current lack of maintenance of the private sewer laterals by proposing a regulatory approach as follows:

*Action 1.1.7: Work with the real estate industry and their regulators, and the municipalities to develop and implement a process for the inspection and certification of private sewer laterals being in good condition as a required component of real estate transactions within Metro Vancouver.*
The purpose of this project is to identify a process for implementing a private sewer lateral certification program that utilizes real estate transactions as a circumstance for requiring that private property owners prove the sewer lateral is in good condition, to highlight key engagement activities for successful implementation and to estimate potential resource requirements.

The study focuses on creating a sewer lateral program for single-family dwellings (though some considerations for addressing multi-family and commercial properties are included where relevant) with a focus on the three North Shore municipalities (District of North Vancouver, City of North Vancouver, and District of West Vancouver). Many of the program elements could be adapted to commercial, multi-family and institutional buildings, as has been done in several other jurisdictions with private lateral programs.

1.4 Objectives

This study aims to identify the requirements to implement a regulatory program for managing private sewer laterals as a step to address inflow and infiltration issues through:

a) A process for the certification of private sewer laterals being in good working condition, and
b) The use of private property real estate transactions as a trigger for enforcing a requirement to obtain a sewer lateral certificate.

The study includes the following key steps to meet the above objective:

1. Review of the current context and bylaws in the North Shore municipalities
2. Review of private sewer lateral certificate and time-of-sale programs in other jurisdictions
3. Recommendations for a process to engage professionals involved in real estate transactions
4. Evaluation of industry capacity to conduct private lateral inspections and/or replacement
5. Recommendations for additional training or certification programs for the industry
6. Review of municipal administrative and staffing requirements for a certificate program

This report presents the outcomes and recommendations to employ a successful private sewer lateral program for a) certification of lateral in good condition, and b) use of time-of-sale as a trigger for enforcing a requirement for a certificate.
2  CURRENT SITUATION IN THE NORTH SHORE

The sanitary sewer system in Metro Vancouver has over 15,000 kilometres of sewers in the network to serve 17 municipalities and the University Endowment Lands. Over 50% of these sewers are on private property. This extensive network of pipes requires ongoing efforts to maintain good repair, to ensure expensive repair and rehabilitation does not get deferred to future generations, and to maintain low levels of I&I (i.e. 11,200 litres per hectare per day for storms less than a five year return period). Successfully managing the sewer system will ensure SSOs are minimized or eliminated, and that the system will not fill to capacity pre-maturely. Capacity requirements will increase in the face of continued population growth (the region anticipates a potential population increase of 35% over 35 years) and the projected increase in winter rainfall as a result of a changing climate.

The chapter outlines key information of relevance about the North Shore municipalities, describes the current state of inflow and infiltration management efforts in the North Shore Sewerage Area on the public and private pipes, and details the results of a bylaw review that examines the extent to which the North Shore municipalities are addressing private sewer laterals.

2.1  NORTH SHORE CONTEXT

The North Shore Sewerage Area encompasses three municipalities: City of North Vancouver, District of North Vancouver and District of West Vancouver. This sewerage area serves a total population of approximately 175,000 residents, with approximately 40,600 private sewer laterals in the system. The vast majority of the private sewer laterals (approximately 30,000) service single-family dwellings in these areas.

Home sales

Based on homes listed in the Multiple Listing Service (MLS), there were 1,468 detached home sales on the North Shore between January and November 2012. In 2011, there were 2,354 sales and 1,659 in 2010. Averaged over these three years, approximately 6% of homes are sold annually in the North Shore.

Future capacity: Population growth and increased rainfall events

North Shore municipalities are projected to grow by approximately 25% over the next 35 years, with the significant growth expected as infill. District of North Vancouver estimates 20,000 people will be added by 2030 with a concentration in the following neighbourhoods: Lynn Valley town centre, Lower Lynn town centre, Maplewood Village centre, and Lower Capilano-Marine Village centre. West Vancouver estimates 10,600 people in 30 years will be added, concentrating in the Rogers Creek area. This growth will continue to add capacity constraints on the system; however, these constraints have the potential to be delayed or eliminated if levels of I&I can be managed effectively.

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7 Metro Vancouver Regional Growth Strategy, 2011, Table A.1
8 Statistics Canada Community Profiles, 2011 Census
9 Personal communication with Craig Munn, Real Estate Board of Greater Vancouver.
10 Metro Vancouver Regional Growth Strategy, 2011, Table A.1
11 District of North Vancouver Our Official Community Plan for a Sustainable Future, 2011, p17
Research indicates that the impact of climate change may lead to an increase in winter rainfall of approximately 6% by the 2020s and 9% by the 2050s\textsuperscript{12}. This increase in precipitation levels could amplify the current volumes of I&I if the system is not brought into better condition.

### 2.2 Public sewer system and maintenance efforts

Despite continued efforts to inspect and maintain the public portion of the sanitary sewer system, high levels of I&I continue to be of concern in some locations in Metro Vancouver, including in the North Shore. Note that all systems in the North Shore have separated pipes for sanitary and storm sewers (there are no Combined Sewers).

Each municipality in the North Shore has a 20-year public sewer system evaluation and maintenance program designed to reduce the amount of rainwater and groundwater entering the sanitary system, reduce the occurrence of sanitary sewer overflows, and undertake capital upgrades to increase system capacity where necessary. Table 1 outlines the progress being made on the public portion of the system, as of the end of 2009. Over the last three years the municipalities have continued the programs to evaluate and maintain the public system.

While undertaking evaluations of the public system, the municipalities occasionally identify cross-connections (where a storm sewer is connected to the sanitary sewer) that are on private property. To address these inflow sources, the municipalities typically notify the private property owner of their responsibility to have the cross-connection corrected.

#### TABLE 1. SUMMARY OF PUBLIC SEWER SYSTEM EVALUATION AND MAINTENANCE PROGRAMS IN NORTH SHORE MUNICIPALITIES, 2010\textsuperscript{13}

<table>
<thead>
<tr>
<th></th>
<th>City of North Vancouver</th>
<th>District of North Vancouver</th>
<th>District of West Vancouver</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flow monitoring</td>
<td>1 permanent meter;</td>
<td>30 lift stations provide</td>
<td>None currently;</td>
</tr>
<tr>
<td>program</td>
<td>3-4 portable meters</td>
<td>permanent monitoring</td>
<td>Plans for new program</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2 portable meters</td>
<td>starting in 2013</td>
</tr>
<tr>
<td>Percent public</td>
<td>73%</td>
<td>24%</td>
<td>4%</td>
</tr>
<tr>
<td>system inspected</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sewer system</td>
<td>Smoke tested: 600m</td>
<td>Smoke tested: 400m</td>
<td>Smoke tested: 0m</td>
</tr>
<tr>
<td>evaluation program</td>
<td>Dye tested: 1,200m</td>
<td>Dye tested: 12,900m</td>
<td>Dye tested: 0m</td>
</tr>
<tr>
<td></td>
<td>Video: 99,558m</td>
<td>Video: 94,560m</td>
<td>Video: 15,100m</td>
</tr>
<tr>
<td>Costs for evaluation</td>
<td>$40,000</td>
<td>$62,500</td>
<td>$260,000 (includes sewer</td>
</tr>
<tr>
<td>program (2008 and</td>
<td></td>
<td></td>
<td>rate study, ISMP)</td>
</tr>
<tr>
<td>2009)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Costs for</td>
<td>135,000</td>
<td>$360,000</td>
<td>$3,205,800 (includes storm</td>
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<td>rehabilitation</td>
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<td>/ sewer rehabilitation</td>
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<tr>
<td>(2008 and 2009)</td>
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<td>in Ambleside, Built Canada</td>
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<td></td>
<td></td>
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<td>Fund)</td>
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\textsuperscript{12} GVRD Historical and Future Rainfall Analysis Update, Murdoch et. al. PCIC, 2007. Page 32.
\textsuperscript{13} Metro Vancouver LWMP 2010 Biennial Report, 2010, Appendix E
Sanitary Sewer Overflows and Basement Backups

All of the North Shore municipalities continue to experience some sanitary system backups and overflows during rain events, though the Lynn Valley area has a particularly high rate of SSOs recorded per year. Metro Vancouver tracks these events in order to report on progress toward eliminating all SSOs during storms that are 5-year return period or less in magnitude. Figure 1 summarizes the number of SSOs recorded between 2003 and 2011 in Metro Vancouver.

FIGURE 1. SANITARY SEWER OVERFLOWS RECORDED IN METRO VANCOUVER, 2003-2011

The municipalities also receive calls from residents when the sewer system backs up into their property. It is common practice among all of the North Shore municipalities to respond to these calls by sending a crew to conduct an inspection to determine the location of the blockage (whether the blockage is on the private or public portion of the pipe). The District of North Vancouver receives approximately 50 calls per year for basement backups. The City of North Vancouver and District of West Vancouver both estimate receiving less than five calls per year (typically two to three) for basement backups.

If the crew determines the blockage is on the public side, the crew will immediately clear the blockage. If the blockage is on the private side, the crew notifies the property owner that they should call a plumber to have the blockage cleared. There are no further requirements for inspecting or ensuring that the lateral is in good condition after a backup has occurred.
In the District of North Vancouver only, there is a maintenance program to clear roots from the public lateral on a regular schedule (3-month, 6-month or 1-year, depending on the situation) for locations that have been identified as problematic. There are currently over 270 addresses on the maintenance list.

2.3 PRIVATE LATERAL MAINTENANCE AND REHABILITATION EFFORTS

To date, minimal public resources have been dedicated to improving or maintaining the private side of the sewer system. Maintenance of sewer laterals on private property are the responsibility of the property owner, thus, private sewer laterals are typically left unmaintained until a problem occurs (i.e. a sewage backup), or a home is demolished and rebuilt. According to North Shore plumbing inspectors, very few plumbing permits are requested by property owners for repair or replacement of sewer laterals. More commonly, permits are obtained for sanitary sewers when homes are torn down and re-build, or for major renovations. Building permit records from the North Shore municipalities indicate that approximately:

- 75 sanitary sewer laterals are replaced per year in the City of North Vancouver.
- 162 sanitary sewer laterals were connected/reconnected in the District of West Vancouver in 2012. Likely about 80% of these are from new homes, and 20% from major renovations.

Therefore, largely due to re-development, sanitary sewer laterals in these communities are being rehabilitated at approximately 1% per year. However, over 70% of homes in the North Shore are over 25 years old (shown in Figure 2). This indicates that the vast majority of sewer laterals are likely over 25 years old as well. Old laterals that are not being maintained are quite likely showing their age through cracks and root intrusions, and allowing infiltration of rainwater. Where blockages or other problems have occurred, it’s believed that property owners may have repaired or replaced their laterals without obtaining permits, though the number of laterals repaired without permits is unknown. This makes it difficult for the municipality to track the state of private sewer lateral maintenance.
In late 2012, the District of North Vancouver launched a private lateral pilot project in the Lynn Valley catchment area. This catchment has experienced a number of SSOs in recent years, and the Ministry of Environment ordered Metro Vancouver to construct a temporary overflow retention facility to prevent the damage that results from overflows. After studying the problem further, the District realized that proactively managing private lateral-sourced I&I into the system might actually prevent the SSOs, and so the District proposed an alternative solution designed to better manage the situation at its source. The proposal that was advanced and approved includes a plan for work that entails:

- Testing of private laterals for both cross-connections and leaking pipes (carried out by District staff, at the District’s expense);
- Where cross-connections or pipe defects are discovered and deemed unacceptable, removal of the cross-connection and repair or replacement of the private lateral pipe (carried out by contractors, at the District’s expense).

The justification for spending public money on private property in Lynn Valley is that fixing this private lateral problem should result in sufficient I&I reductions to avoid the expense of constructing a retention facility to handle excess flows. Also, reducing I&I will allow sufficient capacity in the sewer system for potential future higher density or infill developments within the catchment.

The City of Victoria undertook a $3.55 million pilot project to reduce I&I in the James Bay catchment. The City employed four different techniques including mainline sewer rehabilitation, lateral rehabilitation, manhole rehabilitation, and stormwater inflow redirection (where stormwater pipes cross-connected with sanitary sewers were redirected away from the sanitary system).

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Measurements revealed that mainline and lateral rehabilitation achieved 60% reductions in I&I, while the manhole rehabilitation and stormwater inflow redirection when done in isolation were not effective in reducing I&I\textsuperscript{15}.

2.4 NORTH SHORE MUNICIPAL BYLAWS RE: PRIVATE SEWER LATERALS

This section examines the extent to which North Shore municipalities are addressing private sewer laterals in their bylaws, and in particular, to what extent North Shore municipalities have established mechanisms to monitor, conduct, regulate or encourage the inspection, repair or replacement of private sewer laterals. We also compare the North Shore's bylaws with the bylaws of other Metro Vancouver municipalities and bylaws or municipal ordinances of note elsewhere.

Basic Commonalities re: Private Sewer Laterals

The District of North Vancouver and the City of North Vancouver each has a sewer service bylaw establishing basic regulatory provisions over private sewer laterals\textsuperscript{16}. The bylaws in these two municipalities establish:

• Owners must submit a written application to the municipality, pay a fee, and have the connection authorized, before connecting to the municipal sewer service;
• Buildings must be connected to the public sanitary sewer system, where service is available\textsuperscript{17};
• All sewage disposal / sanitary waste flowing into the pipe must comply with the GVS & DD Sewer Use Bylaw and Health Act standards for sewage disposal (the District of North Vancouver also makes reference to the BCBC as well as the Special Waste Regulations);
• The municipality may enter to inspect and determine whether the pipe is in compliance with the bylaw;
• The municipality may order compliance with the bylaw;
• In event of non-compliance, the municipality may order work to be done to bring the property into compliance and then charge the cost of that work to the owner;
• Contravention of the bylaw is an offence.
• The bylaw establishes rates for sanitary sewer service (user charges – both flat rate and metered based on water consumption) and fees for connection and severance of service.

In contrast to the other two North Shore municipalities, the District of West Vancouver does not have a sewer bylaw. Some provisions related to sanitary sewers are set out in the Building Bylaw No. 4400, 2004 which provides that:

• All utility services are to be connected to the Municipal system unless specifically exempted;
• On installation, prior to being covered over, utility works must be inspected by the District's Building Inspector;


\textsuperscript{16}The District of North Vancouver Sewer Bylaw 6656; and the City of North Vancouver Sewerage and Drainage Utility Bylaw, 1995, No. 6746.

\textsuperscript{17}In the City of North Vancouver, the requirement for buildings to connect to the public sanitary system is established not in the Sewerage and Drainage Utility Bylaw but in the Construction Regulation Bylaw, 2003, No. 7390. The requirement in the District of North Vancouver is set out at section 8 of its Sewer Bylaw.
• Storm drains are prohibited from being connected to the sanitary system;
• Where no public system is available, private sanitary systems are to be inspected and to comply with health board rules;
• Violation of the bylaw is an offence.

The District of West Vancouver has a Sewer and Drainage Utility Fee Bylaw, No. 4538, 2007 that establishes connection fees for sewer and drainage services as well as metered volume rates.

Standards concerning construction and reconstruction

The North Shore bylaws reference the following standards for construction of sanitary infrastructure and/or disposal of sanitary waste:

• The Building Code (including the Plumbing Code)
• The Health Act (now replaced with the Public Health Act and the Sewerage System Regulation, regulating private sewage disposal systems)
• The Greater Vancouver Sewerage and Drainage District Sewer Use Bylaw, No. 299, 2007

The bylaws typically provide that new private lateral installations are to be inspected either by the municipal building inspector or by a qualified professional. (Further to the Code, a qualified professional for the purposes of an inspection is either an architect or an engineer who can verify that the construction meets the plan).

Further to the Plumbing Code, Division A, Part 1, Section 1.2.3.1. personnel who may work on plumbing systems include the following people:

Section 1.2.3.1 Personnel Performing Plumbing Work

1) Personnel performing the installation, extension, alteration, renewal or repair of a plumbing system shall:
   a) possess a tradesman’s qualification certification as a plumber,
   b) be an indentured apprentice supervised by a journeyman who meets the criteria set out in Clause (a), or
   c) be the registered owner and occupant of intended occupant of the single family dwelling in which the plumbing work will occur.

(Note that the Plumbing Code, Division C, Part 2, Section 2.2.1.2. provides a slightly different description of the qualifications, in particular requiring an owner to provide some evidence they can satisfactorily perform the work18.)

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18 2.2.1.2. Personnel Performing Plumbing Work
1) Personnel performing installation, alteration or repair on a plumbing system shall
   a) possess a tradesman’s qualification certification as a plumber,
   b) be an indentured apprentice supervised by a journeyman possessing tradesman’s qualification certification as a plumber, or
   c) be the registered owner and occupant or intended occupant of the single family dwelling in which plumbing work will occur, provided evidence can be provided the owner can satisfactorily complete the proposed work.
Additional measures of note on the North Shore

In addition to the basic bylaw provisions outlined above, the City of North Vancouver bylaw provides that:

- Sewer pipe must be maintained in proper order and free of leaks, in compliance with the BC Plumbing Code,
- The municipality may order the repair of a leaking system/pipe, and
- Property developments (renovations) worth between $50,000 and $100,000 in value may choose not to install new sanitary connections but must “perform a sanitary connection upgrade to reduce infiltration of ground water.” This connection upgrade involves an upgrade of the City-side's pipe, and costs the property owner a fee that is currently set at $1,500.

Further amendments contemplated

The District of North Vancouver is also contemplating amending its bylaw to provide that building permits of a value greater than $150,000 will be required to install new sanitary and storm sewer connections, unless the existing pipe is less than 30 years old or unless a video inspection performed by a qualified operator satisfies the Director that the pipe is in good condition and without defects. The District is also amending its sewer connection charge.

Proactive measures in other Metro Vancouver municipalities

In the Metro Vancouver area, some of the interesting bylaw provisions of note in other municipalities include the following:

1. The Surrey Sanitary Sewer Regulation and Charges By-law, 2008, No. 16611 provides, at section 39 that where an application for a service connection accompanies a building permit with a construction value greater than $100,000 or where a parcel is being redeveloped, the owner must provide a video inspection and recommendation where the sanitary sewer is less than 30 years old. The owner is required to repair or replace the connection if the City determines that the connection is not adequate or has excessive damage. Where the sanitary sewer is 30 years old or older, or where the pipe is no-corrode, asbestos cement or clay service pipe a replacement or new service is required.

2. The Corporation of Delta’s Subdivision and Development Servicing Bylaw (at section 5.9) has a similar provision for replacement on a renovation, but the construction value that triggers the requirement in Delta is $150,000 and where the sanitary connection is older than 25 years old. It is also worth noting that Delta (in the Delta Sanitary Sewer Use Regulation and Connection Bylaw) requires sanitary sewer customers to obtain a “connection permit” for a fee, and part of the application process involves customers providing a release and indemnity in relation to the connected service. The bylaw further provides that purchasers of a property that has such a connection permit may, on 30 days’ notice from Delta, be required to provide a release and indemnity to the Corporation.

3. The City of Vancouver has a number of provisions enabling proactive action concerning private laterals, and it is notable that these provisions are established under the “Plumbing
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Systems and Sprinkler Systems’ portion of the Vancouver Building By-Law\textsuperscript{19}. That bylaw enables the plumbing inspector to inspect any system and order compliance of any defective system; requires that any new pipe or alteration or repair of a pipe obtain a building permit; allows the inspector, if of the opinion that an existing plumbing system is no longer satisfactory, to order an owner to test the system; and if that test indicates a condition that could become dangerous or injurious to health, allows the inspector to order the owner to make alterations or replacements to the system. Vancouver’s Sewer and Watercourse Bylaw, No. 8093 is also notable, in that it provides that the City may repair a stoppage, if a sanitary sewer poses a public health menace and the owner cannot afford to undertake repairs. In that case it is authorized to do the work and charge the cost as overdue taxes (section 2.19, Sewer and Drainage bylaw).

**Proactive Measures beyond the Metro Vancouver Municipalities**

As was initially explored in the 2009 report, *Private Sewer Lateral Programs: A Study of Approaches and Legal Authority for Metro Vancouver Municipalities*, a number of municipalities beyond the Metro Vancouver area now have bylaws and ordinances that require owners to take steps to inspect, repair or rehabilitate their private laterals as a means to address the I&I problem in public systems. Some of those programs are discussed in Section 3.1, but the kinds of regulatory measures that are found in their bylaws or ordinances include:

- Inspection and rehabilitation programs led by the municipality;
- Requirements for owners to inspect laterals and to obtain certificates of inspection;
- Requirements for owners to inspect laterals and if necessary, to repair or replace them in order to bring them into compliance with a stipulated standard;
  - Such certificate requirements have been imposed further to a range of conditions, such as major renovation building permit, transfer of property, rotating asset management / targeted catchment program order, etc.
- Payment of fees for municipal review of inspection videos or to obtain a certificate;
- Requirements to utilize a plumber from an authorized list of plumbing professionals;
- Requirements for owners to disclose the condition of their private lateral to a potential purchaser;
- Requirements for realtors and building departments to distribute educational flyers about private sewer lateral maintenance and repair responsibilities, and about I&I;
- The establishment of grant and loan programs, to encourage and support property owners in funding private lateral repair or replacement;
- Provisions to enforce the bylaw, including fines and shutting off water service;
- Provisions for appealing decisions under the bylaw or ordinance.

Many of the regulatory programs addressing private laterals in the United States have been instituted in response to orders by the EPA requiring municipalities to take measures to address sanitary sewer overflows and the contributions of I&I from private laterals in particular.

\textsuperscript{19}Vancouver Building By-law, Part 1B of Division C: Administration - Plumbing Section 1B.1. Plumbing Systems and Sprinkler Systems.
Concluding observations concerning North Shore bylaws

Although the Lynn Valley pilot and the City of North Vancouver provision that requires the upgrade of the public side pipe (NOT the private lateral) on the occasion of a major renovation are proactive measures, generally North Shore bylaws are not currently proactive in creating or encouraging any system of regular monitoring, inspection or rehabilitation of private laterals.

Specifically:

- None of the North Shore municipalities explicitly requires an inspection or upgrade of a private lateral on the occasion of a major renovation (though the District of North Vancouver is developing a bylaw amendment to require this);
- None of the North Shore municipalities is undertaking any kind of regular basin by basin assessment or testing of the public side, with a view to discovering private side problems (though do on occasion identify cross-connections through smoke testing);
- None of the North Shore municipalities requires a “triggered” inspection or inspection certificate;
- None of the North Shore municipalities has established a “triggered” compliance or certificate requirement (such as has been established in different locales in the United States); and
- None offers a grant or loan program to prompt, encourage or support repairs or replacement.

Instead, the bylaws seem to presuppose a reactive regulatory stance; i.e., if a sewer is found to not comply (i.e. if a leak or other problem such as a cross-connection is discovered), the municipality may order compliance with the bylaw, or in the event of non-compliance, actually undertake the work and charge it back to the owner. However, not all of the bylaws are clear as to how damage will be discovered or when exactly such repairs might be required.

Municipalities are also not undertaking any regular inspection of the private side, nor are they yet organizing their data on private laterals by age, pipe material, etc. Some municipalities seem to have some data on the municipality’s private laterals (date of installation and “as built” drawings) but that information does not seem to have been linked to any tracking system to connect the data (e.g. age of pipe) with proactive action on any planned deadlines.

None of the municipalities has any system for tracking which private laterals are known to comply with the bylaw, such as a system that would track recent inspections, pipe rehabilitation or replacement or even “permits” or “certificates” for sanitary connections.

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20 Opportunities exist for using the data on hand. For example, the District of North Vancouver possesses data on the as-built age and pipe material. Data such as this could be used to populate (and assist in monitoring and enforcing) a program that would e.g. establish a certificate requirement based on age of pipe.
3 REGULATORY PROGRAM OVERVIEW

Numerous local governments and sewer utilities throughout the United States, and in some areas of Canada, have determined that to significantly reduce the amount of Inflow and Infiltration (I&I) entering the sanitary system the condition of private sewer laterals cannot be ignored. What is the most effective and feasible program a local government can put into place to address leaky pipes on private property? Numerous different approaches are available and include education campaigns, incentive rebate programs, financial loan assistance, regulatory requirements based on various enforcement triggers, and the municipality itself undertaking work to bring laterals into good condition in identified areas of need. Programs that have been employed vary greatly between regions, indicating that the answer to this question is dependent on the local situation (age of infrastructure, identified sources of I&I, local government authority, political will, etc.).

This chapter first provides a summary of regulatory approaches to managing private laterals in place in Canada and the United States, with a focus on programs that employ a certificate and/or time-of-sale enforcement trigger for requiring a certificate. Second, the authority for BC municipalities to implement a program to regulate private sewer laterals is established. Finally, key components that would be involved in implementing these programs on the North Shore are identified and briefly described (further details of these are explored in chapters 4 and 5).

**What is a private sewer lateral certificate?**

A “Private sewer lateral certificate”, or “Compliance Certificate”, is a method used by local governments to document that a sewer lateral is considered to be in good condition because it meets the standard specified by the local government in a bylaw or ordinance, and has been verified by some form of inspection. It is a useful tool as it raises awareness of the fact that property owners are responsible for their sewer laterals, and that they must keep them in good condition as part of the municipal system. Certificates can simplify the communication with the property owners and other interested parties by making it clear that properties that have a current certificate have met the local government’s requirements for a set period of time. Certificates may be used in any number of different program approaches from purely voluntary programs to regulatory programs that require owners obtain a certificate under certain circumstances, as defined in the regulation.
3.1 REGULATORY PRIVATE SEWER LATERAL PROGRAMS IN OTHER JURISDICTIONS

Although some jurisdictions have proactively managed private sewer laterals for decades\(^{21}\), the majority of programs that target private sewer laterals have started within the last decade. These programs are much more prevalent in the United States, where there is growing recognition that fixing private laterals is a necessary step towards eliminating sanitary sewer overflows (SSOs) and meeting the requirements of the Clean Water Act. Program approaches vary widely among jurisdictions, from entirely voluntary (relying on education to instigate owners to maintain their sewer laterals), to incentive-based (providing rebates), to requirements for owners to inspect and fix their laterals under certain circumstances (time-of-sale of property, remodeling, age of lateral, high I&I location, etc.). Certificates are commonly used as a means to demonstrate a property has proven to be in compliance with standards set out by the jurisdiction. Although no comprehensive count of sewer lateral certificate programs is available, there are at minimum several dozen municipalities with certificate programs throughout the US. No jurisdiction in Canada has set up a certificate program for sewer laterals at this time.

To demonstrate how certificate programs have been implemented elsewhere, two case studies were selected and are described below: East Bay Municipal Utility District and the City of Santa Barbara.

3.1.1 EAST BAY MUNICIPAL UTILITY DISTRICT PRIVATE SEWER LATERAL PROGRAM

**Program description:** Starting in 2011, the East Bay Municipal Utility District (EBMUD) implemented a regulatory certificate program that requires all property owners to obtain a certificate of compliance for three triggering circumstances:

- at time of property sale,
- when undertaking major renovations, and
- when changing a water meter size.

The program applies to 160,000 properties and covers all property types (residential, including multi-family and strata, commercial, industrial, institutional, etc.). The program is regional in nature and encompasses several municipalities, including the city of Oakland (population 400,000). The program was setup in response to a legal order from the EPA to get private sewer laterals into better condition in order to reduce the occurrence of SSOs.

In addition to the regulatory program, EBMUD is currently pilot testing a rebate program that aims to have sewer laterals updated in target basins where there are known I&I problems and where municipalities have recently or are currently rehabilitating the public mains and lower laterals. Funding for the rebate program is $2 million per year.

**Bylaw/ordinance:** Regional Ordinance No. 311 Title VIII – Regulation of Upper Sewer Laterals\(^{22}\)

**Standards for Maintenance:** EBMUD decided that all sewer laterals in their program must demonstrate that they are watertight in order to obtain a compliance certificate. Further, all cleanouts must be securely sealed with a proper cap, and there must be no non-sanitary connections.

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\(^{21}\)For example, the City of Burlingame, CA has had an ordinance requiring time-of-sale lateral certification since 1986 (http://www.burlingame.org/index.aspx?page=351).


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February 12, 2013

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to the lateral or to any plumbing that connects to the lateral. To meet this standard, a sewer lateral must meet a water or air pressure test prior to qualifying for a certificate.

**When a certificate is required (triggers and exemptions):** As noted above, there are three circumstances that trigger a certificate requirement that apply to single-family properties: title transfer, construction or remodeling, and change in water services. More specifically, the certificate is required for:

- **Title transfer:** prior to transferring title of any property that contains a structure with a sewer lateral in the District’s wastewater service area. The transferor property owner shall disclose these requirements, shall obtain a Compliance Certificate, and shall provide the certificate to interested parties;
- **Construction or remodeling:** all construction, remodeling, modification or alteration work where the cost is estimated to exceed $100,000 shall obtain a Compliance Certificate prior to obtaining a final permit or approval from the permitting authority; and
- **Change in water services:** the owner must obtain a Compliance Certificate prior to obtaining a final permit or approval for the increase or decrease in the size of a water meter.

For certain property types, there are requirements to obtain a Compliance Certificate within certain time frames, as follows:

- **Multi-unit structures served by single lateral:** within 10 years of the ordinance adoption, the homeowner’s association will inspect the sewer lateral and perform work necessary to achieve compliance. After completed, recertification must occur at 20-year intervals.
- **Property developments with sewer laterals totaling greater than 1,000 feet in length:** within 5 years of the ordinance adoption property owners must submit a Condition Assessment Plan that details a schedule for testing the condition of all sewer laterals on the property. The testing must be completed within 10 years of the ordinance adoption, and a Corrective Action Work Plan submitted for approval. Once all work is completed and the laterals are in compliance, recertification will occur at 20-year intervals.

Properties are exempt from obtaining a Compliance Certificate where the property has an unexpired Compliance Certificate, or where a dated approved building/sewer permit is provided that indicates the sewer lateral was replaced in total within 10 years of the effective date of the ordinance. The property owner must apply for an Exemption Certificate in this case.

**How to obtain a certificate:** Property owners are responsible for determining whether their lateral is in compliance and what must be done to bring it into compliance. In practice, homeowners typically contact a plumber to determine what they need to do in order to obtain a Compliance Certificate. The property owner works with the plumber to have the sewer lateral repaired or replaced in order to meet the
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ordinance standard. Once the lateral is ready, the property owner or plumber contacts EBMUD to set up an appointment for a Verification Test. An air or water pressure test is performed in the presence of the District’s authorized representative (a plumbing inspector). If the test confirms the lateral is in compliance, the District will issue a Compliance Certificate.

Over 95% of tests performed to date have been water, however, air pressure tests have been used with larger and longer laterals (usually commercial properties), or where access to the cleanouts is difficult. EBMUD requires the contractor to provide the equipment (pipe test plugs, caps and 5’ stand pipe), setup and conduct the test. A Contractor Guidelines document was created to clarify all requirements.

A Time Extension may be granted for 180 days when the work cannot be completed prior to transfer of title. Property owners must place $4,500 into escrow in order to obtain the extension. Funds are release when the lateral passes verification testing.

Certificate terms: The Compliance Certificate is valid for 20 years from the date of issuance for complete replacement of the sewer lateral. When compliance is obtained as the result of repair work, or for testing without the need for repair, the Certificate is valid for 7 years from the date of issuance.

Non-compliance: The Director notifies the property owner in writing that actions must be taken to get into compliance within 60 days. If work is not completed, the District may impose administrative fees, file an injunction requiring the work to be done, and/or terminate water service.

For extensions, if work is not completed within the extension period, the escrow funds may be forfeited and the current owner is subject to the enforcement actions above.

Information and reporting: The City developed a web-based database system for tracking and issuing compliance certificates. The system allows property owners to login, schedule an inspection, pay for a certificate, view, print or download a certificate, or request a time extension or exemption. Staff also use the database program to monitor compliance. Since the program began in 2011, EBMUD has issued 2,310 compliance certificates. Of these, 18% (411) laterals were tested as is and passed, 19% (450) were repaired laterals, and the remaining 63% were replaced entirely. The immediate compliance rate was approximately 70%, and over 80% once courtesy letters were sent to property owners after title transferred.

3.1.2 City of Santa Barbara Sewer Lateral Inspection Program
Program description: Since 2007, the City of Santa Barbara (population 420,000) has had a comprehensive, City-led sewer system evaluation program that identifies potential problem laterals in basins with high I&I and serves notice to these properties that a sewer lateral inspection is required. Once an owner receives a notice, they must have a video inspection conducted and submitted to the City. The City also requires an inspection to be conducted with all home additions, or renovations that include a new plumbing fixture.

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24 Personal communication with Jacqueline Kepke, EBMUD Private I&I Program Manager, December 2012.
To increase awareness of the need for property owners to maintain sewer laterals, the City added new requirements to disclose the property’s sewer lateral certificate status on the Zoning Information Report (ZIR) provided with real estate transactions.

For condominiums, apartments and commercial properties, the City requires inspection every 10 years.

**Bylaw/ordinance:** Ordinance of the City of Santa Barbara Amending the Municipal Code by Adding Chapter 14.46 (Building Sewer Inspections); also amends the code pertaining to Zoning Information Reports. A separate ordinance puts into place the Administrative Guidelines for Municipal Code Chapter 14.46.

**Standards for Maintenance:** In order to receive a certificate, a sewer lateral must be free of displaced joints, open joints, root intrusion, substantial deterioration of the line, cracks, leaks, inflow, or infiltration of extraneous water, grease and sediment deposits, or other similar conditions, defects, or obstructions likely to cause or increase the chance for blockage of the Building Sewer Lateral.

**When a certificate is required (triggers and exemptions):** As noted above, there are four different situations that lead to a requirement to have a lateral inspected:

1. Home additions: an inspection must be completed prior to issuance of a building permit for a residential building or new improvement on the property that exceeds 400 square feet of habitable space;
2. New plumbing fixtures: an inspection must be completed prior to issuance of a building permit for two or more new (i.e. an increase in) plumbing fixtures in a residential property;
3. Scheduled: for non-residential properties and common interest developments, building owner(s) must have the lateral inspected once every 10 years and not later than the date provided on a City-wide map attached to the ordinance;
4. Sewer evaluations: the City determines when a property must have an inspection done through sewer system testing conducted by the City. If the City finds evidence to conclude that the Building Sewer Lateral has failed, is likely to fail, or has not been properly maintained then the property owner will be served a notice requiring inspection.

**How to obtain a certificate:** Property owners must engage a certified licensed plumber to complete a proper building sewer lateral inspection video and report in order to comply with the City’s requirements. Only a Licensed plumber may prepare a lateral inspection report, and the plumber must have attended a City of Santa Barbara Certification Program to learn about the program, the specifications for the video inspection, the expectations for checking other drains, etc. The inspection specifications include the speed to move the camera, commentary on observations, and codes for observed defects. A subcontractor may perform the video, but the report must be signed by the certified, licensed plumber. The inspection report must also identify whether any connection allows rainwater or groundwater to enter the building sewer or public sewer.

Once the video and completed inspection report are submitted to the City, staff review the report and video within 5 days. Videos are held for 10 days for owners to pick up, and then they are disposed of. A compliance certificate is then issued for compliant laterals. If issues are indicated during the

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review, a Notice to Repair is sent to the owner specifying a deadline for completion of the corrective action (to either repair or replace as appropriate).

**Certificate terms:** Properties that have had the sewer lateral installed or replaced within the last 20 years are exempt from the inspection requirements outlined above. Properties are also exempt if a permitted repair of the lateral has been completed within the last 3 years.

**Non-compliance:** If a required inspection form is not submitted after 2 letters of notification, the result may be issuance of an administrative citation and an Administrative Penalty of $150 and referral to the City Attorney’s office for enforcement.

**Information and reporting:** A certificate is not required at the time of property sale, however, the seller of a property must obtain a ZIR from the City no later than 5 days after entering into an agreement of sale of any residential property. The owner must supply a copy to the buyer no later than 3 days prior to the transfer of title. The report will contain a statement of whether the sewer lateral has had a report prepared within 5 years, and if so, a copy will be attached to indicate the results. There is also an advisory statement on all ZIRs that advises the purchaser of potential problems caused by an inadequate or poorly maintained building sewer lateral. It will also advise the purchaser to obtain a sewer lateral inspection report.

### 3.1.3 SUMMARY OF SEWER LATERAL CERTIFICATE PROGRAMS IN OTHER JURISDICTIONS

The following table highlights a selection of private sewer lateral certification programs implemented elsewhere that are triggered by different circumstances. Key features of each triggered program are noted, along with a list of places it has been implemented²⁷.

<table>
<thead>
<tr>
<th>Trigger to get a certificate</th>
<th>Key features of this approach</th>
<th>Where has this been implemented?</th>
</tr>
</thead>
</table>
| Required at time-of-sale of property | • Long-term maintenance approach that eventually captures all properties on an on-going basis  
• Home sellers/buyers are undertaking financing and can access funds to undertake work if necessary  
• Sewer laterals become another item for consideration during the bidding process  
• Penalties for non-compliance include: hold up property transfer of title (California); fines and administrative penalties (Pennsylvania)  
• Exemptions (e.g. transfer to family member) and time extensions are provided where warranted  
• Mechanisms put into place to alert home sellers and buyers (e.g. realtor education, property disclosures, web-based databases listing certified properties)  
• Requires strong stakeholder awareness campaign targeted at real estate and legal professions, as well as existing home owners | • Berkeley, Oakland, Alameda CA and numerous others in California  
• North Fayette, PA and at least 10 more in Pennsylvania  
• Golden Valley and Chisholm, MN  
• Wickliffe, OH  
• Rock River, IL |

²⁷ For a more thorough listing of a variety of other types of private sewer lateral programs underway, refer to the Water Environment Foundation’s Private Property Virtual Library (http://www.wef.org/privateproperty/).
## An Approach Towards Private Sewer Lateral Certification in Real Estate Transactions

### Trigger to get a certificate

<table>
<thead>
<tr>
<th>Required at time of major renovation</th>
<th>Key features of this approach</th>
<th>Where has this been implemented?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extensive remodeling is already undertaken and certifying the lateral becomes part of the building permit process</td>
<td>Surrey BC (not formal certificate program)</td>
<td></td>
</tr>
<tr>
<td>Home owners are undertaking financing and can access funds to undertake work if necessary</td>
<td>Berkeley, Oakland, Santa Barbara and numerous others in California</td>
<td></td>
</tr>
<tr>
<td>Captures a smaller percentage of home over time relative to point-of-sale</td>
<td>Chisholm, MN</td>
<td></td>
</tr>
<tr>
<td>Penalty for non-compliance: building permits not completed for remodeling project until work is complete</td>
<td>Lakeport, CA</td>
<td></td>
</tr>
</tbody>
</table>

### Required by a certain date or age of lateral

| Certificate must be obtained in 10 years – provides time for planning / financing of work | Santa Barbara, CA (strata or commercial only) |
| Used primarily for multi-family, strata and commercial properties | Oakland and other East Bay Municipal Utility District members, CA |
| Found one example of small town that required replacement of all laterals in entire town of Knox Borough PA by set date (July 31, 2011) | Knox Borough, PA |
| Laguna Beach, CA |

### Required when defect identified by the agency

| Agency investigates targeted basins (usually focusing on areas measuring the highest I&I) and test both public and private pipes – notice requiring fix sent to owner when defect identified | Miami Dade, FL |
| Penalty for non-compliance: administrative fines on monthly utility bills (Miami Dade, Santa Barbara); fines and possible termination of water service (Fort Erie, Kingston) | Santa Barbara, CA |
| Usually have provision that if work is not undertaken by property owner, agency may undertake work and charge property owner | Laguna Beach, CA |
| Has been employed by municipalities in Canada | Fort Erie, ON |
| Kingston, ON |

### Voluntary – education triggers owner to get certificate

| Brochures and websites developed to educate public about their responsibility and need | Tacoma, WA |
| In Tacoma, realtors are required to include the City’s information package on sewer laterals into the real estate package provided to new buyers | Lakeport, CA |
| Education campaign is always included with other regulatory programs as well | |

### Incentives – limited time for fund availability

| Municipalities typically allocate a set annual budget for incentives and provide them on first-come first-served basis | Castro Valley, CA |
| Grants range in value, but are frequently in the range of 50% up to a maximum of $2,000 per property | San Luis Obispo, CA |
3.2 **Authority to Regulate Condition of Private Sewer Laterals in BC**

It is clear that municipalities in other jurisdictions have taken significant steps to address private sewer laterals through the implementation of various regulatory programs to regulate the maintenance of laterals in good condition. The authority to regulate private sewer laterals in BC municipalities was previously studied in Private Sewer Lateral Programs: A study of approaches and legal authority for Metro Vancouver Municipalities (2008). This section describes that BC municipal purposes encompass taking action to steward the sanitary sewer system to meet and address community needs, and that imposing a condition for owners to inspect and if necessary, repair or replace their private laterals that are connected to the municipal sewer system is a valid exercise of municipal powers.

3.2.1 **Municipalities can Take Action to Steward the Sanitary Sewer System**

Municipalities are given a broad range of “fundamental powers” in section 8 of the Community Charter. One of these is the power under section 8(3) to, by bylaw, regulate, prohibit and impose requirements in relation to ... (a) municipal services.

The section 8 fundamental powers need to be interpreted in accordance with section 4(1) of the Community Charter, which provides:

4 (1) The powers conferred on municipalities and their councils under this Act or the Local Government Act must be interpreted broadly in accordance with the purposes of those Acts and in accordance with municipal purposes. (emphasis added)

The purposes of the Community Charter are set out in section 3:

3 The purposes of this Act are to provide municipalities and their councils with:
   (a) A legal framework for the powers, duties and functions that are necessary to fulfill their purposes;
   (b) The authority and discretion to address existing and future community needs; and
   (c) The flexibility to determine the public interest of their communities and to respond to the different needs and changing circumstances of their communities.

And according to section 7,

7 The purposes of a municipality include:
   (a) Providing for good government of its community;
   (b) Providing for services, laws and other matters for community benefit;
   (c) Providing for stewardship of the public assets of its community; and
   (d) Fostering the economic, social and environmental well-being of its community.

Referring to these sections then, one may understand that the municipal purposes of good government and providing services for the benefit of the community would include providing a public sewer service and sewer infrastructure, and establishing services, law and other measures to ensure the stewardship of those public assets. This would include maintaining a public sanitary sewer service and its infrastructure generally; more specifically, good administration should also
An Approach Towards Private Sewer Lateral Certification in Real Estate Transactions

encompass the municipality providing for laws to address the I&I flowing into the public sewer system from the private side – i.e., the private property sewer lateral connections.

3.2.2 Municipalities may impose requirement to repair or replace a lateral

1. The municipal services power

Within its fundamental powers set out in section 8, pursuant to section 8(3)(a) a municipality may, in relation to a municipal service, “impose requirements” in relation to the service.

Further to section 8(8), those powers are clarified as follows:

(8) As examples, the powers to regulate, prohibit and impose requirements under this section include the following powers:
(a) To provide that persons may engage in a regulated activity only in accordance with the rules established by bylaw;
(b) To prohibit persons from doing things with their property;
(c) To require persons to do things with their property, to do things at their expense and to provide security for fulfilling a requirement.

These municipal powers would encompass a power to impose a requirement upon a property owner to inspect their private lateral that is connected to the service, and if necessary, to repair or replace a defective lateral, as a condition for continuing to receive the sanitary sewer service or to remain in compliance with the sewer service bylaw. It is well within municipal authority for a municipality that provides a municipal sewer service to, by bylaw, prohibit the connection of a “leaky private lateral” to its system, and to establish circumstances that will require owners to prove that private lateral connections are in good condition.

So long as there is a valid municipal purpose that within the municipality’s powers to act, it may act. There need only be one proper purpose for the bylaw to be valid.

2. The building regulation power

Appendix A discusses an alternative source of municipal authority to regulate private laterals, the municipal power to regulate, prohibit and impose requirements in relation to buildings and other structures.

Additional considerations regarding municipal authority

Section 8(7)(c) provides that a municipality may not exercise any of its fundamental powers where the power is already extant under Part 26 of the Local Government Act.

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28 As described above, a number of Metro Vancouver municipalities already require such an inspection or even repair, on the circumstance of a redevelopment having a value greater than $100,000 to $150,000.
30 Section 8(7)(c) provides: The powers under subsections (3) to (6) to regulate, prohibit and impose requirements, as applicable, in relation to a matter...(c) may not be used to do anything that a council is specifically authorized to do under Part 26 [Planning and Land Use Management] or Part 27 [Heritage Conservation] of the Local Government Act.
Part 26, Section 938 of the Local Government Act provides that:

1. The locating or construction of a sewer system should be carried out in accordance with the standards established under a subdivision servicing bylaw;
2. A subdivision servicing bylaw may require that such a sanitary system on a subdivision be connected in accordance with standards that the bylaw establishes; and
3. A local government may, as a condition for the issue of a building permit, require the owner of land to provide, on the site being developed, works and services in accordance with the standards established under a subdivision servicing bylaw.

What this means is that when, in the case of a subdivision or a new building permit, a municipality wishes to regulate or establish standards for the construction, location or connection of services (including sanitary sewer service), the municipality should exercise its specific Part 26 powers rather than using its more general regulatory powers under section 8 of the Community Charter.

### 3.3 Key Components of a Potential Program in North Shore Municipalities

Based on a review of programs in other jurisdictions, the authority available to BC municipalities, and discussions with various North Shore municipal staff, a potential program for managing private sewer laterals in North Shore municipalities was developed for this study. This section outlines the key components that should form part of such a program. The next two chapters of the report will provide an in-depth look at the legal authority and processes needed to implement the proposed certificate program (chapter 4) and specific authority and processes to put in place if the time of property sale is used as the trigger for requiring a certificate (chapter 5).

Municipalities develop new programs as a mechanism for defining, planning and rolling out a group of activities that will assist in achieving specific organizational goals and objectives that are defined in a strategic plan. When a municipal program is successful, it delivers benefits to the municipality, and to the community as a whole. In the case of a private sewer lateral program for municipalities in Metro Vancouver, the objective is stated in the ILWMP that private sewer laterals need to be brought into compliance with local bylaws and need to be maintained in good condition over the long-term in order to achieve significant reductions in inflow and infiltration entering the sanitary system. The benefits for the community of implementing such a program include reduced sewer overflows and basement backups, and reduced costs for conveying and treating rainwater unnecessarily.

The activities that will warrant significant attention in the formulation of a private sewer lateral program can broadly be grouped into six categories for further discussion:

1. Establishing policy and regulatory authority
2. Defining program requirements and administrative processes
3. Engaging external stakeholders
4. Securing resources – staff and equipment
5. Risk management and benefit tracking
6. Public education
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Policy and authority

BC municipalities have the jurisdiction to establish a private lateral certificate program and to set the time of sale of property as the trigger for requiring a certificate. By establishing a bylaw, the municipality may indicate what standards are needed for receiving a certificate, how the standards are verified, how long the certificate is valid for, the enforcement that will be undertaken for non-compliance, and any other aspect needed to clarify the certificate program. Relevant sections: 4.1 and 5.1.

Program requirements and administration

A certificate program is likely to involve numerous staff across multiple departments, though the majority of activity will occur within the engineering department that would lead the program. To smoothly implement and run a certificate program, there is a need for staff to meet numerous times to define program requirements, define a clear administrative process and each department's responsibility, identify what, if any, changes to IT are needed to support the program, and undertake a training program to ensure all staff facing property owners are equipped with clear communication about the program – purpose, authority, objectives, etc. Relevant sections: 4.2 and 5.2.

Industry and external stakeholder processes

To ensure program standards and inspection requirements are clear to professionals that will be conducting inspections and undertaking rehabilitation work, municipalities and Metro Vancouver may wish to coordinate training sessions with the plumbing industry. Relevant section: 4.3.

Existing and prospective new property owners will need to be informed of a time of sale certificate program through various means to ensure both parties are aware of the bylaw so that it becomes part of the negotiation and purchase discussion. To effectively alert both parties, municipalities will need to obtain the cooperation of real estate and legal professionals, as well as work with the Canadian Real Estate Association to have information included in MLS, property disclosure statements, and due diligence searches. Relevant section: 5.3.

Municipal resource requirements

Municipal resources will be required to setup the program – including setting policy and bylaw, defining internal processes, undertaking external engagement, and to implement and maintain the program on an on-going basis. This includes management, reviewing videos and applications, issuing certificates. Relevant section: 6.

Risk management

Municipalities receive no direct notice of the listing or sale of homes until after the transaction is complete, so will rely on real estate and legal professionals to ensure parties are aware of the requirement. Municipalities have no authority to require realtors to provide specific notice of the bylaw or state of compliance to buyers in the municipality.
Public education

A broad public education campaign is paramount to setting up any certificate system for private sewer laterals. Property owners need to become aware of their responsibility to maintain the lateral, and the broader purpose for the need to reduce inflow and infiltration.

Public education campaigns may include media releases to newspapers, radio, local news programs; a website with information about the program and what steps to take to check and maintain laterals; a brochure can be distributed with building permits and at key community locations (community centres, libraries).

FIGURE 4. SOURCES OF I/I DIAGRAM USED BY GOLDEN VALLEY MN
4 IMPLEMENTING A PRIVATE LATERAL CERTIFICATE PROGRAM

By implementing a certification program where certificates are required at certain triggers, the municipality can collect more data about the current state of the network of sewer pipes on private property to assist with better managing the sanitary system.

Currently, property owners must obtain a plumbing permit from their municipality in order to undertake repair or rehabilitation work on the lateral, as a sewer lateral is part of the home’s plumbing system. Therefore, the North Shore municipalities have building permit data that demonstrate how old the private laterals are, based on these permit records. Although this data is available, it is not currently linked to the more extensive public sewer data infrastructure and models so does not typically contribute to system maintenance evaluation and planning.

Additionally, the municipalities do not have records about the current status of any of the sewer laterals that have not been repaired or replaced with permits, which is the case for the vast majority of single-family homes. Owners may have their sewer lateral inspected and/or cleared of obstructions without the need for a permit and thus do not contact the municipality under these circumstances. Also, in practice it is likely that many property owners have lateral repair or rehabilitation work completed without obtaining a permit. In these cases municipalities do not have the opportunity to inspect the quality of work, verify that the lateral is watertight after completion, or update their records with the state of the lateral.

This study identifies a certification approach for the North Shore that would provide improved data for more effective management of the sanitary system. Many existing laterals, if tested now, would not be compliant with the current BC Building Code (to be watertight); however, the laterals may be in good shape and free from roots, major cracks or problems with joints. It would perhaps be overly onerous to require all homes to be brought into compliance with Code when no work is being undertaken on the building or plumbing system (e.g. at the time of property transfer) 31. To address this, a dual approach to certification is proposed:

1. A **10-year certificate** be issued to properties that submit a video demonstrating that the existing lateral is free from roots, major cracks or problems with joints (N.B. consider whether some materials must be replaced). The lateral is not tested for being watertight due to the lack of access to conduct the test properly (i.e. inadequate opportunities to seal the sewer lateral at both ends, such as clean-outs at the building or property line).

2. A **20-year certificate** be issued to properties that demonstrate the lateral is watertight and meets the current BC Building Code materials and standards by completing a water pressure test in the presence of a plumbing inspector.

Where a property has had a sewer lateral installed within the last 20 years, it is suggested that these properties receive a 20-year certificate if records can be provided that

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31 An additional alternative is available that further reduces the onus on property owners, and that is to only require inspection in order to receive a certificate from the municipality (i.e. a “Certificate of Inspection” as opposed to a “Certificate of Compliance” would be issued). This was not pursued in this study, as it does not meet the objective to ensure laterals be in “good working condition”. It does, however, provide the municipality with more information that can assist in devising targeted lateral improvement program. This approach was previously pursued by the City of Tacoma.
demonstrate the issuance of a plumbing permit with an installation date shown. (N.B. note material considerations if needed).

For the North Shore program, 20 years is recommended for recertification to align with the regional commitment to inspect the public portion of the sanitary sewer on a 20-year management cycle.

The following sections describe the authority for implementing this program, the internal processes to implement the program, and the recommended external processes and engagement to ensure a more successful program.

4.1 REGULATION AND POLICY

Municipalities have the jurisdiction to establish a private lateral certificate program. This section describes the sources of regulatory authority for each of the program elements.

4.1.1 ESTABLISHING A TRIGGER FOR A CERTIFICATE

The municipality has a broad discretion to establish what circumstances will “trigger” a regulatory requirement such as a certificate requirement

Under section 12 of the Community Charter, municipalities are given considerable discretion to decide what circumstances will trigger a regulatory requirement such as a certificate requirement. Section 12 of the Community Charter provides:

12(1) A municipal bylaw under this Act may do one or more of the following:

• Make different provisions for different areas, times, conditions or circumstances as described by bylaw;
• Establish different classes of persons, places, activities, property or things;
• Make different provisions, including exceptions, for different classes established under paragraph (b).

(2) A council may, in exercising its powers under section 8(1) [natural person powers], establish any terms and conditions it considers appropriate.

Applied to the issue of establishing a certificate requirement for private laterals, relying on this section, municipalities have the choice to establish any number of kinds of reactive or proactive “triggers” for requiring an inspection or a certificate. In other words, a municipality might establish a certificate requirement in relation to all properties:

1. Located within a specified area or zone, the boundaries of which are defined by the municipality;
2. To be satisfied by a certain date;
3. With sewer connections older than a stipulated age;
4. On the occasion of transfer of title;
5. Undergoing a renovation where the construction is greater than $“x” in value and with service connections that are more than “y” years old;
6. etc.

The municipality may specify whatever conditions or circumstances make sense to it.
4.1.2 Establishing a Requirement to Obtain a Certificate

Establishing a requirement for an owner to obtain a “certificate” to prove sewer lateral condition compliance is also authorized

Beyond the ability to require a property owner to inspect, repair or replace the lateral, however, is the question of the municipality's authority to require a property owner to obtain a “sewer lateral certificate” and even pay a fee, on meeting certain conditions that demonstrate compliance with the bylaw's requirements.

Municipalities in BC have the authority to establish a certificate requirement under their bylaw. The requirement to obtain a certificate would be in the nature of providing for a system of licences, permits or approvals related to receiving sewer service at the property. Councils are authorized to establish system of licences, permits or approvals, in accordance with the licensing and standards authority set out in section 15 of the Community Charter:

Licensing and standards authority
15 (1) A council may, in regulating under this Act or the Local Government Act, provide for a system of licences, permits or approvals, including by doing one or more of the following:
   (a) Prohibiting any activity or thing until a licence, permit or approval has been granted;
   (b) Providing for the granting and refusal of licences, permits and approvals;
   (c) Providing for the effective periods of licences, permits and approvals;
   (d) Establishing:
      (i) Terms and conditions of, or
      (ii) Terms and conditions that must be met for obtaining, continuing to hold or renewing a licence, permit or approval, or providing that such terms and conditions may be imposed, the nature of the terms and conditions and who may impose them;
   (e) Providing for the suspension or cancellation of licences, permits and approvals for:
      (i) Failure to comply with a term or condition of a licence, permit or approval, or
      (ii) Failure to comply with the bylaw;
   (f) Providing for reconsideration or appeals of decisions made with respect to the granting, refusal, suspension or cancellation of licences, permits and approvals.

(2) A council may, in regulating in relation to a matter under this Act or the Local Government Act,
   (a) Establish a standard, code or rule by adopting a standard, code or rule
      (i) Published by a provincial, national or international body or standards association, or
      (ii) Enacted as or under a law of this or another jurisdiction, including a foreign jurisdiction, and
   (b) Adopt the standard, code or rule under paragraph (a):
      (i) In whole, in part or with any changes considered appropriate, and
      (ii) As it stands at a specific date, as it stands at the time of adoption or as amended from time to time.

Notably, section 15 enables a council in establishing a permit system to reference a provincial, national or international body or standards association standard, in whole or in part, and with any changes deemed appropriate. A referenced standard may be stipulated to be the standard as it stands at a specific date, as it stands at the time of adoption, or as amended from time to time.
In the instance at hand, the North Shore municipalities may refer to the BC Plumbing Code as the construction standard that would apply to any private lateral construction or reconstruction to replace a defective or leaky lateral. The Plumbing Code establishes standards for plumbing systems (including “building sewers” as private laterals are termed in the Code), and further to section 692 of the Local Government Act, the Plumbing Code standard applies, whether at the time of construction or reconstruction.

4.1.3 Bylaw elements
Given all of the above, the basic steps that a municipality would need to take in order to establish a regulatory private lateral certificate requirement and program would consist of the following:

1. Assess the current bylaw provisions pertaining to private laterals. How well are those provisions supporting a municipal goal to reduce private lateral I&I? Consider whether the bylaws are conducive to having additional procedural sections added as an amendment, or whether the best route might be to proceed with passage of a fresh bylaw.

2. In either case, the bylaw will need to provide terms and conditions linking the granting of a private lateral certificate with signifying either a state of “bylaw compliance” or signifying actual permission to have or to continue a connection to the public sewer service.

3. The bylaw provisions for a certificate requirement will need to clearly stipulate, at a minimum:
   a. Under what conditions (“trigger”), an owner will be required to apply for a certificate (e.g., upon delivery of a notice of a defect from the municipality? On transfer of title? Upon major renovation?);
   b. Whether any conditions or circumstances would exempt an owner from the need to obtain a certificate (e.g., private lateral less than 20 years old);
   c. Who is authorized to carry out an inspection of the private lateral;
   d. What persons are authorized to perform any required work on the private lateral (as noted in Chapter 2, the Plumbing Code answers this question);
   e. What testing method will be acceptable to the municipality, and what evidence of testing needs to be produced;
   f. What standard (or standards) needs to be met, to obtain a certificate;
   g. What persons will be authorized to review evidence from the testing or inspection and authorized to issue a certificate;
   h. Whether a fee is payable for the certificate or for any of the municipal services provided related to the process;
   i. What the certificate entitles the owner to and for how long the certificate is valid;
   j. What are the legal consequences of not obtaining a certificate when required to do so;
   k. Procedures for addressing non-compliance / enforcement of the bylaw.

4. The bylaw should also address any other considerations pertaining to the certificate program, e.g., availability of any loan program to assist with financing repairs, etc.

5. Finally, further to section 8(9) of the Charter, a municipality must “make available to the public, upon request, a statement respecting the council’s reasons for adopting a bylaw
under subsection (3), (4), (5) or (6). Often municipalities will include their reasons in the Preamble portion of a bylaw.

Sample bylaw provisions for achieving all of the above steps are included in Appendix B.

4.1.4 Municipal enforcement of the bylaw

The municipal powers of enforcement in respect of a certificate requirement include:

1. The authority to enter onto property, without the consent of the owner, for the purposes of inspecting or determining whether all regulations, prohibitions or other bylaw requirements are being met (reasonable advance notice to the owner is required prior to entry, except in an emergency, and entry must be done at reasonable times and in a reasonable manner) 32;
2. The authority to order a property owner to comply with a duly authorized bylaw, failing which enforcement action will be taken 33;
3. The authority to take municipal action at the defaulter’s expense, i.e. to undertake the work needed to bring the property into compliance, and to recover the costs of that work as a debt, including as a special fee that, like outstanding property taxes, may be charged as a municipal lien on the property (see below) 34;
4. The authority to impose a fine in respect of the non-compliance 35;
5. The authority to discontinue providing a service, upon notice 36.

4.1.5 Statutory charge under Land Title Act for recovering cost of work

In a situation of non-compliance, one of the remedies open to a municipality is to undertake the work needed to bring a private property into compliance with a bylaw and to charge the cost back to the owner. Municipalities are protected in respect of such expenditures in respect of improvements to private property, in that the Community Charter specifically calls these out as “special fees” that automatically become an unregistered statutory charge against the title to a property. When the property is transferred, this charge is discharged (paid) prior to or upon the transfer of title, often out of the sale proceeds. Section 23(2)(c) of the Land Title Act confirms that fee simple title is subject to such unregistered municipal charges.

32 Section 16(4) and 16(6)(a) of the Community Charter
33 This is part of the fundamental power to regulate, impose requirements and prohibit granted under section 8 of the Charter.
34 Section 17 of the Community Charter, and Division 14 of Part 7 of the Charter
35 See generally Part 8 of the Community Charter, Bylaw Enforcement and Related Matters
36 The bylaw must specifically establish the circumstances when this Section 18 of the Community Charter provides:
18 (1) A municipality may, by bylaw, establish circumstances in which it may discontinue providing a municipal utility or other service to a specific property or person:
(a) Because of unpaid fees or taxes in relation to the service, or
(b) Because of non-compliance with the rules established by bylaw or contract respecting the use of the service.
(2) A bylaw under subsection (1)
(a) Must include provision for reasonable notice, and
(b) In relation to a discontinuation under subsection (1) (b), must include provision for the persons affected to have an opportunity to make representations to council.
4.1.6 Public Tracking of the Certificate as a Permit Associated with the Property

As noted in Chapters 2 and 3, North Shore municipalities may establish an internal municipal tracking program for recording what properties have been issued certificates, what date the certificates were issued, and until when each certificate is valid. Tracking will help the municipality maintain control over the system and monitor the municipality’s progress in getting the private lateral side of the sewer system to a certified state.

Currently, permit records and other property information may be made publicly available on municipal websites via the “property information” search engine function. Property information can be made public because such permitting information associated with a property is not deemed to be personal information that may otherwise be barred from public release37.

4.1.7 Optional Consideration – Power to Require Security to be Provided

In some circumstances, municipalities might be tempted to consider whether there would be any benefit to administering a requirement for security to be paid to the municipality, as a requirement related to the need to obtain a private lateral certificate. Section 19 of the Community Charter provides:

Requirements for security to be paid to municipality

19 (1) This section applies if:

(a) A bylaw requires a person to provide the municipality with security; or
(b) The council or a person authorized by the council requires a person to provide security to the municipality as a condition of a licence, permit or approval.

(2) The person who is subject to the requirement may, at that person’s option, provide the security by:

(a) A cash deposit;
(b) An irrevocable letter of credit; or
(c) Another form of security satisfactory to the council or the person who imposed the requirement for the security.

(3) The municipality must deal with the security as follows:

(a) Interest on the security becomes part of the security;
(b) The security may only be used for the purpose for which it was provided;
(c) Any amount not required for that purpose must be returned to the person who provided the security.

Historically, provisions enabling a municipality to impose a requirement to post security have been established in the context of ensuring performance of conditions under Part 26 Local Government Act permits – permits for subdivision developments, etc38. These security provisions have worked quite well, mostly because developers are highly motivated to obtain their permits as quickly as possible so that they can move forward with the development project (time is money), and because they have the financing available to post security.

37The release of personal information is subject to the Freedom of Information and Protection of Privacy Act.
It is also important to understand that this power to require security is not the “magic bullet” providing the municipality with the authority to launch an “escrow posting” of security for private laterals at time of sale, as has been done in some US examples. In the BC case, municipalities have no legal or practical mechanism by which they might compel closing funds to be payable to the municipality to meet a security obligation of a selling property owner. This is because under the Land Title Act, the municipality’s statutory charge or lien against title (that does not require registration of a charge for funds owing to it) does not include monies owing as a result of a bylaw provision of this nature. The only amounts that are eligible to be such a special statutory charge in favour of a municipality include property taxes owing and “special fees” for work done or services provided to the land or improvements as set out at sections 258 and 259 of the Charter (including, e.g. if the municipality had actually performed work to bring the property into compliance and had then charged the cost to the owner39). Instead, the obligation to comply with the bylaw would pass to the buyer who assumes the risk and responsibility for any defects or bylaw non-compliances associated with the property. This underlines the need for prospective buyers to exercise diligence in their searches in advance of their removal of contract conditions and in advance of the closing date.

4.2 Defining Program Requirements and Administrative Processes

Undertaking a sewer lateral certification program, regardless of the trigger(s) employed to require property owners to obtain a certificate, will require coordination among departments in order to define and implement new or modified internal processes, and to ensure all staff communicate about the program in a clear and consistent manner when dealing with the public. This section outlines the program requirements for:

1. Obtaining a 10-year certificate upon completion of a video inspection
2. Obtaining a 20-year certificate upon completion of a pressure test (verifying watertight)

When property owners reach a trigger requiring a certificate, the owners can opt to pursue the certificate that is most appropriate for their laterals’ condition. The processes for achieving the two different certificates are described separately, as they require different steps and testing procedures.

4.2.1 Certification and Inspection Procedures: 10-Year Certificate

In the vast majority of lateral programs reviewed, a video inspection is the tool used to verify the condition of an existing lateral. Video inspections are convenient because they are simple to conduct and do not require an external clean out for access. Although video inspections will identify most obvious defects such as open or offset joints, cracks and roots, the use of this method does not verify that a lateral is operating in a watertight manner as there could still be leaky joints not identified.

**Step 1:** The property owner engages a qualified plumber to conduct a condition assessment of the lateral using a CCTV video inspection.

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39 See section 17 of the Community Charter, addressing municipal action at a defaulter’s expense, which refers to a municipality’s ability to recover such amounts for work performed in relation to the land or improvements, further to sections 258 and 259 (Division 14 of Part 7).
• The plumber advises whether any repairs or replacement are needed to meet the program standards. If repairs or replacement are deemed necessary, the owner must pursue the 2nd option – to update the lateral to meet current Code requirements (see 20-year certificate below).

Step 2: If no repairs are advised, the property owner or plumber submits the following to the municipality:

- Sewer Lateral Inspection Form, completed and signed by a qualified professional
- DVD of the sewer lateral video conducted by the qualified professional to the program standards
- Certificate Application Form, completed and signed by the property owner
- Certificate Application Fee

Step 3: Municipal engineering/utilities department reviews the documents and video within a set number of business days (e.g. 10) of receipt and determines whether the lateral meets the certificate standards.

• If requirements are all met, the engineering department will issue a letter to the property owner containing a 10-year certificate. Engineering staff will also update the property information database (or advise the finance department to update the record) to indicate a certificate has been issued.
• If the lateral does not meet the standards required for a certificate due to material, roots, cracks, etc. as evidenced in the video, the engineering department will issue a letter to the property owner requiring repair or replacement of the lateral (see 20-year certificate).
• If any information is missing or incomplete, the engineering department will send the application back to the owner requesting the missing information be provided and re-submitted.

4.2.2 Certification and Inspection Procedures: 20-Year Certificate

When a property owner must undertake work to get their lateral into compliance, the process will require obtaining a plumbing permit and proving that the lateral is in compliance with the BC Building Code to be watertight. The expected sequence of events for obtaining a 20-year certificate is as follows:

Step 1: The property owner engages a qualified plumber to conduct a condition assessment of the lateral using a CCTV video inspection to determine ability to meet a watertight test.

• If repairs or replacement are needed to meet a watertight test, proceed to step 2.
• If no repairs are needed, proceed to step 3.

Step 2: The property owner and qualified plumber enter into a work agreement to have the lateral repaired or replaced. The qualified plumber must obtain a plumbing permit from the municipality prior to conducting work. Necessary work is undertaken.

Step 3: The qualified plumber books an inspection time to verify the lateral condition. The plumber sets up and conducts a water pressure test, as per Building Code requirements.
• Upon completion of a successful test, the permit database is updated and the engineering department is notified. Engineering staff will issue a letter to the property containing a 20-year certificate. Engineering staff will also update the property information database (or advise the finance department to update the record) to indicate a certificate has been issued.

4.2.3 Exemptions
If the sewer lateral was installed within the last 20 years, and the property owner can verify this with a plumbing permit, the property owner may complete an exemption application form and submit it to the municipality with the required permit documentation and an application fee.

• If the application form is received with the appropriate documentation, the engineering department will issue a letter to the property owner containing a 20-year certificate, calculated from the date of the work completed. A minimum 5-year certificate will be issued for exempt laterals. Engineering staff will also update the property information database (or advise the finance department to update the record) to indicate a certificate has been issued.
• If the documentation does not meet the requirements, the engineering department will issue a letter to the owner notifying them they must have the lateral inspected.

4.2.4 Supporting Documents, Forms and Guidelines to Prepare
To support the steps outlined above, the following documents would need to be created and put into place:

Video inspection standards (10-year certificate): a document that describes what standard must be met to warrant a 10-year certificate. It should also detail the expectations of the video procedure to be undertaken (e.g. Tacoma requires certain information to be displayed during the video, including the property address, date and time of inspection, and contractor name; the entire length of the sewer must be recorded in one continuous recording; the camera shall be stopped at all defects for a minimum of 5 seconds; etc.).

Sewer lateral inspection form: a form that must be completed and submitted with the video inspection detailing observations from the inspection. When implementing a lateral inspection program, North Shore municipalities may also want to ensure there are no sources of stormwater connected to the sewer system (inflow). This can be incorporated into the inspection form and required as a condition to achieve a certificate.

Certificate application form: a form that must be completed and signed by the property owner, then submitted to the municipality with the required inspection documentation in order to apply for a certificate.

Exemption application form: a form that must be completed and signed by the property owner, then submitted to the municipality with the required inspection documentation in order to apply for an exemption certificate.
4.2.5 INTERNAL EDUCATION
Training should be provided for all staff and Council that interact with the public about the program to ensure they understand and can consistently communicate the municipal policy, bylaw, justification and legal authority for establishing the program. In the EBMUD program, employees posed as customers performing various tasks – such as making payments, calling in to inquire about the process, etc. to ensure staff were familiar with the procedures set up, to identify process gaps, and to “grow accustomed to working together”.

4.2.6 RECORD MANAGEMENT
The North Shore municipalities have various record keeping and data management systems already in place for tracking property-based data, including online web databases that contain information regarding the property, such as permits related to the property, service connections, etc. The District of North Vancouver has even created links so that users may view the “as built” drawings of private sewer connections for a property, and have data concerning when the sewer was installed, pipe material, etc. Private lateral certificate status could be posted as permit information together with other information related to the property in these existing systems as a way of notifying the public of the certificate status of properties.

To implement a sewer lateral certificate program, each municipality will need to determine which system will be used to track the status of compliance certificates. The system will need to be able to:

- Be searchable by staff using property address to determine current certificate status;
- Include status of certificate compliance with a property report that gets requested by a prospective buyer, or their representative (lawyer or notary);
- Track payment status for application fees;
- Include status of certificate compliance in web-based property information systems;
- Add notes about the certificate status, including reference to a building permit number, reasons for issuing an exemption certificate, etc.; and
- Ideally be accessible by the engineering department staff managing the private sewer lateral certificate program.

Table 2 outlines our understanding of the systems currently in place. Because these vary in nature, it will be necessary for an internal team to meet and determine the most effective process for tracking the certificate status.

Note that consideration may also need to be given to methods for extracting the status records for groups of properties using a GIS system in order to inform sewer system maintenance discussions and planning.
### TABLE 2. NORTH SHORE DATA MANAGEMENT SYSTEMS FOR TRACKING AND REPORTING PROPERTY INFORMATION

<table>
<thead>
<tr>
<th>Municipality</th>
<th>Record management system(s)</th>
</tr>
</thead>
</table>
| City of North Vancouver   | 1. Tax certificate (for conveyancing).  
2. Property Information Search: a) parcel information which includes legal description, zoning and OCP designation and construction permit or license status ("Parcel Status search"); and b) property assessment or tax information ("Public Property Search" or iCitizen search system) – includes legal identifier information, property tax, property assessment, utility service information for water and sewer. |
| District of North Vancouver| 1. Tax certificate (for conveyancing): BC Online, or from DNV to owner, or lawyer/notary public on behalf of owner.  
2. Property information and assessments: property tax levies, assessed property value, legal description of property, utility charges, local improvement information, other property information.  
3. Permits online building and permit information: searches for application, permit or business license, building permit, business license, electrical permit, environment permit, mechanical permit, film permit, planning process, neighbourhood zoning, rezoning, sign permit, subdivision, OCP amendments.  
| District of West Vancouver | 1. Tax certificate (for conveyancing).  
2. Property Information Online system: legal description, property attributes (e.g. single family dwelling), date built, lot area, property assessment details, property tax levy and comparison, local improvements/business improvement areas.  
4. MyDistrict online: residents can pay taxes and utilities, business licenses and dog licenses. |

### 4.3 **EXTERNAL ENGAGEMENT: INDUSTRY PROFESSIONALS AND PROPERTY OWNERS**

In addition to significant efforts to organize administrative requirements and communications internally, additional efforts will need to be placed on setting up and communicating the program standards and processes to professionals in the plumbing industry that will be engaged by property owners to assess their laterals’ level of compliance, possibly undertake work, and/or prepare video
applications for a certificate. In addition to industry professionals, the other key external audience to engage is property owners that may be subject to the bylaw upon meeting certain triggers. This section outlines the existing capacity of industry companies in the North Shore, a potential industry training and certification approach, and methods for engaging property owners.

4.3.1 NORTH SHORE INDUSTRY CAPACITY
Informal consultation with North Shore plumbing and drainage industry representatives reveals an existing capacity, and support for increasing capacity to meet the need for increased private sewer lateral inspections in their service area.

There are approximately 45 plumbing service providers located on the North Shore: Two large firms with over 50 employees; 18 medium-sized companies with teams of 5-10 staff; and more than 20 small companies with less than 5 staff. Interviews were conducted with representatives from each segment.

The industry representatives indicated a preference for CCTV camera inspection over a water pressure test. In an older home, compromised clay drain tiles may be further damaged by water pressure test. The CCTV technique does not compromise the existing systems, can be preformed in approximately 1 to 2 hours, and cost approximately $300. This cost could decrease if demand were to increase significantly, and may increase if video record of each inspection were required.

The large and medium-sized companies have CCTV equipment and technicians available to meet current demand, and to accommodate a marginal increase in demand. These companies indicated they would be interested in procuring additional CCTV equipment and training staff to meet an increase in demand.

Some of the smaller firms have their own equipment and capacity, and like the larger firms, would be inclined to procure necessary resources to meet increased demand. Many of those who do not own the appropriate equipment expressed they would respond to demand by purchasing a CCTV device and offering service, or referring property owner to a larger, local firm.

For a list of companies identified to be currently operating in the North Shore, refer to Appendix C.

4.3.2 INDUSTRY TRAINING AND CERTIFICATION
Standardization of certain components of the inspection work has a number of advantages including:

- Providing an accurate and consistent depiction of the condition of laterals;
- Ensuring equity between property owners that all reports are done to the same standard;
- Providing reliable data for system monitoring (e.g. a municipality may wish to capture the information within an asset management system for subsequent review and analysis or project planning);
- Providing information for evaluation of the program itself over time.
An Approach Towards Private Sewer Lateral Certification in Real Estate Transactions

Standardization and training center upon three issues:

- **Program Framework**: The program objectives and the compliance standards provided in the bylaw.
- **Equipment operation**: there are a number of suppliers of CCTV inspection equipment, and each may have different operating characteristics. Local contractors have indicated that some suppliers provide introductory training in equipment operations when they provide the equipment. There is expertise in the operation of the camera system but this is expected to be swiftly attainable through the supplier training and expertise.
- **Condition Assessment and coding**: Mainline sewer inspections have evolved to include coding systems for detailing the nature and type of failures, as well as providing a numerical scoring (e.g. a 1-5 scale). This is primarily applicable to mainline sewer systems as part of asset management systems. For lateral inspections, a system as rigorous as the PACP may not be warranted.

Training and certification programs fall into a number of general categories. These include guidance (guidelines and best practices documents and outreach), third party professional sign off, and training and certification (see Table 3). In practice, the program would utilize a mixture of these approaches and not any one in isolation.

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40 For example the NAASCO PACP program licenses the North American rights to the Water Research Council (WRC) coding system for sewer pipe infrastructure.

41 Example: The National Association of Sewer Service Companies (NASSCO) has developed a number of training and certification programs for sewer service professionals. These include the:

- **Pipeline Assessment and Certification Program (PACP)**: A 2-day training program directed for inspections of mainline sewers using the WRC coding system. NASSCO offers training programs throughout the US, and in 2011 licensed the Canadian Standards Association (CSA) to deliver this program. The CSA contracts the delivery of this training through eight qualified contractors – three of which are located in the lower mainland (Langley, BC).
- **Lateral Assessment and Certification Program (LACP)**: A follow-up to the PACP (the PACP is a pre-requisite) focusing on sewer lateral inspections and coding. It is typically delivered with the MACP in a one-day session.
- **Manhole Assessment and Certification Program (MACP)**: a follow-up to the PACP (the PACP is a pre-requisite) focusing on manhole inspections and coding. It is typically delivered with the LACP in a one-day session.
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February 12, 2013

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Table 3. Industry Training and Certification Overview

<table>
<thead>
<tr>
<th>General Activity</th>
<th>Nature of Activities</th>
<th>Comments</th>
<th>Examples</th>
</tr>
</thead>
</table>
| Guidance               | Provide a guidance document or best practices manual to professionals for their use. This typically includes outreach to relevant trade, or company associations. | • No regulatory weight and limited ability to enforce standards.  
• Potential uncertainty over legal liability over the regulatory requirement of the documentation.  
• Could be a first step at the beginning of a regulatory process (e.g. supply guidelines in year 1, compulsory training or certification becomes required in a subsequent year). | None yet identified. |
| Third party professionals | Define a suitable third party professional (e.g. a certified plumber, a civil engineer, etc).  
These professionals provide a statement to the effect of the lateral condition. | • Concerns about liability or legal uncertainty of what constitutes an acceptable condition assessment would create a desire for standardization.  
• Typically not done without some training or program roll-out.  
• General contractors and some stand-alone inspection forms might feel that they are unfairly penalized if they do not have a registered professional on staff. | None yet identified. |
| Training and certification | Certification is typically achieved through the successful completion of a training program. | • All participants are required to attend a municipally delivered training program – including both certified professionals (e.g. plumbers) and other delivery agents (e.g. pipe inspection companies).  
• This training includes information about the program and its objectives, and how to fulfill the compliance reporting requirements. | Santa Barbara, CA  
El-Cajon, CA  
Ukiah CA |

Potential Delivery Agents

A number of possible agents could be leveraged to provide training. Training will need to address a number of key issues including:

- **Program information**: Intent of the program, conditions where it applies, timelines and the process, responsibilities of each party.
- **Suitable technologies**: What level of CCTV capture and quality is required, archiving requirements and software compatibility, acceptable and unacceptable technologies.
- **Documentation and reporting**: Coding of pipe condition and failures. Evaluation criteria for condition assessment.

At present there is no delivery agent ready in the area with an ‘off-the-shelf’ training program available. A summary of the potential delivery agents is provided in Table 4.
An Approach Towards Private Sewer Lateral Certification in Real Estate Transactions

TABLE 4. TRAINING DELIVERY AGEND OPTIONS

<table>
<thead>
<tr>
<th>Agent</th>
<th>Core Function(s)</th>
<th>Training-related Mandate</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Association of Professional Engineers and Geoscientists of BC (APEGBC)</td>
<td>• Professional certification agency for engineers and geoscientists</td>
<td>• P. Eng. &amp; P. Geo. Exam administration</td>
<td>Likely not suitable</td>
</tr>
<tr>
<td></td>
<td>• Industry representative organization</td>
<td>• Training and certification of water and WW system operators</td>
<td>Most work is with water and sewer system operators. Limited or no connections to contractor and plumbing community. Potential to provide training for municipal staff.</td>
</tr>
<tr>
<td>BC Water and Waste Association (BCWWA)</td>
<td>• Certification of water and wastewater system operators</td>
<td></td>
<td></td>
</tr>
<tr>
<td>BCIT</td>
<td>• Educational institution</td>
<td>• Trade / apprentice programs</td>
<td>Delivers programs to plumbing trades. Not clear if there are connections to established trades-persons. Limited connections to the general contractor community.</td>
</tr>
<tr>
<td>NASSCO</td>
<td>• Training and certification of sewer service companies</td>
<td>• Assessment and certification programs (mainlines, manholes, and laterals)</td>
<td>Does not operate in Canada, but has teamed with CSA to adapt standards for pipeline assessment to Canada. Potential for adapting the lateral standards as well. PACP and LACP training likely too extensive for a lateral only program.</td>
</tr>
<tr>
<td>CAS and delivery agents</td>
<td>• Standards</td>
<td>• Training sessions for different standards administered</td>
<td>Delivery of PACP program only at present.</td>
</tr>
<tr>
<td>Municipalities and local governments.</td>
<td>• Municipal services, planning and development, and bylaw development and enforcement</td>
<td>• Limited</td>
<td>Some (e.g. MetroVan) have suitable training facilities that could be used for any ‘hands-on’ training.</td>
</tr>
<tr>
<td></td>
<td>• Typically ad-hoc outreach initiatives for new bylaw initiatives</td>
<td>• Some ongoing outreach for established programs (e.g. waste, water conservation)</td>
<td></td>
</tr>
</tbody>
</table>

Training and Certification Requirements

There are approximately 45 plumbing and service companies located on the North Shore. Training would be required for a subset of these companies’ staff. At most it could be assumed that there is a need to train one or two staff from each firm.
In recent years, sales of detached dwellings across the North Shore number about 1,600 to 1,900 annually\(^ {42}\). A typical inspection is estimated to take 1.5 to 2 hours. Assuming that an inspection can be undertaken by one person, there is the maximum need for up 475 person-days of inspection related employment – equivalent to about 2.5 persons working full time doing inspections. In practice, the trades and contractors doing inspections would provide this service along with other services. We can assume that currently employed professionals would spend the same amount of time or slightly more on this issue, and that industry would hire to respond the additional workload. We can assume a maximum training requirement of 45 to 50 currently employed and new professionals to respond to the increased sewer lateral inspection demand.

If inspectors were only required to be trained once, then the total market for training would be 50 persons. It is unlikely that a private sector operator would develop a training program for that limited market. Municipal support for a training program would likely be required.

Metro Vancouver should partner with a suitable delivery agent to develop and deliver an inspection training program. BCIT would be a suitable agent as it currently programs for the trade, however, Metro Vancouver may deem that internal resources are sufficient for delivering this training (as is done in the program in Santa Barbara, CA). This would likely be a one-day program offered one-time to certify companies and/or individuals. Ongoing training opportunities would need to be provided on an as-need basis for new professionals entering the industry.

### 4.3.3 Property owner awareness

For engaging with existing property owners, the municipality might engage in a range of educational and communications activities:

- The municipality's online "property information search" / GIS mapping system could display property information that includes an indication of private lateral certificate status (yes/no and validity date, if applicable). Note: this information is available not just to property owners but to any individual that conducts an online search.
- Informational packages could be mailed to every registered property owner in the municipality;
- Owners could be invited to informational workshops;
- The annual tax notice (tax bill) that is sent to every registered property owner could contain a blurb or link referencing the bylaw and the transfer of title certificate requirement;
- The municipal website could feature an educational component about private laterals describing:
  - How the public sewer system works and the problem of I&I;
  - Sources of I&I from private connections (cross-connections, leaking pipes, etc.);
  - How I&I from private laterals can be remedied; and
  - Bylaw goals and regulatory measures to address the I&I problem: the certificate requirement on transfer of title, on major renovation.

\(^{42}\)Not all would require inspections, but for simplicity this is assumed in this estimate.
5  IMPLEMENTING A TIME OF SALE TRIGGER FOR A CERTIFICATE PROGRAM

The previous chapter discussed all the components necessary to implement a private sewer lateral certificate program in the North Shore, regardless of the regulatory trigger(s) chosen. This chapter describes the implementation considerations when the time of property sale is selected as the triggering circumstance for obtaining a certificate.

5.1  REGULATION AND POLICY

This section discusses the municipal authority to use time of sale of a property as a trigger for requiring a private sewer lateral certificate. Two key statements summarize the discussion:

- First, municipalities clearly have authority to use time of sale to trigger a bylaw requirement for a lateral certificate; and
- Second, the existing regulatory systems that underpin a real estate transfer provide municipalities with imperfect access to buyers and buyers with imperfect access to or awareness of prevailing bylaws. Therefore, municipalities will have to employ non-regulatory mechanisms to engage prospective buyers about the requirement (and will be discussed in in section 5.3).

5.1.1  AUTHORITY TO USE A TIME OF SALE TRIGGER

As described in Chapter 2, section 12 of the Community Charter gives municipalities considerable discretion to decide what circumstances will trigger a regulatory requirement such as a certificate requirement. Relying upon section 12, it is properly within the jurisdiction of a municipality to establish that the “time, condition or circumstance” of a title transfer occurring may define the condition in which a regulatory provision, such as a certificate requirement, would apply. Our review of BC legislation did not uncover any provision in any other statute that would bar a municipality from identifying the transfer of ownership of a property as a circumstance that would make regulatory provisions apply to a property.

Identifying properties that are undergoing a transfer of title as a class of property subject to particular regulatory provisions is unusual but not completely unprecedented in British Columbia. One precedent is an initiative that was designed to prompt the replacement of inefficient wood-burning stoves with high-efficiency ones. In the late 2000s, a number of BC municipalities established bylaws that identified that any property undergoing a transfer of title after a certain date must not have one of the old technology woodstoves still hooked up or operational. For example, the Smithers Wood Burning Appliance Smoke Control Bylaw, No. 1520, provides:

5(d) Prior to the completion or consummation of a sale or transfer of any real property on or after January 1, 2007, all existing non-certified wood burning appliances located on the property shall be replaced or removed and rendered permanently inoperable by the target date of December 31, 2010.
5.1.2 No regulatory mechanism for notifying buyers prior to sale

While a municipality is acting within its powers to establish a transfer of title certificate requirement, two procedural considerations particular to that trigger merit discussion:

1. First, municipalities do not receive a definitive confirmation that a property title has transferred until approximately two weeks after the sale has completed; and

2. Second, municipalities cannot use regulatory means to ensure the buyer learns of the bylaw and the certificate requirement, until after the sale has completed. Municipalities cannot require:
   a. The seller to disclose the bylaw / certificate requirement to the buyer;
   b. The realtor(s) to disclose the bylaw / certificate requirement;
   c. That a due diligence search be conducted; or
   d. That a due diligence search discovers the bylaw / certificate requirement.

The practical implication of these facts taken together is that the possibility exists that a municipality may end up enforcing its bylaw against new buyers who may be surprised by the bylaw and certificate requirement, and who also may be less financially prepared to bear this potentially expensive inspection and repair than if they had known about it in advance of negotiating a purchase price, or in advance of arranging mortgage and home renovation on purchase financing.

While the potential gap in time between when the bylaw requirement is optimally communicated to the buyer and when it is actually communicated does not legally impede the municipality from enforcing the certificate requirement subsequent to a transfer, its consequences underline that it is desirable for the municipality to devise a range of strategies to engage potential buyers in advance of their home’s closing.

Notice of name change from the Land Title Office

Municipalities may commence enforcement action in relation to the bylaw obligation starting approximately two weeks following any transfer of title. While the BC Land Title Office (LTO) provides a daily update to municipal tax departments respecting property title transfers that have occurred within municipal boundaries, there is a lag of approximately two weeks for any particular transfer of title to be included in the daily update. Municipalities do not formally update municipal property ownership records until they receive this formal notice from the LTO – even if they may have received informal notice as a result of inquiries by a prospective owner or by a selling property owner.

Regulatory framework and practices in real estate transactions

For a thorough description of the various regulations and regulatory mechanisms involved in property transfer, refer to Appendix D. This study considers:

- Property Law Act
- Land Title Act

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43 Note that the duty to comply with the bylaw falls on the owner. If the seller does not obtain the certificate before the sale, the buyer becomes responsible for bylaw compliance.
44 An additional measure that could provide some relief to buyers in need of timely financial assistance would be for the municipality to establish a loan program offering loans to assist with the financing of sewer lateral rehabilitation.
5.2 INTERNAL PROCESSES

5.2.1 Notification procedures after land title changes

As noted above, municipalities in BC receive notification that a transfer of title has occurred within the municipal boundaries approximately two weeks after the transfer is complete. At this stage the municipality formally updates the property ownership records for taxation purposes. In order to implement a sewer lateral certificate program with a time of sale trigger, this is the mechanism whereby municipalities will be able to track which properties should be in compliance with the bylaw. Therefore, a new administrative process will need to be put into place that ensures the engineering department is notified with a list of all properties that have transferred title as they become available to the municipal taxation department. The process should involve:

• Alerting the engineering department of the list of properties that have transferred title;
• Preparation of letters notifying the new property owner of the bylaw and of their requirement to obtain a compliance certificate; and
• Follow up letters and possible enforcement of the certificate in not obtained in a reasonable timeframe.

5.2.2 INTERNAL EDUCATION

Municipalities would also want to train staff on how to respond to more informal desk inquiries concerning permitting requirements in respect of a property. The municipality should respond to inquiring prospective buyers with information about the certificate requirement and the certificate status for any particular property in question. Any staff member that may be contacted by prospective new property owners with questions about purchasing a property should undergo internal training about the program, as described in section 4.2.5.

5.3 EXTERNAL PROCESSES

One of the key challenges in a time of sale certificate program is finding reliable mechanisms for building awareness in the community of the bylaw and its requirements.

The bylaw’s regulatory requirement for a certificate will apply equally to either the current owner / seller or to the subsequent owner / buyer. If the current owner does not fulfill the obligations imposed by the bylaw, the duty to do so will fall on the new buyer’s shoulders. This makes the
prospective buyer particularly vulnerable and makes it all the more important to consider what tools the municipality might employ to ensure prospective buyers are informed in a timely way of this responsibility and impending liability.

Quite apart from the legal notice that, post-transfer, a municipality can and will send to a new buyer to advise that the bylaw’s requirements have been triggered by a recently completed transfer of title of the property, a truly successful time of sale program will ensure that mechanisms are in place to ensure that news of the bylaw is communicated to buyers and sellers well in advance of a sale and any subsequent enforcement action.

External engagement with existing and prospective property owners, their professional advisors, and the community at large, will increase the chances that the program’s goals are understood, that responsibilities imposed under it will cause the least amount of surprise and disruption to those most affected, and also increase the chances that existing or new property owners will have access to the financing necessary to complete any required repairs. All of the foregoing will bolster compliance and reduce the need for enforcement action by the municipality.

5.3.1 Property Owner and Prospective Buyer Awareness

In this section, we focus on the actions that might be taken by the North Shore municipalities to draw the attention of property owners, both existing and prospective, to a transfer of title certificate requirement and their obligations under it.

a) Existing Property Owner Awareness

Refer to section 4.3.3 for a listing of how to engage existing property owners on the requirement for a certificate.

b) Prospective Property Owner (Prospective Buyer) Awareness

For educating and communicating with prospective buyers / persons who are contemplating property ownership in the municipality, the municipality’s set of tools is more circumscribed. The major limiting obstacle is that this group is both disparate and anonymous vis-à-vis the municipality, unless or until a prospective buyer approaches the municipality, visits its website or comes into possession of information that has been strategically disseminated by the municipality.

The tools that might be used to engage with prospective buyers include:

- The municipal website could feature an educational component about private laterals (as described above)
  - Additionally, the municipal website could feature “prospective resident” information, and either describe the private lateral time of sale certificate requirement directly there, or link to the sewer area;
- The municipality’s online “property information” search (as described in 4.2.6) could reference certificate requirements and status for a particular property
  - Again, in any “prospective resident” area of the website, the website could highlight the usefulness of using the “property information” search engine as a tool to learn more about the property and applicable permitting compliance, such as the private lateral certificate requirement
5.3.2 Real Estate and Legal Professionals

In this section, we focus on the actions that might be taken by the North Shore municipalities to draw the attention of real estate and legal professionals to a transfer of title certificate requirement and the obligations of their clients under such a bylaw.

a) Unique access to prospective buyers, unique knowledge of community

Real estate professionals play a key role in educating prospective buyers about the community in which they are shopping for a home, and are therefore ideally situated in relation to prospective buyers to alert them to a time of sale certificate requirement. Real estate professionals typically spend considerable time accompanying prospective buyers to potential properties, and in return, buyers typically look to their realtor as a source of a range of information related to their deliberations about a home in making an offer to purchase.

Real estate professionals have an opportunity to share with buyers basic information about a bylaw’s requirements, and even to advise buyers regarding what questions to ask of sellers, or what terms to consider negotiating in an offer to purchase. The latter would be consistent with the best practices of realtors: experienced realtors often recommend the insertion into the Standard Form Contract of Purchase and Sale substantive clauses designed to protect client buyers from known potential liabilities (informed by realtor experience on the issue).

If real estate professionals could be trained to understand the importance of the bylaw, and voluntarily educate sellers and buyers about their obligations under the bylaw as a matter of routine practice, such as step would be pivotal in bridging the gap faced by municipalities in attempting to engage directly with prospective buyers. Having realtors draw the attention of buyers to the bylaw’s regulatory requirement should lead buyers to ask appropriate questions and then logically, to embark upon the necessary negotiations to ensure that this importance maintenance responsibility will be shared between the seller and buyer. Engaged real estate professionals, and in turn, engaged prospective buyers, should lead to the transfer of title program working the way it was intended to, i.e., with the private lateral certificate being a point to be negotiated in advance of the sale and financed at the same time as the purchase or sale. Metro Vancouver has identified the real estate industry as a starting point for further engagement about private sewer lateral maintenance and will undertake efforts to achieve this over the next year.

b) Legal professionals

An opportunity also exists to engage legal professionals, both lawyers and notaries public, to increase their awareness and understanding of a private lateral time of sale bylaw and such a bylaw’s goals. While legal professionals tend to become involved in real estate transactions later in the process than do realtors (usually after offer documents are already signed), they still enjoy good access to the parties to the transaction and are an important group to engage.
**c) Key organizations**

In BC, real estate professionals are influenced by three different real estate organizations: the Real Estate Council of BC, the BC Real Estate Association and the Real Estate Foundation. All three organizations are potentially important allies for municipalities seeking to engage the cooperation of real estate professionals:

- The Real Estate Council of BC (RECBC) is the regulator of real estate licensees, appointed further to the Real Estate Services Act. The RECBC has a mandate of protecting the public interest and it enforces licensing and licensee conduct requirements of the Real Estate Services Act.

- The BC Real Estate Association (BCREA) is an association of some 11 real estate boards and 18,000 realtors. As a professional association, it represents realtors on provincial issues, provides courses and continuing education, conducts research, analysis and government relations, and creates standard forms.

- The Real Estate Foundation (REF) is appointed under the Real Estate Services Act and according to its website, “receives interest from pooled or "unassigned" trust deposits held by real estate brokerages and uses the funds to support real estate related education, research, law reform, and other real estate related activities intended for the public or professional good.” The Foundation administers a grants program that advances research and supports other initiatives in support of land stewardship.

The Canadian Bar Association (CBA), BC Branch, Real Property – Vancouver Section, is also a key group influencing lawyers in the Metro area. The CBA is the professional equivalent of the BCREA but for lawyers, and the Real Property – Vancouver Section of the CBA provides a forum for conveyancing lawyers to discuss issues and to share new developments and best practices.

**d) Process for engaging the real estate industry**

In order to engage the real estate industry prior to launching a private sewer lateral certification program, the following steps are recommended:

<table>
<thead>
<tr>
<th>Engage with the BCREA and the CBA regarding amending the Property Disclosure Statement (PDS).</th>
<th>One of the key conversations to engage in with the BCREA and the CBA would be to discuss the potential for amending the questions on the standard form Property Disclosure Statement to include a more specific question regarding whether a private lateral certificate has been obtained for the property.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Using the PDS to draw attention to the bylaw is an obvious potential opportunity for municipalities. With the question on the form, buyers and sellers would be prompted to turn their minds to the issue of certificate requirements and the status of the property in question. Having the PDS raise the question directly would alleviate any dilemma an individual realtor might face in deciding whether to discuss the certificate requirement.</td>
<td></td>
</tr>
</tbody>
</table>
Since the CBA is a joint holder of the copyright on the PDS, it is important for any conversations exploring PDS amendments to be three-way conversations.

| Engage with the Greater Vancouver Real Estate Board | Review the purpose of the program, authority for implementing such a program, the process a property owner must undergo to get certified, and enforcement actions that could result if the buyer (new property owner) is found to be non-compliant. Metro Vancouver and/or municipal staff should plan to attend several Board meetings, and host workshops for realtors to answer questions. Staff at EBMUD and City of Tacoma report conducting meetings with realtors over the course of one to two years prior to launching their programs, and then continuing to meet with them as needed for the following year.

The GVREB also runs a property listing website called RealtyLink. Work with the GVREB to have information about the private sewer lateral bylaw requirements added to the RealtyLink website. |

| Engage Canadian Real Estate Association in order to have the Multiple Listing Service (MLS) updated | Update MLS to incorporate the status of a sewer lateral compliance certificate in the standard property information listed. The City of Tacoma accomplished this through a series of meetings with the agency. |

e) Other industry engagement

When purchasing a home, a buyer may engage services of other professionals including home inspectors and home insurance companies. These groups may be additional groups to consider engaging so that they can also alert a prospective buyer of the bylaw and the potential requirement to upgrade the sewer lateral.
6 RESOURCE REQUIREMENTS

Implementing a sewer lateral certification program will require additional municipal staff effort for the development and execution of the program.

6.1 PROGRAM DEVELOPMENT

Based on discussions with other municipalities that have programs, the development of a program for the North Shore is likely to take one to two years of relatively dedicated effort by one to two individuals at the municipality. A designated program manager in the engineering department would lead and undertake most of the activities involved in the program development. Other staff would need to attend a number of meetings through the year, including staff from the engineering department, permitting department, legal department, financial department, and communications specialists. The anticipated program development activities are outlined in Table 5.

<table>
<thead>
<tr>
<th>Activity</th>
<th>Departments</th>
<th>Effort notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Define, review and put into place administrative procedures for the certification process (notification upon title change, tracking of certificate compliance in property databases, updating of information with permit completion)</td>
<td>Engineering (lead), Permitting, Finance</td>
<td>Several meetings over several months.</td>
</tr>
<tr>
<td>Define, review and prepare bylaw language</td>
<td>Engineering (lead), Legal</td>
<td>Several meetings over 2 to 4 months.</td>
</tr>
<tr>
<td>Create, review inspection standards and forms (application form, inspection form)</td>
<td>Engineering</td>
<td>Research and review meeting</td>
</tr>
<tr>
<td>Internal communications training for staff dealing with property owners</td>
<td>All involved departments</td>
<td>One or more training sessions to ensure all necessary staff receive training. Development of handouts and key message / frequently asked question documentation.</td>
</tr>
<tr>
<td>Develop, launch education campaign to alert the public about the program</td>
<td>Engineering, Communications</td>
<td>Brochure and website text and graphics creation – 2 months.</td>
</tr>
<tr>
<td>Engage real estate and legal professionals to alert them of the</td>
<td>Engineering</td>
<td>Several meetings over several months. Development of</td>
</tr>
</tbody>
</table>

45 EBMUD estimated approximately 2.5 full time equivalent effort for one year. Tacoma estimated approximately 1 to 1.5 full time equivalent effort for three years.
An Approach Towards Private Sewer Lateral Certification in Real Estate Transactions

February 12, 2013
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program, discuss property disclosure statements, MLS listings
Communications presentations and handouts for realtors.

Industry engagement regarding certification of professionals for conducting videos for the program.
Engineering
Developing materials and hosting training sessions to certify plumbers to be eligible to submit video inspection forms.

6.2 PROGRAM EXECUTION

Once the program launches, the program will continue to require a dedicated program manager, as well as support of approximately one full time position for administration and video review. The anticipated ongoing activities are outline in Table 6.

<table>
<thead>
<tr>
<th>Activity</th>
<th>Department</th>
<th>Effort notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reviewing submitted applications forms, videos and inspection forms</td>
<td>Engineering (lead), Permitting, Finance</td>
<td>If we estimate 75% of home sales will use this method, there will be ~1,350 application reviews for the whole North Shore per year. Video and application review: 1 hour each; Application review, no video: 30 minutes each. Approximately 1 FTE total (each municipality will require approx. 0.25 to 0.5 FTE)</td>
</tr>
<tr>
<td>Recording successful certificates into the property information system</td>
<td>Engineering, Finance</td>
<td>Depends on the system</td>
</tr>
<tr>
<td>Preparing and sending letters in response to applications</td>
<td>Engineering</td>
<td>Templates should be made to ensure minimal effort required for each response</td>
</tr>
<tr>
<td>Responding to phone call and email inquiries about the program</td>
<td>Engineering</td>
<td>Ongoing</td>
</tr>
<tr>
<td>Conducting additional plumbing permit applications and inspections</td>
<td>Permitting</td>
<td>If we estimate 25% of home sales will require a plumbing permit: there will be ~450 additional permits for the whole North Shore per year</td>
</tr>
<tr>
<td>Ongoing education campaign activities</td>
<td>Engineering, Communications</td>
<td>As needed, continue attending real estate meetings and public events to raise awareness about the program.</td>
</tr>
</tbody>
</table>
7 CONCLUSION

With sufficient planning and consultation, a private sewer lateral certificate program with a time-of-sale trigger is a feasible option for long-term management of I&I from private property sources for Metro Vancouver municipalities. This report has reviewed the impetus, current status and legal authority for such a program in Metro Vancouver municipalities, with a focus on the North Shore. The report has also outlined the administrative framework that would be needed to support a regulatory program and highlighted the external engagement needed to ensure key professionals impacted by such a program would be well informed and prepared (both in the building / plumbing industry, and the real estate / property transfer industry). The benefit of gaining the support and collaboration of real estate and legal professionals is significant and key to a successful program.

Because sewer laterals are so far out of the average property owner's regular consciousness, success is most likely to result from a staged timeline for implementation, to build understanding of the issues, acceptance of responsibilities, and move towards a general acceptance of the need for regular private sewer lateral maintenance over the long term. The report was designed to offer stand-alone programmatic and regulatory modules that might be adapted and plugged into varying local circumstances and priorities as desired by Metro Vancouver municipalities.

As with any program, success will only be achieved through political leadership and issue support, the dedication of sufficient resources, careful program planning and communication, and program evaluation and adaptation over time.
8 APPENDICES

APPENDIX A: ALTERNATIVE AUTHORITY FOR A BYLAW REQUIRING A LATERAL CERTIFICATE

A municipality might consider whether alternative authority exists for it to pass a sewer lateral certificate requirement further to the powers given under section 8(3)(l) of the Charter, the municipality power to, by bylaw, regulate, prohibit and impose requirements in relation to … buildings and other structures.

This is an interesting question and draws attention to the fact that sewer pipes are regulated under the BC Building and Plumbing Code. Together referred to as the BC Building Code (BCBC), these two “books” are enacted as one regulation further to section 692(1) of the Local Government Act (which enables the minister to establish a Provincial building code governing standards for the construction, alteration, repair or demolition of buildings). Further to section 692(2), the BCBC applies to all municipalities and regional districts and has the same force and effect as a validly enacted bylaw of the municipality or regional district.

The power to regulate (etc.) in relation to buildings and other structures is more limited than the municipal powers of regulation (etc.) in relation to a municipal service. First of all, some of the building regulation power is a sphere of concurrent authority that is shared with the province further to section 9(1)(d) of the Charter. Secondly, the Charter also sets out a number of limitations on the municipal exercise of authority, in Part 3, Division 8 – Building Regulation. Any proposed exercise of the authority to make a bylaw in relation to buildings and other structures must ensure it is abiding by these two important restrictions on powers.

The threshold question, however, is whether a private lateral is a “building” or “other structure” within the meaning of section 8(3)(l).

The BCBC defines a “building” as “…any structure used or intended for supporting or sheltering any use or occupancy.” It seems unlikely that a building sewer (private lateral) could be seen to be as “…a structure used or intended for supporting or sheltering any use or occupancy”. The BCBC definition seems to suggest a “building” is intended to be restricted to an enclosed structure for a specific purpose.46

So then, is a private lateral a “structure”? The Plumbing Code terms private laterals as “building sewers” and depicts them (in Figure A-1.4.1.2.(1)-L in Appendix A of the Code) as being within a “plumbing system.” A “plumbing system” means “a drainage system, a venting system and a water system or parts thereof.” The BCBC does not define what a “structure” is, but the Plumbing Code does provide both a definition and a number of standards in relation to “building sewers”.

The common definition of “structure” given by the Oxford Dictionary is:

46 See e.g. GVRD v. Stainsby, 2007 BCSC 585 at para. 42
Structure has previously been rather broadly construed in BC to include both a retaining wall and a paved asphalt raceway. Noticeably, the District of West Vancouver, which does not have a Sewer Service Bylaw, only refers to sewer pipe and connections in the context of its Building Bylaw (apart from fees which are addressed in its Sewer and Drainage Fee Bylaw). Considering the foregoing, it seems reasonable to conclude that a private lateral is probably a “structure”; but less likely to be considered a “building”.

So – if enacting a bylaw in relation to private sewer laterals may be considered a bylaw in relation to a “structure”, the first restriction to consider is whether the province has concurrent authority over the kind of bylaw we might be considering making, i.e. a bylaw that would establish a certificate requirement upon the occurrence of a transfer of title of property.

Under section 9(1)(d), the Community Charter establishes that the province has concurrent authority over the making of bylaws under section 8(3)(l) [buildings and other structures] establishing standards that are or could be dealt with by the Provincial building regulations. [emphasis added]

This then raises the question whether a bylaw that would propose to require a certificate proving the condition of the private lateral is “establishing standards that are or could be dealt with by the Provincial building regulations”. Notably, the LGA section 692 speaks of the minister establishing a Code that will govern standards for the construction, alteration, repair or demolition of buildings (emphasis added).

It seems to me that the certificate requirement that we are proposing to institute in relation to establishing triggers for inspection and repair of sewer structures is quite different from the BCBC standards in relation to building construction and reconstruction that have been established by the Province under s. 692. It also seems unlikely that all municipalities would wish to embark on a private lateral certificate program, so less likely as well that the topic is one that “…could be dealt with by the Provincial building regulations.”

My conclusion would be that this exercise of regulatory authority under section 8(3)(l) properly should not fall within the concurrent authority provision of section 9(1)(d). What we are purporting to do is not in the nature of establishing standards that are or could be dealt with by the Provincial building regulations.

If that logic is flawed, and we are establishing a standard, section 9(3) provides:

3. Recognizing the Provincial interest in matters dealt with by bylaws referred to in subsection (1), a council may not adopt a bylaw to which this section applies unless the bylaw is
   (a) in accordance with a regulation under subsection (4),
   (b) in accordance with an agreement under subsection (5), or
   (c) approved by the minister responsible.

47 Revised and Illustrated Oxford Dictionary (Dorling Kindersley and Oxford University Press, 1998)
48 GVD v. Stainsby, at para. 44 See also Hilltop Sand & Gravel v. FortisBC, 2010 BCSC 108 which concluded that a proposed road is a “structure”.
This means that unless the province passes a regulation that would authorize such a bylaw, either the province would have to authorize it via an agreement entered into with one or more municipalities, or the bylaw would have to have specific ministerial approval.

Luckily, the province has passed a regulation under subsection (4). The Buildings and Other Structures Bylaws Regulation provides, at section 2(1):

2 (1) For the purposes of section 9 (4) (a) of the Act, a council may adopt a bylaw that establishes standards for the construction, alteration, repair or demolition of buildings or structures

(a) that are listed in sentence 1.1.1.1. (2) of Division A of the Code [this basically lists all those things to which the Code does not apply, such as infrastructure in the street or public transit right of way, very small accessory buildings or temporary buildings, etc.], or

(b) that are not "buildings" as defined in the Code.

Given the definition of “building” set out in the Code, our conclusion is that a municipality would be establishing a standard for the repair of a structure that is not a "building" as defined in the Code, and this would therefore fall into an authorized class of bylaw-making power under section 2(1)(b) of the regulation.

Whether the exercise of power under section 8(3)(l) is a concurrent exercise of power or not, any exercise of municipal power in relation to the regulation of buildings and other structures is limited by the Community Charter, Part 3 Division 8. Section 53 of that Division provides that a council may only exercise its authority under section 8(3)(l) or Division 8 – Building Regulation for the following:

(a) the provision of access to a building or other structure, for a person with disabilities;

(b) the conservation of energy or water;

(c) the reduction of greenhouse gas emissions;

(d) the health, safety or protection of persons or property.

This means then that a municipality passing a bylaw under the authority of section 8(3)(l) in relation to a …structure is therefore limited to exercising that authority for the objects listed above. Would these objects limit the passage of a sewer lateral certificate requirement? Possibly yes, but arguably not. A local government might defend its bylaw on the basis that the requirement to inspect for leaky or defective private laterals and obtain a certificate is made in furtherance of the conservation of energy associated with pumping and treating the extra storm water that infiltrates through leaky pipes and cross connections. An alternative basis is that the inspection and certificate requirement will further the health or protection of persons or property by avoiding SSOs.

1. Where there are two avenue for the exercise of authority and one is concurrent jurisdiction or more limited in its scope, does any rule exist to say that one power is the “true” jurisdiction or somehow can limit the other?

Section 8(7)(a) of the Charter states that the powers under subsections 8(3) to (5) to regulate, prohibit and impose requirements, as applicable, in relation to a matter are “separate powers that may be exercised independently of one another.”
Practically speaking, this means that the power to regulate, prohibit and impose requirements in relation to a municipal (sewer) service is distinct from the power to regulate in relation to other structures. The exercise of one power does not in any way depend on the exercise of the other. If a municipality can find the required authority to pass a bylaw under one head of power, then even if the exercise of authority under the second head of power would be more circumscribed, the municipality may exercise it fully under the first head.

However, section 4(2) must also be considered. It provides:

4  (1) The powers conferred on municipalities and their councils under this Act or the Local Government Act must be interpreted broadly in accordance with the purposes of those Acts and in accordance with municipal purposes.

(2) If

(a) an enactment confers a specific power on a municipality or council in relation to a matter, and
(b) the specific power can be read as coming within a general power conferred under this Act or the Local Government Act,

the general power must not be interpreted as being limited by that specific power, but that aspect of the general power that encompasses the specific power may only be exercised subject to any conditions and restrictions established in relation to the specific power.

In this case, this should mean that if we were setting out to establish new or different (construction) standards in relation to private sewer laterals for the pipe structure to meet, then, even if we were purporting to act under the authority of the general power under the section 8(3)(a)municipal services power, we might need to limit any aspect of the general power which encompasses the specific power to set construction standards in relation to sewer pipes to whatever conditions or restrictions are imposed by the specific limitations delimited by section 53.

However, this does not mean that the rest of the general powers are lost. Only that aspect of the general power that encompasses the specific power is subject to the conditions and restrictions.

Given that the general powers intended to be exercised in relation to establishing a private lateral certificate time of sale program in fact reach beyond any specific power conferred under section 8(3)(l) of the Charter, section 692 of the Local Government Act or otherwise to establish standards regulate sewer structures [structures], the municipality would not be limited to exercising just its standard-making powers. The municipality might still proceed with establishing a certificate requirement, conditional upon a trigger of transfer of title, with the condition that obtaining a certificate would require both an inspection and the need to pass a satisfactory review of the video inspection.

6. Municipal notice on title of a building condition of some import

Section 57 of the Community Charter provides that in some cases, a building inspector may recommend to council that it order a notice on title in respect of a condition with respect to land or a building or other structure.

It is also very possible that the program may choose not to create new regulations under this, i.e. setting new construction standards for private lateral pipes, and that we would simply refer any new construction required to comply with the existing standard, the Building (Plumbing) Code.
The section provides:

57(1) A building inspector may recommend to the council that it consider a resolution under subsection (3) if, during the course of carrying out duties, the building inspector
(a) observes a condition, with respect to land or a building or other structure, that the inspector considers
(i) results from the contravention of, or is in contravention of,
   (A) a municipal bylaw, 
   (B) a Provincial building regulation, or
   (C) any other enactment
   that relates to the construction or safety of buildings or other structures, and
(ii) that, as a result of the condition, a building or other structure is unsafe or is unlikely to
   be usable for its expected purpose during its normal lifetime, or
(b) discovers that
(i) something was done with respect to a building or other structure, or the construction of a
   building or other structure, that required a permit or an inspection under a bylaw,
   regulation or enactment referred to in paragraph (a) (i), and
(ii) the permit was not obtained or the inspection not satisfactorily completed.

This section cannot be used in the case of a mere failure to obtain a certificate, as there would be no physical “condition” to be observed by the inspector that would relates to the construction or safety of the structure... that would make the structure (the pipe) unsafe or unlikely to be usable for its expected purpose during its normal lifetime.

While one could imagine that a private lateral leaking sewage to the surface might fit the description of an “unsafe” condition to be observed, nonetheless this section seems unlikely to be used in the case of a defective lateral, as it seems more likely that if public safety considerations were to come into play, the municipality would be more likely to simply go ahead and fix the lateral and charge the cost back to the owner rather than merely posting a notice on title.
APPENDIX B: SAMPLE BYLAW SECTIONS

PRIVATE SEWER LATERAL BYLAW

MODEL LANGUAGE FOR CERTIFICATE REQUIREMENT TRIGGERED BY TRANSFER OF TITLE

PART 1

Definitions

1) The following definitions apply:

“Building inspector” means the general manager, planning and development for the city / district, or his/her duly appointed representatives and assistants;

“City / district engineer” means the chief municipal engineer or his/her designate;

“Condition inspection” means a video inspection or a water pressure test of a private sewer lateral, performed by a qualified plumber and as prescribed by this bylaw;

“Exemption certificate” means a certificate that exempts an owner from the requirement to obtain a private sewer lateral certificate in accordance with this bylaw;

“Owner” means an owner of a parcel of real property including:

(a) the registered owner of an estate in fee simple,

(b) the tenant for life under a registered life estate,

(c) the registered holder of the last registered agreement for sale, and

(d) the holder or occupier of land held in the manner referred to in the definition of ”Owner” in the Schedule to the Community Charter, S.B.C. 2003, c.26 and amendments thereto.

“Parcel” means any lot, block, or other area in which land is held or into which it is subdivided, but does not include a highway;

“Private sewer lateral” means a pipe, including manholes and inspection chambers laid on a property connecting a service connection with a house, building, or structure on the parcel;

“Private sewer lateral certificate” means a certificate indicating that the owner has adequately complied with the city’s condition inspection and private sewer lateral certificate application and review process requirements, as provided in this bylaw. A private sewer lateral certificate is valid proof only of compliance with those specific procedural requirements. Disclaimer: Note that issuance of a private sewer lateral certificate provides NO certification or warranty that a private sewer lateral is in proper working condition, has structural integrity or is free of defects. Every owner remains solely responsible to operate and maintain the private sewer lateral in accordance with the requirements of this bylaw (**and the Building Bylaw).
"Qualified plumber" means a person who possesses a tradesman's qualification certification as a plumber in accordance with the BC Building Code;

"Sanitary sewer service" means the city / district's system of sanitary sewer pipes and sanitary sewage disposal and treatment;

"Service connection" means an authorized connection of a private sewer lateral pipe to the sanitary sewer service, for the purposes of meeting the building's sanitary sewage disposal and treatment requirements in accordance with this bylaw [**optional – insert name of other bylaw, if elsewhere];

"Transfer of title" means the transfer of title to a parcel, as recorded at the BC Land Title Office, but excludes:

(a) a transfer by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust,
(b) transfers from one co-owner to one or more other co-owners, or from one or more co-owners into or from a revocable trust, if the trust is for the benefit of the grantor or grantors,
(c) a transfer made by a trustor to fund an inter vivos trust,
(d) a transfer made by a spouse or common law spouse within the meaning of the Family Law Act, S.B.C. 2011, c. 25, or to a person or persons in the lineal line of consanguinity of one or more of the transferors,
(e) a transfer between spouses or common law spouses resulting from a decree of divorce, or division of matrimonial property or family assets resulting from a property settlement agreement or order incidental to a decree or other order of a court pursuant to the Family Law Act, S.B.C. 2011, c. 25,
(f) a transfer made to a spouse or common law spouse within the meaning of the Family Law Act, S.B.C. 2011, c. 25, or to a person or persons in the lineal line of consanguinity of one or more of the transferors,

"Video inspection" means a visual inspection of the condition of a private sewer lateral undertaken with the use of a videotaping camera or other video recording device authorized by the city / district from time to time, and performed by a qualified plumber [optional - who has attended training in respect of the city / district requirements for performing a private sewer lateral video inspection service];

"Water pressure test" means a water pressure test of a private sewer lateral as described in the BC Building Code, to verify hydrostatic pressure, and to detect the presence of leakage, cracks and other structural defects, duly performed by a qualified plumber in the presence of a building inspector.

**Operation and maintenance requirement; tests and inspection**

1) Every owner shall operate and maintain the owner's parcel's private sewer lateral(s), including clearing any blockages in the private sewer lateral which are directly attributed to the discharge from the parcel in accordance with the provisions and requirements of this bylaw. Maintenance of the private sewer lateral shall include, but is not limited to, the repair and/or replacement of any portion of the private sewer lateral that is not in proper working condition or that allows for the discharge of any storm water or the infiltration of any groundwater into the sanitary sewer service.

2) All private sewer laterals and related plumbing within the bounds of a parcel must be in strict compliance with the provisions of the Plumbing Bylaw/Building Bylaw/Sewer Bylaw. The city /
district engineer may require that private sewer laterals within the bounds of a parcel be subjected to appropriate tests or inspections for hydrostatic and/or structural integrity and the presence of any roots, major cracks or problems with joints that could allow groundwater infiltration, or for the presence of any cross-connections with stormwater drains. The city / district engineer may withhold permission to connect to the city’s sanitary sewer service until any required remedial work is completed to the satisfaction of the city / district engineer.

**Right of Inspection**

4) The city / district engineer and/or the building inspector are authorized to enter on or into property for the purposes of inspecting and determining whether all regulations, prohibitions and requirements of this bylaw are being met. Such entry shall be made in accordance with the authority to enter on or into property conferred by section 16 of the *Community Charter, S.B.C.* 2003, c. 26.

**PART 2**

**Application of this Part**

1) This Part applies to all private sewer laterals that service single family dwellings, duplexes,[[optional – list as desired]. This Part does not apply to [[optional – to be determined – consider exclusions for e.g. strata developments, apartment buildings, etc].

**Requirement for condition inspection and private sewer lateral certificate – transfer of title**

1) This section applies to transfers of title that occur after X date [[optional, if decide to implement it after some period of time – e.g. gradual phase-in].

2) Subject to an exemption granted pursuant to sections 8 through 13 of this bylaw, every owner of a private sewer lateral, prior to the completion of a transfer of title of a parcel on which a sewer lateral is situate, or within 60 days following such transfer of title, must submit for review a report of a condition inspection of the private sewer lateral and must apply for and obtain a private sewer lateral certificate.

**OR:**

**Requirement for condition inspection and private sewer lateral certificate [multiple triggers]**

1) This section applies to transfers of title and building permit applications after X date.[optional]

2) Subject to the exemption described in section **, every owner of a private sewer lateral must submit for review a report of a condition inspection of the private sewer lateral, and must apply for and obtain a private sewer lateral certificate, in the following circumstances:

   a) For any transfer of title of the parcel on which the sewer lateral is situate, prior to the completion of the transfer of title, or within 60 days following such transfer of title;

   b) Where the **parcel/property is the subject of an application for a building permit with a construction value greater than $100,000.00; or

   c) [insert other circumstances, e.g. addition of 2 or more plumbing fixtures]

**Exemption from private sewer lateral certificate requirement - application**

8) An owner who would otherwise be subject to the requirement to obtain a sewer lateral certificate in respect of a transfer of title may submit an application in writing to the city /
district engineer in the form prescribed by the city / district [*see sample form set out in Schedule “C” to this Bylaw*] for an exemption from the private sewer lateral certificate requirement.

9) Such application must be accompanied by the documentation prescribed and the applicable fee.

10) Documentation that may qualify an owner for an exemption consists of the following:
   a) a building or plumbing permit proving that:
      i) the private sewer lateral is constructed out of PVC or metal; and
      ii) the private sewer lateral is less than 20 years old; and
   b) Any additional documentation prescribed by the city / district engineer.

**Exemption from private sewer lateral certificate requirement - review**

11) The city / district engineer shall review an application for exemption from a private sewer lateral certificate requirement and any supporting documentation to determine if the requirements for an exemption have been met.

12) If the city / district engineer determines that the application and supporting documentation submitted meets the requirements for an exemption, the city / district engineer shall issue an exemption certificate.

13) An exemption certificate will be valid until the later of: either 20 years from the date of the work on the building or plumbing permit was completed, or 5 years from the date the exemption certificate is granted.

**Application for a private sewer lateral certificate**

14) In circumstances when an owner is not exempt and is required to apply for and obtain a private sewer lateral certificate,
   a) The owner shall submit an application for a sewer lateral certificate in writing to the city / district engineer, in the form prescribed by the city / district [*see sample form set out in Schedule “A” to this bylaw*] and accompanied by the applicable fee.
   b) The application for a private sewer lateral certificate must be supported by a report or record of a satisfactory condition inspection. Either:
      i) A qualified plumber who performs a video inspection shall prepare and submit to the city / district engineer a report of such video inspection in the form prescribed [*see sample form set out in Schedule “B” to this Bylaw*] together with a videotape, DVD or other visual evidence of the video inspection in a format acceptable to the city / district, as established by the city / district from time to time; or
      ii) The owner’s application shall reference the city / district record of a water pressure test.

**City / district review - grant of private sewer lateral certificate**

15) The city / district engineer shall review an application for a private sewer lateral certificate together with the supporting report or record of a condition inspection and shall determine whether the private sewer lateral is eligible for a continued service connection.

16) If, upon the review described in a), the city / district engineer determines that the private sewer lateral is eligible for a continued service connection,:
   a) the city / district will issue a private sewer lateral certificate that is valid for 10 years, for private sewer laterals that pass the city / district’s review relying upon evidence of a video inspection report; or
b) the city / district will issue a private sewer lateral certificate that is valid for 20 years, for private sewer laterals that pass the city / district’s review relying upon evidence of a water pressure test report.

City / district review – order for reconstruction of private sewer lateral

17) If, after the review described in section 16, the city / district engineer determines that the private sewer lateral has roots, major cracks, problems with joints or other evidence of stormwater inflow or groundwater infiltration, the city / district engineer may order the reconstruction (repair or replacement) of the private sewer lateral, to bring it into a condition that is adequate for a continued service connection.

Reconstruction of private sewer lateral – procedure requirements and private sewer lateral certificate upon satisfactory reconstruction

18) An owner who is required to complete a reconstruction (repair or replacement) of the private sewer lateral must submit an application for a building permit in accordance with the Building Bylaw.
19) Reconstruction of the private sewer lateral must be completed by personnel authorized to perform work on a plumbing system in compliance with the BC Building Code and any requirements of the Building Bylaw and Sewer Bylaw.
20) Any proposed connection of a reconstructed private sewer lateral must be authorized and approved in accordance with the procedures for connection to the city / district’s sanitary sewer service, described in the Building Bylaw and/or Sewer Bylaw.
21) Upon satisfactory reconstruction, connection and water pressure testing of a private sewer lateral, the city / district will issue a private sewer lateral certificate that is valid for a period of 20 years.

Notice of Non-Compliance

22) On discovering any non-compliance with this bylaw, an inspector or the city / district engineer shall provide an owner with a written notice of non-compliance and the actions required to be taken by the owner in order to bring the property into a state of compliance with the bylaw.

City / district may undertake reconstruction

23) If after receiving written notice of non-compliance from the city / district, an owner fails to apply for a private sewer lateral certificate, or to undertake any repair or replacement of a private sewer lateral that does not meet the operation and maintenance requirements or the certificate requirements of this bylaw, the city / district engineer may pursuant to sections 16 and 17 of the Community Charter, enter the parcel to undertake a condition inspection, or undertake any necessary repairs and/or replacements of the private sewer lateral. Actual cost is recoverable by the city / district, and shall be paid by the owner in full. The city / district shall be entitled to recover actual cost from the owner in the same manner as city / district taxes.

Offences and Penalties

24) No person shall supply false information or make inaccurate or untrue statements in a document or information required to be supplied to the city / district pursuant to this bylaw.
25) No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface, mar, or tamper with any sewer, building sanitary sewer, or any part of the sanitary sewerage system.

26) Any person who contravenes any provision of this bylaw is liable to the city / district for and must indemnify the city / district from all costs, expenses, damages and injuries resulting from the contravention. This does not in any way limit any other provision or any other remedy the city / district may have under this bylaw or otherwise at law.

27) Every person who contravenes or violates any of the provisions of this bylaw, or who suffers or permits any act or thing to be done in contravention of this bylaw, or who refuses, omits, or neglects to fulfill, observe, carry out, or perform any duty or obligation imposed by this bylaw commits an offence and is liable, on summary conviction, to a fine of not less than the sum of XX Dollars ($XX), but not more than the maximum provided by the Offence Act.

28) Where there is an offence that continues for more than one day, separate fines may be issued for each day or part thereof in respect of which the offence occurs or continues.

29) The city / district may enforce compliance with the stipulations within this bylaw or non-payment of fines by shutting off the provision of sewer services being supplied to the user or discontinuing the service thereof.

30) A person who contravenes this bylaw may also be in contravention of the Greater Vancouver Sewerage & Drainage District (GVS&DD) bylaw. A penalty separate from and independent of the penalties under this bylaw may also be imposed under the current GVS&DD bylaw.

31) Nothing in this bylaw limits the city / district from utilizing any other remedy that is otherwise available to the city / district at law.

32) Any charges pursuant to this bylaw placed on the assessment roll of a parcel and remaining unpaid after the 31st day of December in any year shall be deemed to be taxes in arrears in respect of the parcel and will be recoverable by the city / district as such.

**Severability**

33) Each provision of this bylaw is severable from each other provision, and, if any provision is determined to be void or unenforceable in whole or in part, this determination shall not be deemed to affect or impair the validity of any other provision, unless a Court otherwise determines.
Schedule “A”

SAMPLE Application for a Private Sewer Lateral Certificate

[This section only to be completed by applicant/owner]

Applicant:___________________________________________

Site Address:________________________________________

PID:______________________________________________

Evidence of Condition Inspection Submitted in Support of Application:

[ ] Videotape and Videotape Condition Inspection Report of _____________[insert name of qualified plumber who performed the inspection]

[ ] Water Pressure Test Report of _____________ in respect of Sewer Lateral Repair / Replacement, Permit # __________

Fee: ________________________________________________

_______________________________________________________________________________________________

SAMPLE Private Sewer Lateral Certificate

[insert municipal logo]

[This section to be completed by city/district engineer only]

The City/District of ** has reviewed the [ ] Videotape Inspection Report [ ] Water Pressure Test Report of _____________ in respect of ____________________________[address] and has determined that the property is in compliance with the city/district’s condition inspection and private sewer lateral certificate application and review process requirements, as provided in the city/district’s Private Sewer Lateral Bylaw.

Effective Date: _____________ Expiration Date: _____________

If you have any questions, or if we can provide assistance, please call (604) xxx-xxxx

Thank you,

City / District of **

____________________________

City / District Engineer
An Approach Towards Private Sewer Lateral Certification in Real Estate Transactions

Schedule “B”

SAMPLE Report of a Private Sewer Lateral Video Inspection

[this section to be completed by applicant owner]

Plumber Name:__________________________________________________

Licence No:_____________________________________________________

Name of Owner Applicant:__________________________________________

Site Address:_____________________________________________________

PID:_________________________________________________________________

[This section to be completed by the plumber who performed the inspection]

Video of inspection enclosed with this report? [to be in a format acceptable to the city/district engineer]

[ ] YES

[ ] NO

I ____________________, confirm that on ________________ [date] I performed a video inspection of the private sewer lateral located at the above-noted address.

Further to my video inspection of the private sewer lateral on-site, I hereby certify that the private sewer lateral is free from roots, major cracks or problems with joints that could allow groundwater infiltration; and

I also certify that I have inspected and can confirm that there are no cross-connections from any rainwater / stormwater drains located on the property.

__________________________________

Signature of Plumber

Licence No:
Schedule “C”

SAMPLE Application for an Exemption from a Private Sewer Lateral Certificate Requirement

[this section to be completed by applicant owner]

Applicant:___________________________________________________________________

Site Address:________________________________________________________________

PID:______________________________

__________________________________________

Evidence Submitted in Support of Application:

[ ] Building permit proving that the private sewer lateral is less than 20 years old and is constructed out of [ ] PVC or [ ] metal

[ ] Additional documentation: _____________________ [please specify]

Fee: __________________

SAMPLE Exemption Certificate

[municipal logo]

[this section to be completed by city / district engineer only]

The City / District of ** has reviewed the evidence submitted in support of this Application for Exemption ___________ in respect of __________________________[address] and has determined that the property qualifies for an exemption from the city / district's condition inspection and private sewer lateral certificate application and review process requirements, as provided in the city / district's Private Sewer Lateral Bylaw.

Effective Date: ___________ Expiration Date: ___________

If you have any questions, or if we can provide assistance, please call. (604) xxx-xxxx

Thank you,

City / District of **

____________________________________

City / District Engineer
### APPENDIX C: INDUSTRY CAPACITY IN NORTH SHORE

List of Plumbing and Drainage companies operating in the North Shore:

<table>
<thead>
<tr>
<th>Large Companies (&gt;50 employees)</th>
<th>KEITH PLUMBING &amp; HEATING LTD*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>MILANI</td>
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<tr>
<td>Medium sized Companies (&gt;5 employees)</td>
<td>ALEX PLUMBING</td>
</tr>
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<td></td>
<td>BUDGET DRAINAGE*</td>
</tr>
<tr>
<td></td>
<td>DAN EX CONTRACTING*</td>
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<tr>
<td></td>
<td>EUROSET PLUMBING &amp; HEATING*</td>
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<td></td>
<td>HEADWATER MANAGEMENT*</td>
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<td></td>
<td>KING KABUTO</td>
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<tr>
<td></td>
<td>LARTER &amp; CO PLUMBING HEATING</td>
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<tr>
<td></td>
<td>MAJOR MECHANICAL CONTRACTORS</td>
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<tr>
<td></td>
<td>MODERN DRAINAGE LTD*</td>
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<tr>
<td></td>
<td>NORTH SHORE PLBG &amp; HTG CO</td>
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<tr>
<td></td>
<td>NORVAN PLUMBING HEATING &amp; GAS</td>
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<tr>
<td></td>
<td>PERIMETER DRAINAGE*</td>
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<td></td>
<td>PARKER DEAN PLUMBING AND HEATING CO.*</td>
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<td></td>
<td>P MURRAY CONTRACTORS LTD</td>
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<td></td>
<td>R &amp; B PLUMBING &amp; HEATING</td>
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<td></td>
<td>RAY JOHNSON PLUMBING &amp; HTG LTD</td>
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<td></td>
<td>STEVENS PLUMBING &amp; HEATING LTD*</td>
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<td></td>
<td>UNITED PLUMBING &amp; HEATING</td>
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<td></td>
<td>SPADE AND PICK SERVICES LTD.</td>
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<tr>
<td>Small Companies (&lt;5 employees)</td>
<td>ADVANCE INSTALLATIONS LTD</td>
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<td></td>
<td>BRAVO PLUMBING AND HEATING</td>
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<td></td>
<td>C BREWER PLUMBING &amp; GAS</td>
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<tr>
<td></td>
<td>DARYL ROBERTS-PROFESSIONAL*</td>
</tr>
<tr>
<td></td>
<td>DAVID BLAIR &amp; SONS LTD</td>
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<td></td>
<td>DELBROOKE PLUMBING</td>
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<td></td>
<td>HOLLYBURN PLUMBING &amp; HEATING*</td>
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<td></td>
<td>JOHNSON MECHANICAL LTD</td>
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<td></td>
<td>KODIAK HEATING &amp; PLUMBING LTD</td>
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<td></td>
<td>MASTERWORKS PLUMBING CO*</td>
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<td>McCALLS PLUMBING</td>
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<td>MIKE'S PLUMBING &amp; HEATING</td>
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<td>NORTH SHORE PLBG &amp; HTG CO</td>
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<td>PLUMBIZ</td>
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<td>SCOTIA PLUMBING</td>
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<td>SILVER FERN PLUMBING LTD</td>
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<td>WATER HEATER RESCUE</td>
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<td>WEST COAST PLUMBING &amp; POWER</td>
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<td>WEST VAN PLUMBING LTD</td>
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<td></td>
<td>WESTLYNN PLUMBING &amp; HTG</td>
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<tr>
<td></td>
<td>ZENITH PLUMBING AND HEATING</td>
</tr>
</tbody>
</table>

* Indicates contacted by phone for this study
APPENDIX D: REGULATORY FRAMEWORK AND PRACTICES IN REAL ESTATE

This appendix provides more detail about the regulatory framework and practices summarized in section 3.2 of the report.

Firstly, what legal processes normally apply to the transfer of title, and to a municipality’s ability to make a certificate requirement a part of real estate transactions?

The Property Law Act sets out the basic rules for selling real property in British Columbia. The legislation describes the need for a seller to prepare an instrument in a form registrable under the Land Title Act to facilitate the transfer of registration of title to the new owner, describes the words of transfer, provides rules respecting the registration of charges and leases, etc. The only provision for “vendor disclosure” in relation to the sale concerns a purchaser’s right to seek a remedy, in the event a vendor fails to provide a “site profile” in accordance with section 40(6) of the Environmental Management Act (in respect of suspected industrial or commercial activities).

The Land Title Act defines what fee simple title means under our Torrens (title certificate) system. For municipalities, what is most notable is that further to section 23(2)(c) of the Act municipalities are entitled to a statutory charge (i.e. a charge that does not need to be registered) for any outstanding taxes or “special fees”. Because fee simple title is made subject to such charges, this means that the transferring owner will always need to discharge those charges in advance of the transfer, in order to be able to deliver a clear title to the buyer, as required.

There is no statutory provision under the Land Title Act for a municipality to make fee simple title subject to the provisions of a regulatory bylaw (such as a certificate requirement). In other words, a municipality has no legal mechanism by which to “hold up” the transfer of title of a property with a requirement that bylaw compliance be satisfied in time for the sale. Any outstanding bylaw obligation to obtain a sewer lateral certificate gets passed on to the new owner / buyer, unless the buyer has made separate arrangements with the seller to address the obligation.

In fact, municipalities not only have no mechanism by which to enforce bylaw compliance in advance of the transfer, but the Land Title Act also does not provide any legal mechanism by which to place a notice of a bylaw’s time of sale certificate requirement on titles. The Land Title Act provides no entrée for municipalities to provide any such “blanket” warnings in respect of properties within municipal boundaries. Bylaw compliance such as this rather falls under the category of information that a buyer is expected to discover through due diligence inquiries at City Hall or otherwise.

Note: it is conceivable that a municipality could choose to assign staff to “troll” for neighbourhood signs or MLS listings, to ascertain new listings of properties for sale; and that it could deliver formal notices to comply to the owners of these homes discovered by such a process. On the whole, however, this option seems unsatisfactory in that its methodology is not particularly rigorous, and moreover, such a process almost seems to place the municipality in the rather unsavoury position of being rather like an “ambulance-chaser” vis-à-vis residents that have placed their home up for sale.

Secondly, what legal processes impact a buyer’s chances of learning about the bylaw, and does the municipality have any legal authority to require third parties to inform potential buyers to a real estate transaction about the bylaw?

i) Regular disclosure obligations of a seller
The Property Law Act does not impose any requirement upon a seller to disclose information about a bylaw or about a property’s non-compliance with a bylaw (except related to contaminated sites, as described above).

The Real Estate Development Marketing Act regulates the disclosure obligations of developers who sell real property such as strata developments, but this legislation only imposes obligations upon the marketing, sale and long-term lease of larger development units, not sellers of single-family dwellings.

The relative lack of statutory regulation of disclosure in British Columbia stands in stark contrast to some highly regulated disclosure requirements that exist at the state level in the western United States

In terms of legal disclosure obligations, what remains for sellers of private homes are the legal obligations that have arisen at common law – i.e. case law decisions that address the private law duties of buyers and sellers in real estate transactions. The basic governing doctrine is *caveat emptor*, or “buyer beware”. However, the doctrine makes some exception for certain kinds of latent defects.

In Smith v. Reder and Carleton, 2005 BCSC 635, the court referenced authority which states that patent defects are “those that can be discovered by inspection or vigilance on the part of the purchaser.” For those, the principle of *caveat emptor* applies. On the other hand, latent defects are “those which would not be revealed by any enquiry which a purchaser is in a position to make”. The difference between whether or not the defect is patent is important one. In Davis v. Stinka, [1995] B.C.J. No. 1256 (S.C.) (QL) at para. 23, Leggatt J. quoted from the B.C. Real Estate Law Guide, as setting forth the general law as follows:

> The general law relating to the disclosure of facts by the vendor is still that of *caveat emptor* - let the purchaser beware. Defects are regarded as being of two kinds - latent or patent. Patent defects are those that can be discovered by inspection on ordinary vigilance on the part of the purchaser and with respect to them the ordinary rule is *caveat emptor*. Latent defects are those which would not be revealed by any enquiry which a purchaser is in a position to make before entering the contract. The vendor is thus under no obligation to disclose patent defects. It is up to the purchaser to ascertain them either by inspection or inquiry. By the same token the vendor must not act so as to mislead the purchaser or allow his suspicions. Thus where a purchaser did not enquire whether a house was connected to a sewer he was not able to recover damages for fraudulent concealment when the septic tank later backed up into his basement...

The most recent authoritative statement of the law of patent defect versus latent defect and the doctrine of *caveat emptor* is found in Cardwell v. Perthen, 2007 BCCA 313, affirming 2006 BCSC 333.

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50 For example, the California Civil Code (at sections 1102.6a, 1103.4 and 1353) imposes disclosure requirements on sellers of property, and further, any city or county can elect to require disclosures in the form provided under the statute, or can (without limits on their authority) require additional or different disclosures on its own form. The state of Washington has a mandatory disclosure form and for improved real property it requires the owner to disclose when the sewer was last inspected and by whom. See Washington State Code Title 64, Chapter 64.06 Real Property Transfers - Sellers' Disclosures, esp. 64.06.020.
There, the Court of Appeal affirmed that there are generally four exceptions to the application of the rule of *caveat emptor*:

1. where the vendor fraudulently misrepresents or conceals;
2. where the vendor knows of a latent defect rendering the house unfit for habitation;
3. where the vendor is reckless as to the truth or falsity of statements relating to the fitness of the house for habitation;
4. where the vendor has breached his or her duty to disclose a latent defect that renders the premises dangerous.

The Court of Appeal in Cardwell v. Perthen quoted the following comments of the trial judge with approval (from para. 122 of the trial judgment):

...Patent defects are those that can be discovered by conducting a reasonable inspection and making reasonable inquiries about the property. The authorities provide some guidance about the extent of the purchaser's obligation to inspect and make inquiries. The extent of that obligation is, in some respects, the demarcation of the distinction between latent and patent defects. In general, there is a fairly high onus on the purchaser to inspect and discover patent defects. This means that a defect which might not be observable on a casual inspection may nonetheless be patent if it would have been discoverable upon a reasonable inspection by a qualified person: 44601 B.C. Ltd. v. Ashcroft (Village), [1998] B.C.J. No. 1964 (S.C.) [Ashcroft]; Bernstein v. James Dobney & Associates, 2003 BCSC 986 (CanLII), 2003 BCSC 986 [Bernstein]. In some cases, it necessitates a purchaser retaining the appropriate experts to inspect the property (see for example Eberts v. Aitchison 2000 BCSC 1103 (CanLII), (2000), 4 C.L.R. (3d) 248, 2000 BCSC 1103.

Applying the law as set out in Cardwell v. Perthen then, it would appear that in our situation, unless a seller were to actively conceal or misrepresent the facts concerning a known defective sewer lateral, the rule of *caveat emptor* could be expected to apply to the situation - as a mere failure to obtain a certificate would not be a latent defect rendering the property unfit or dangerous per se. Furthermore, even if the sewer lateral were, on an inspection, found to be leaking, it might still not render the property dangerous or unfit for human habitation. Such a circumstance might arise if the lateral were leaking sewage to the surface or if there were a backup to the basement – but that situation is certainly not encountered in every case of a lateral suffering from I&I.

This means that in all likelihood, the legal onus rests with a buyer to make appropriate independent inquiries to satisfy him/herself as to what local bylaws apply and what compliance action is required, and in turn, to make inquiries of the owner (or the municipality) as to whether a certificate has been obtained in respect of the property and in fulfillment of the bylaw requirement.

**Standard Form Contract of Purchase and Sale**

The legal documents via which a seller makes disclosure of defects or other information relevant to the sale are the contractual documents. In BC, the form that is normally used for the sale of residential property is the Standard Form Contract of Purchase and Sale, a form developed and copyrighted by the BC Real Estate Association and the Canadian Bar Association, BC Branch (Real

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51 Referring to the trial judge in Cardwell v. Perthen who (at para. 121) quoted these exceptions from the trial judgment of McCluskie v. Reynolds 1998 CanLII 5384 (BC SC), (1999), 65 B.C.L.R. (3d) 191 at para. 53 (S.C.)
An Approach Towards Private Sewer Lateral Certification in Real Estate Transactions

Property section). This form is not regulated under statute, but experienced real estate and legal practitioners developed it with an eye to the governing law.

The Standard Form Contract of Purchase and Sale essentially upholds the principle that the buyer is responsible for discovering any bylaw non-compliances, with the following clause that appears at section 9 of the form and which fails to address such issues:

9. TITLE: Free and clear of all encumbrances except subsisting conditions, provisos, restrictions, exceptions and reservations, including royalties, contained in the original grant or contained in any other grant or disposition from the Crown, registered or pending restrictive covenants and rights-of-way in favour of utilities and public authorities, existing tenancies set out in Clause 5, if any, and except as otherwise set out herein.

Notably, an Information sheet that is prepended to the Contract provides the following explanation of Clause 9:

5. (TITLE: (Clause 9) It is up to the Buyer to satisfy the Buyer on matters of zoning or building or use restrictions, toxic or environmental hazards, encroachments on or by the Property and any encumbrances which are staying on title before becoming legally bound. It is up to the Seller to specify in the Contract if there are any encumbrances, other than those listed in Clause 9, which are staying on title before becoming legally bound. If you as a Buyer are taking out a mortgage [...]

Property Disclosure Statement (non-statutory)

An additional (non-statutory) standard form that was developed by the BCREA and the CBA is the Property Disclosure Statement (PDS). The form has no formal legal status in BC, i.e. there is no statutory provision requiring a seller to complete a PDS.

Sellers often complete this form; in fact, those who list their property with the Multiple Listing Service (MLS) may be contractually obliged to complete a PDS. In essence, however, the PDS as a form has no statutory or regulatory footing. Completing it constitutes a voluntary disclosure by the seller, and the Standard Form Contract of Purchase and Sale specifically provides that representations in the PDS do not form part of the contract / survive the contract unless the parties specifically agree in writing, by a separate clause, to incorporate the PDS into the contract.

The standard form PDS is revised from time to time at the discretion of the BCREA and CBA.

Currently, the following questions that appear in the PDS would be relevant to private lateral certificate requirement, but would not necessarily lead to the seller informing the buyer that a certificate requirement was still pending:

1. LAND
   E. Have you received any other notice or claim affecting the Premises from any person or public body?
2. SERVICES
   D. Indicate the sanitary sewer system the Premises are connected to:
      Municipal [ ] Community [ ] Septic[ ] Lagoon [ ] Not Connected[ ]
3. BUILDING
   O. Are you aware of any problems with the plumbing system?
4. GENERAL
   B. Are you aware of any material latent defect as defined in Real Estate Council of British Columbia Rule 5-13(1)(a)(i) or Rule 5-13(1)(a)(ii) in respect of the Premises?
For the purposes of Clause 4.B of this form, Council Rule 5-13(1)(a)(i) and (ii) is set out below.

**5-13 Disclosure of latent defects**

(1) For the purposes of this section:

*Material latent defect means a material defect that cannot be discerned through a reasonable inspection of the property, including any of the following:*

(a) A defect that renders the real estate

   (i) dangerous or potentially dangerous to the occupants

   (ii) unfit for habitation.

(ii) Municipal bylaw requirement for seller to disclose?

Given that the seller is not, at common law, subject to any clear positive requirement to disclose to a potential buyer an obligation like a certificate requirement, municipalities may wonder if they have the regulatory authority to, by bylaw, compel a seller of real property to disclose information about the certificate requirement to the potential buyer.

The Community Charter does not provide any clear or tested authority for a municipality to require a seller to disclose specific bylaw-related information to a prospective buyer in a real estate transaction.

The question is whether the authority to “regulate, prohibit and impose requirements in relation to… municipal services” given by section 8(3)(a) of the Community Charter is a broad enough power to require owners of laterals to make specified disclosures to a third party.

We have already posited that the power to regulate and impose requirements in relation to a public sewer service could include imposing requirements regarding the connection and making rules regarding what needs to be done to a lateral for the property to be entitled to receive sewer service. It seems well within the municipal power to regulate the condition of the lateral, given that its condition may impact the sewer service to which it is making a connection.

The Community Charter defines “regulating” to include “establishing a rule regarding what must be done, in relation to the persons, properties, activities, things or other matters being regulated.” The power to regulate is broad, but it must be noted that purporting to compel an owner to disclose certain information to a third party seems to be more about regulating the owner than about regulating the sewer service and private property that is connected to that service. It is possible that the municipal authority to steward the sewer system for the community benefit extends that far, but it is also possible that such a regulation might be found to exceed the reach of the sewer service regulation authority. It may be vulnerable to a legal challenge.

In this regard, however, the City of Richmond’s Drainage, Dyke and Sanitary Sewer System Bylaw may warrant further review. That bylaw requires “food sector establishment” owners to implement best management practices in relation to food oil and grease. Those best practices include requiring the establishment to provide training to its employees concerning the proper management of grease. This is in essence a positive obligation on the lateral owner to provide certain information to third party actors, the employees. It is not clear how or whether the City of Richmond enforces this provision, or whether it has ever been challenged.

In the instant case, even if it was within a municipality’s power to require owners to disclose specific information to third parties, it is unclear how the municipality would enforce such a provision against...
existing owners, especially when it has no knowledge that a sale is occurring. Given the difficulty, it seems more viable for the municipality to find another method for reaching the prospective buyer.

**iii) Regular disclosure obligations of a realtor**

The second means by which a buyer might learn of a certificate requirement or bylaw is from the realtor representing the buyer or seller on the purchase/sale of the property.

Under section 86 of the Real Estate Services Act, the Real Estate Council of British Columbia is authorized to establish rules “respecting licensing... or regulating licensees in relation to the provision of real estate services” and in particular, at section 86(e), the Council may make rules,

(e) establishing or adopting standards of conduct and business practice standards for licensees, including rules
   (i) respecting the keeping and operation of trust accounts by licensees,
   (ii) regulating the operation of offices by licensees,
   (iii) respecting the use of business names by licensees,
   (iv) respecting the form and content of advertising carried out by licensees,
   (v) establishing or providing for the establishment of standard forms for use in providing real estate services, and requiring their use by licensees, and
   (vi) respecting the making of disclosures by licensees in relation to the provision of real estate services;

Further to this authority, the Real Estate Council has established the Real Estate Council Rules (under Ministerial Order M417) which include standards of conduct.

Rule 5-13 which imposes upon licensees a duty to disclose a “material latent defect” (as defined) is relevant, since at sub-para (2) it imposes a duty upon the real estate licensee to disclose to the parties to a transaction, before any transaction is entered into, a “material latent defect” that is known to the licensee:

Disclosure of latent defects
5-13
(1) For the purposes of this section:

**material latent defect** means a material defect that cannot be discerned through a reasonable inspection of the property, including any of the following:

(a) a defect that renders the real estate
   (i) dangerous or potentially dangerous to the occupants,
   (ii) unfit for habitation, or
   (iii) unfit for the purpose for which a party is acquiring it, if
      (A) the party has made this purpose known to the licensee, or
      (B) the licensee has otherwise become aware of this purpose;

(b) a defect that would involve great expense to remedy;

(c) a circumstance that affects the real estate in respect of which a local government or other local authority has given a notice to the client or the licensee, indicating that the circumstance must or should be remedied;

(d) a lack of appropriate municipal building and other permits respecting the real estate.

[08/01/2006 amended subsection (1) by adding “material” in the definition effective 09/01/2006]

(2) A licensee who is providing trading services to a client who is disposing of real estate must disclose to all other parties to the trade, promptly but in any case before any
agreement for the acquisition or disposition of the real estate is entered into, any material latent defect in the real estate that is known to the licensee.
(3) If a client instructs a licensee to withhold a disclosure required by subsection (2), the licensee must refuse to provide further trading services to or on behalf of that client in respect of the trade in real estate.
(4) As an exception, disclosure to a party is not required under subsection (2) if the party has already received written disclosure of the material latent defect from the client who is disposing of the real estate.
[08/01/2006 amended by adding subsection (4) effective 09/01/2006]

This section is interesting because it would appear that “material latent defect” is defined to include a rather broader set of circumstances than those “latent defects” that a seller is under any common law duty to disclose.

So the question arises: if a bylaw required a certificate for time of sale, would Rule 5-13 impose any professional obligation upon a real estate licensee to inform the parties to a potential transaction that a sewer lateral certificate was required and had not been obtained?

Possible yes, but the answer is not certain. The following would certainly impact any interpretation of the facts:

- Can the lack of a certificate be said to be a defect that “cannot be discerned through a reasonable inspection of the property”? Presumably, a diligent buyer would or could make inquiries that would lead them to discover the information online or at City Hall; or a buyer might retain a building inspector to conduct an inspection of the key building systems, including the plumbing system, and the inspection professional should certainly be aware of, and ready to advise a buyer on issues like this. In the case of Cardwell v. Perthen quoted above, the court found it quite reasonable to expect that in some circumstances, “reasonable investigations” by the buyer include the buyer hiring a professional to in finding defects that might not otherwise be evident;
- It may cost “great expense” to undertake all that is required to obtain a certificate, but can it be said that the property has a “defect” if all that is known is that the pipe has not yet been inspected?
- Can it be said that the local authority has “given a notice to the client or licensee”? It seems likely the meaning would be interpreted to mean a notice of non-compliance – and this would not likely be sent until after the closing, when the municipality learns of the title transfer.
- If the actual trigger (title transfer) for obtaining a certificate has not yet passed, can it be said that there is already, before signing the contract, a “lack of appropriate municipal building and other permits respecting the real estate”? The answer will depend on how narrowly or broadly this provision would be read.

It should be noted that if a seller provides written disclosure of a “material latent defect”, then further to Rule 5-13(4), that disclosure obviates any need for a licensee to make disclosure of a material latent defect to a party to a transaction52.

52 Note also section 5-13(3) which provides that “If a client instructs a licensee to withhold a disclosure required by subsection (2), the licensee must refuse to provide further trading services to or on behalf of that client in respect of the trade in real estate.”
Further to section 35 of the Real Estate Services Act, a licensee commits professional misconduct if he/she fails to comply with that Act, the regulations or the rules (rules means rules established under section 86). See more info about Disciplinary Proceedings and Regulatory Enforcement under Part 4 Division 2 of the Real Estate Services Act.

iv) Municipal bylaw requirement for realtor to disclose?

Given that realtors may or may not provide information to the seller voluntarily, a municipality may wish to know whether it is within municipal powers to compel realtors to provide information to a buyer.

The short answer is no, it is not within the municipal business regulation power to do this. Municipalities have the power to “regulate” in relation to business but not to “impose requirements”. The power to regulate includes the power to “authorize, control, inspect, limit and restrict, including by establishing rules respecting what must or must not be done, in relation to the persons, properties, activities, things or other matters being regulated”. When this clause is read as a whole, it is evident that power to regulate in relation to business is all about limiting or restricting business activities, rather than imposing positive requirements.

v) Regular due diligence searches of the buyer

The third and final means by which a potential buyer might become aware of a certificate requirement is through their own independent or “due diligence” inquiries about the property in question, either by the buyer him/herself, or by the buyer’s legal representative on the purchase.

The first point to note about this is that in residential real estate transactions in BC, the standard of practice for lawyers who do regular residential conveyancing is to generally discuss what bylaws do, and to advise the buyer in writing that the lawyer will not be checking for municipal bylaw compliance etc. and that it is buyer’s responsibility to check with the municipality regarding applicable bylaws and whether the property is in compliance. The lawyer for the buyer’s mortgage company may carry out such searches, and in commercial purchases, such searches are standard practice.

That standard practice leaves residential buyers to make such inquiries of their own initiative. Since not all buyers are sophisticated enough to make those inquiries either at all or with any thoroughness, it seems quite possible that buyers might not easily discover this information, unless they are coached by their lawyer or notary as to what questions they ought to be asking at City Hall or of the seller.

On the other hand, the standard manual for real estate practice does indicate that a diligent lawyer should be reviewing the tax information sheet, as it may contain important information about the property, such as the possibility of local improvement charges. If it is standard practice for legal advisors to review that information, then this increases the chances that a certificate requirement would be discovered and communicated to a buyer in advance of closing. The tax information sheet

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54 BC Real Estate Practice Manual, at para. 5.31 at p. 5-20.
55 The BC Real Estate Practice Manual states at para. 5.30, "Notice of local improvement charges (local services) assessments often appear as inconspicuous notations (for example, "Bylaw 1234 Loc Imp Pending") on tax information sheets. Therefore, tax information sheets should be scrutinized carefully."
(especially when combined with the property information, such as permit information for the property) is a key communication vehicle by which a municipality may publicize both the fact that there is a time of sale certificate requirement, and whether or not the property in question has obtained a valid certificate. And of course, it can be expected that over time, lawyers will become more aware of the bylaw and be in a better position to provide some more routine warning to their clients.

If the municipality were to receive a formal request for a “comfort letter”\textsuperscript{56} from a prospective buyer or the buyer’s lawyer, it would be incumbent upon a municipality to provide a formal response that would include notification to prospective buyers of the certificate requirement and certificate status for the property in question.

\textbf{vi) Municipal bylaw requirement for legal professional to disclose?}

Just as a municipality would not be able to compel a realtor to disclose certain information, a municipality also has no authority to impose such positive obligations upon a legal professional. The better and more viable course, explored in section 5.3 below, is to work cooperatively with these two professional groups to achieve the necessary policy understanding and support.

So, to conclude, the existing regulatory systems that underpin a real estate transfer provide municipalities with imperfect access to buyers and buyers with imperfect access to or awareness of prevailing bylaws. Non-regulatory mechanisms for municipalities to engage the community and build support for and awareness of the program are explored further, in section 5.3 External Engagement.

\textsuperscript{56} The District of West Vancouver notes on its website that it will furnish “comfort letters” to inquiring prospective buyers, on payment of a fee (either $224 or $336, depending on what kind of property it is).