

# CON·STRUCT

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## EMERGENCY PREPAREDNESS: PLAN, PREPARE & PRACTICE

Like other jurisdictions across the country, British Columbia is at risk for numerous emergencies and disasters, including flooding, forest fires, severe water shortages, tsunamis, storm surges, landslides, avalanches, power outages, hazardous material spills and disease outbreaks. While emergency planning and response is a shared responsibility across all levels of government, citizens largely depend on and expect local governments to provide effective, coordinated response in local emergency situations. A local government's statutory obligations within this context are found in the British Columbia *Emergency Program Act* (EPA).

The EPA provides the legislative framework for the management of disasters and emergencies within BC and sets out the roles and responsibilities of local governments and the Province (as well as ministries, crown corporations and other government agencies). This article focuses only on the roles and responsibilities of local governments (referred to in the EPA as "local authorities").

The EPA specifically requires local governments to develop local emergency plans and to establish and maintain emergency management organizations to develop and implement such plans. Importantly, the EPA and the regulations thereunder do not mandate the scope of a local government's emergency program. While emergency plans must be established in accordance with the legislative requirements of the *Local Authority Emergency Management Regulation* ("LAEMR"), the LAEMR recognizes that emergency plans are living documents that must be prepared to the level required to meet each specific community's unique needs and risk profile, based on the resource capabilities available.

A critical aspect of the EPA lies in the significant extraordinary powers that may be exercised by a local government in the context of an emergency, including powers to:

- acquire or use any land or personal property to prevent, respond to or alleviate the effects of an emergency or disaster;
- authorize or require persons to render assistance;

- control or prohibit travel to or from an area of British Columbia;
- provide for the restoration of essential facilities and the distribution of essential supplies and provide, maintain and coordinate emergency medical, welfare and other essential services;
- cause the evacuation of persons and the removal of livestock, animals and personal property;
- authorize the entry into any building or on any land, without warrant, by any person in the course of implementing an emergency plan or program or if otherwise considered necessary to prevent, respond to or alleviate the effects of an emergency or disaster;
- cause the demolition or removal of any trees, structures or crops if the demolition or removal is considered to be necessary or appropriate to prevent, respond to or alleviate the effects of an emergency or disaster;
- construct works considered to be necessary or appropriate to prevent, respond to or alleviate the effects of an emergency or disaster; and
- procure, fix prices for or ration food, clothing, fuel, equipment, medical supplies or other essential supplies and the use of any property, services, resources or equipment within any part of British Columbia for the duration of the state of emergency.

Importantly, these extraordinary powers may only be exercised if a state of emergency has been declared in accordance with the EPA and may only be exercised for the duration of such emergency.

While the EPA and the regulations thereunder do not mandate the scope of a local government's emergency program, all local

(Continued on page 2)

governments are required to have an emergency program in place. Further, the LAEMR requires, among other things, that emergency response exercises and training programs and other procedures be established for the purposes of implementing the plan. This process can have significant cost implications for local governments, especially in smaller or more remote communities where there may be a lack of staff expertise, or a lack of financial and/or physical resources. Notwithstanding a local government's capacity, citizens typically expect local governments to provide effective and coordinated emergency response. Failure to do so could result in residents taking action to hold their local government liable for losses suffered in emergency or disaster situations. As a result, local governments need to ensure their compliance with the EPA and the regulations thereunder and must ensure, to the extent of the local government's capability, that resources are available for critical infrastructure upgrades, first responder training and acquisition of necessary equipment to address hazards.

Local governments may address their lack of capacity for emergency response by bylaw. For example, the probability that a forest fire might occur has been upheld as the basis for denying a building permit. In *Guest v. North Vancouver (District)*, 2012 BCSC 1626 (CanLII), the court was faced with a petition for judicial review of the refusal of the City's chief building officer to reject an application for a building permit to construct an "off the grid" house. The Chief Building Official's decision to reject the permit was premised on the fact that the property was isolated, unserved by water or power utilities, and located in a hillside forest area. There was no access to the property for fire suppression equipment. The owner proposed a wet sprinkler system to address the City's complaints, but the Chief Building Official reiterated that it was his conclusion that the objectives of the Building Code and the District's Building Bylaw would not be met by an on site fire suppression system in the absence of a form of fire vehicle access to the property. The court found that the denial was reasonable considering stated objective of safety in the B.C. Building Code.

Otherwise, where local governments do not have the financial or physical resources to prepare or respond to emergency events, they should consider other risk mitigation strategies, such as mutual aid agreements and other operating agreements with partner organizations, insurance and the use of other mechanisms to limit or transfer risk (e.g. public awareness campaigns, warnings, disclaimers etc.).

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Pam brings over 18 years of combined legal experience in local government and commercial real estate matters with a focus on land use planning, subdivision, rezoning and redevelopment of residential, mixed-use and industrial properties. Pam has worked on numerous large-scale development projects throughout the Province and provides strategic and practical advice on project development, infrastructure financing and transactional matters. Pam also has a Master's Degree in Public Administration and is a seasoned advisor for local governments in all aspects of their legislative authority, including bylaw development, constitutional jurisdiction, conflict of interest and FOIPPA.



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Emily has been working in the area of local government and commercial real estate law since she moved to B.C. in 2015. With a background in Urban and Environmental Planning, Emily brings a practical approach to the legal advice that she provides. Emily has experience in relation to a broad range of solicitor and litigation matters. Emily has acted for local governments in mediation and has appeared in Provincial and Supreme Court, as well as a variety of administrative tribunals, including an expropriation inquiry hearing, a development permit appeal and representing a municipality as an intervenor in a Federal Public Sector Labour Relations and Employment Board matter. Emily has written and presented on a variety of topics of interest to local governments, including environmental issues, urban agriculture and development legislative tools.

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