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Condominium to the Country: The Sprawl of Ownership within Private Local Government in British Columbia

Douglas C. Harris and Guy Patterson

As a form of land ownership, condominium enables subdivision and produces local government. Designed to facilitate the production of apartments as distinct parcels of land, ownership within condominium now dominates many urban housing markets. In some jurisdictions, including British Columbia, condominium (labelled strata property) may also be deployed to subdivide land for single-house lots within a structure of private local government. The principal effect of extending condominium to unbuilt land is not to enable subdivision, which is something that was already possible and common, but, rather, to endow groups of single-house lot owners with fiscal capacity and governing authority to assume important aspects of local government. Through an analysis of bare land strata property in British Columbia, we reveal how the condominium form, which brought an architecture of ownership and government from the homeowners association of the American suburbs to the North American city, has spread back from the city into the suburban, exurban, and rural, producing a sprawl of ownership within private local government.

INTRODUCING CONDOMINIUM TO THE COUNTRY

As a form of land ownership, condominium does two things: it enables subdivision, and it produces private local government. Single parcels of land become multi-unit, multi-owner developments, governed by an association of owners. Introduced across much of the world in the second half of the twentieth century, primarily to facilitate the subdivision of buildings into distinct parcels of land, condominium has come to dominate many urban housing markets. Indeed, condominium apartment towers are displacing corporate office buildings as city-defining structures, and, in North America, *the condo* now describes an individually owned apartment. This tag derives from the legal form that combines title to an individual unit, co-ownership of the common property, and the right to participate in a governing association of owners.

Douglas C. Harris is Professor and Nathan T. Nemetz Chair in Legal History, Peter A. Allard School of Law, University of British Columbia, Vancouver, BC, Canada. Email: harris@allard.ubc.ca

Guy Patterson is Lawyer and registered professional planner and a partner at the law firm of Young Anderson, Vancouver, BC, Canada

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This same package of interests exists elsewhere in the world under different labels, including strata title, sectional title, unit title, divided co-ownership, horizontal ownership, and apartment ownership (Van der Merwe 1994, 2015; Lehavi 2016; Altman and Gabriel 2018; Easthope 2019; Lippert and Treffers 2021).

Through a series of small, largely unheralded amendments to its statutory condominium regime in the mid 1970s, the Canadian province of British Columbia untethered condominium from buildings, allowing the legal form to spread across the landscape in subdivisions creating parcels of land for detached houses. Several Australian states took roughly contemporary steps (Brotchie 1976; Dawson 1978; Brown 1989; Sherry 2008, 2009, 2016), and other Canadian provinces have followed with amendments to their statutory condominium regimes (listed in chronological order in Table A1 in the Appendix). The principal effect of these statutory interventions was not to facilitate subdivision for single-house lots, something that was already common, but, rather, to enable the placing of those lots within a form of private local government. Condominium within buildings enabled a subdivision of physical structures into distinct parcels of land, something that had hardly been possible before the condominium statutes (Harris 2011). Condominium subdivision for unbuilt land enables the privatization of local government for single-house lot developments outside the urban core.

The extension of condominium to unbuilt land was largely unnecessary in the United States where single-house lot subdivision within private residential community was already ubiquitous (Schreiber 1968). Early in the twentieth century, owner-developers began to subdivide land and construct dwellings on the outskirts of cities in developments where the owners, through membership in a homeowners association, paid and assumed responsibility for shared infrastructure and services and enjoyed a measure of local self-government (Stevens 2016). By the 1960s, when American states introduced condominium legislation to facilitate the subdivision of buildings in cities, the homeowners association was already becoming the dominant structure within which land would be owned and governed in the expanding American suburbs (McKenzie 1994).

Although the legal forms are slightly different—in homeowners associations, the association owns the common property, in condominium it is the unit owners that own the common property as tenants in common—the roles and functions are "essentially identical" (Hyatt 1975, 980–81). Indeed, the condominium statutes of the post-Second World War era brought to the city what the homeowners association had already made possible in the suburbs: individual ownership of distinct parcels of land within structures of private local government. Within condominium, the parcels of land were smaller—usually an apartment, sometimes a townhouse—but they were individually owned, and the owners were members of a governing association. The private, sometimes gated community of the suburb could be replicated, in vertical form, in the city. Together, the homeowners association and condominium forms now dominate residential property markets in the United States (FCAR 2021a), a development that has been described as "transforming the urban and suburban landscape, not just physically but also politically" (Barton and Silverman 1994, 39); as "the most significant privatization of public services in recent times" (Dilger 1992, 9); as "the most comprehensive privatization occurring in any sphere of government functioning in the United States today" (Nelson 1999, 832); and as possibly "the most extensive and dramatic privatization of public life in U.S. history" (McKenzie 2011, 1).

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In Canada, and most other common law jurisdictions, the homeowners association hardly exists, and the sweeping privatization of local government, which has accompanied its spread across suburban landscapes in the United States, has not occurred. Part of the explanation for this difference lies in the distinct evolution of property law doctrine in the United States. Through a series of decisions in the late nineteenth century, American judges upheld positive covenants—obligations to do or pay something—as property interests that might attach to, or run with, the land (Reichman 1982). The binding nature of positive covenants on whomever was owner, including a requirement to pay monthly association fees (a form of private taxation), enabled developments in which groups of owners were empowered with the fiscal capacity to sustain collective infrastructure and services (McKenzie 1994). In most other common law jurisdictions, including Canada, courts ruled that, while restrictive covenants—obligations not to do something—might run with the land, the burdens of positive covenants did not (Gray and Gray 2009, 246; Ziff 2018, 469). Without a common law mechanism to bind successive owners to pay for the maintenance of common property and the provision of shared amenities, the homeowners association, as it appeared in the United States, could not emerge (O'Connor 2011; Sherry 2008, 2009, 2016).

Outside the United States, the extension of local governing power and fiscal capacity to groups of owners within single-house lot subdivisions required legislative intervention. This came in the form of amendments to statutory condominium regimes or, as in Australia, separate statutes that Sherry (2008, 12) describes as enabling "flattened out strata schemes." British Columbia was a forerunner, amending its condominium legislation to enable what had not been possible before: communities of landowners in single-house lot subdivisions with governing authority and fiscal capacity. In the first section of this article, we set out the steps taken in the 1970s by successive provincial governments to create what became known as "bare land strata property." We then describe how owner-developers responded to this opportunity, providing examples of different strata plans (the constituting documents) to reveal the emerging patterns of private residential subdivisions. In the second section, we illustrate, on a province-wide scale over forty-four years, the growth and spread of bare land strata property, identifying the peaks and troughs in development and mapping its distribution. This distribution prompted the title—condominium to the country—a descriptor that we use broadly to include rural, recreational, exurban, and suburban landscapes, the principal settings where condominium has been utilized to subdivide unbuilt land and to construct a form of private local government. Bare land strata property took the condominium form, which had been designed to expand the possibility of homeownership in the city, and made it available in the country.

The data are derived from the records of the province's land title registration system as managed by the Land Title & Survey Authority of British Columbia. We reviewed every strata plan in the province, distinguishing those that subdivided unbuilt land from the great many more that subdivided buildings. Once we had identified the bare land strata plans, we turned to the publicly available BC Assessment database to confirm the present number of strata lots in each development and to collect civic addresses. From these addresses, we derived geolocation data to mark the site of one lot within every plan in order to produce the maps of their locations.

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The focus on provincial legislation excludes subdivision on reserve land set aside for First Nations from our study. The province's statutory condominium regime does not apply on these lands, and there is no federal equivalent for reserve lands. Elsewhere in the province, where the provincial legislation does apply, residential subdivision occurs on land that is, for the most part, unceded territory. The agreements that do exist between Indigenous peoples and the governments of a settler society over the sharing of territory and jurisdiction in British Columbia cover a small fraction of the land area. As a result, bare land strata property is another means to intensify private property and private local government in a context where basic issues about the division of land and jurisdiction remain unresolved.[1] In this context, "bare land" reinforces the fallacy of *terra nullius* or empty land and buttresses a continuing colonial project (Borrows 2015). Except where referring to the legal form, we use "unbuilt land" to describe the spaces over which this statutory condominium regime extends.

In the third section of this article, we describe the particular powers that the provincial government has extended to owner-developers and then to communities of owners through the bare land strata property regime. First, there is a partial transfer of responsibility for building and maintaining local infrastructure and shared amenities from public local governments to private associations of owners. Second, there is a grant to owner-developers of discretionary zoning power to size and place individual lots within a development. Finally, the provincial government has empowered owner-developers and then groups of owners to produce and enforce bylaws and, by doing so, to create another layer of community-shaping rules that govern the lives of those within. Each of these private powers—to provide common services, to determine development patterns, and to construct local government—is the result of a statutory delegation of authority to landowners. Their cumulative effect is to enable private local government.

While much of the scholarly attention on private residential government has focused on the United States, there have been similar moves toward the creation of private neighborhoods or even private towns and cities in jurisdictions around the world, sometimes the result of the diffusion of ideas and forms from the United States and, at other times, of local historical precedents (Glasze, Webster, and Frantz 2006; Blandy, Dupuis, and Dixon 2010). The development of master planned estates in Australia within the framework of community title legislation in New South Wales, or its equivalent in other states, provides the most direct point of international comparison with British Columbia, at least in terms of the shared common law framework governing covenants and a similar timing for the application of the condominium form to unbuilt land (Sherry 2009; Kenna, Goodman, and Stevenson 2017). In Canada, there is scholarship on the private character of condominium government in cities (Rosen and Walks 2013; Harris 2019; Lippert 2019), on gated communities (Grant, Greene, and Maxwell 2004; Grant 2005, 2007; Rosen and Grant 2011; Walks 2014), and on developments with private roads (Curran and Grant 2006; Grant and Curran 2007; Gordon 2020). Although these later studies mention condominium as commonly providing the ownership structure for gated communities and private roadways, the authors focus on the planning and policy implications of these developments and not on the structure of ownership that makes

1. This includes the traditional, ancestral, and unceded territories of the Coast Salish peoples, the Musqueam, Squamish, and Tsleil-Waututh, where the authors live and work.

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them possible. Our focus is on the legal form to reveal the work it is doing in taking private local government to the country.

In the concluding section, we begin an evaluation of bare land strata property in British Columbia. A full analysis would require attention to what Evan McKenzie (1994) describes as the micro-politics of private residential communities—the internal operations (rule making, enforcement, management, finances) and their impacts on owners and residents—and the macro-politics: the relationship to other levels of government, particularly municipal or regional, and the broader social impacts. We start this analysis, but our principal aim in this article is to describe the emergence of bare land strata, to reveal how and where it is used, and to explain the particular powers it confers. By describing and exposing the legal form, we reveal an extension of power and authority based on land ownership, and we hope this analysis precipitates further evaluation of its effects. We observe, in closing, that private property and private local government, once created, will be difficult to displace and that this alone is reason for caution. The extension of condominium to the country should proceed with care.

CREATING BARE LAND STRATA PROPERTY

In 1966, British Columbia borrowed a label and a template from New South Wales in becoming the first Canadian province to introduce a statutory condominium regime (Harris 2011). The 1966 Strata Titles Act was intended to facilitate the subdivision of buildings into multiple, individually titled units or strata lots, and the brief "explanatory note" accompanying the statute reveals what it made possible:

> This proposed Bill would provide a procedure similar to that available in some parts of Australia, the United States of America, and other parts of the world whereby title to parts of a multi-storied building might be obtained. An example of this type of subdivision is in the form of apartment blocks wherein each apartment is owned separately pursuant to a strata titles or condominium Statute. … Each owner of a strata lot under this Act holds title to a piece of land measured by three dimensions rather than two, and along with that has a share in that part of the building which is described as "common property"; e.g., driveways, stairways, hallways, etc. A corporation is formed with the owners as members, and this corporation looks after the common property.[2]

The opportunity to create this particular package of rights—ownership of an individual lot, an undivided share of the common property, and a right to participate in the governing association—in a multi-unit development applied, as the note suggested, to buildings. The deposit of a strata plan created individual strata lots, defined in three dimensions "by reference to floors, walls, and ceilings" of the building shown in the plan.[3]

The extension of condominium to unbuilt land, in the absence of buildings, occurred in several unsteady steps and, initially, without much discussion or debate.

2. "Explanatory Note," Strata Titles Act, S.B.C. 1966, c. 46 (Strata Titles Act, 1966).
3. Strata Titles Act, 1966, s. 4(1)(d).

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In 1974, as part of the first wholesale revision of the statutory framework, British Columbia's left-of-center New Democratic Party (NDP) government created an option to mark out strata property lots with "support structures" to indicate the locations of future construction.[4] The height and depth of these support-structure strata lots were described with an expansive restatement of common law doctrine: ownership "shall be deemed to extend vertically upward and downward without limit."[5] This restricted support-structure subdivision to a single plane across the surface of the earth, distinguishing it from the subdivision of buildings in which separate parcels of land could be stacked in a column.

The reasons for extending the application of the statutory condominium regime are not clear, but it appears the NDP government, elected on a platform to address working class interests and issues, was motivated to create a structure of land ownership that might enhance the security of tenure for those who owned and lived in mobile or manufactured homes (Hamilton 1978, 138; Pavlich 1978b, 36). A government-commissioned report on mobile homes published in 1975 labelled British Columbia, with its 620 mobile home parks and 44,420 mobile homes in 1974, the "mobile home heartland of Canada" (Audain 1975, 8), a distinction it retains (Lund 2021). The report also noted the apparent advantages of the condominium form over leasehold for mobile home owners: "Strata title mobile home parks in many respects represent a better deal [than rental parks] for the residents. They enable purchasers to secure CMHC [Central Mortgage and Housing Corporation] mortgages (if the units are designed to the correct specifications), they provide residents with a hedge against inflation because of their share in any appreciated land value, and they also largely remove the strain of the schizophrenic tenure arrangement that people living in the mobile home parks experience from being at the same time a home-owner and a tenant" (Audain 1975, 69).[6] If mobile homeowners also owned their lots, then they could secure financing on better terms, would enjoy any appreciation in land values, and would avoid the precarious tenure that accompanied owning a structure and leasing the land (Lund 2021).

The chosen terminology—support structure—also suggests that the amendment was intended for mobile homes, and a number of the early developments, including a subdivision in 1976 creating 157 lots on the outskirts of Chilliwack (then a community of thirty thousand residents approximately one hundred kilometers inland from Vancouver), produced mobile home parks with lots that could be owned individually. The long, narrow support structures shown in the strata plan for the Baker Trail Village development reveal the intended use (Figure 1), and the aerial image shows the manufactured home subdivision that emerged (Figure 2).

The NDP government may have intended to create a means to produce stable tenure for mobile homeowners, but developers saw other possibilities. In October 1975, an owner-developer filed the province's first support-structure strata plan to

4. Strata Titles Act, S.B.C. 1974, c. 89, s. 1(1) (Strata Titles Act, 1974).

5. Strata Titles Act, 1974, s. 3(4)(b).

6. The Central Mortgage and Housing Corporation, now the Canada Mortgage and Housing Corporation, is the federal crown corporation with a mandate to assist with the provision of housing. One of its principal roles is to provide mortgage insurance for lenders who take residential properties as security for loans (Leslie 2022).

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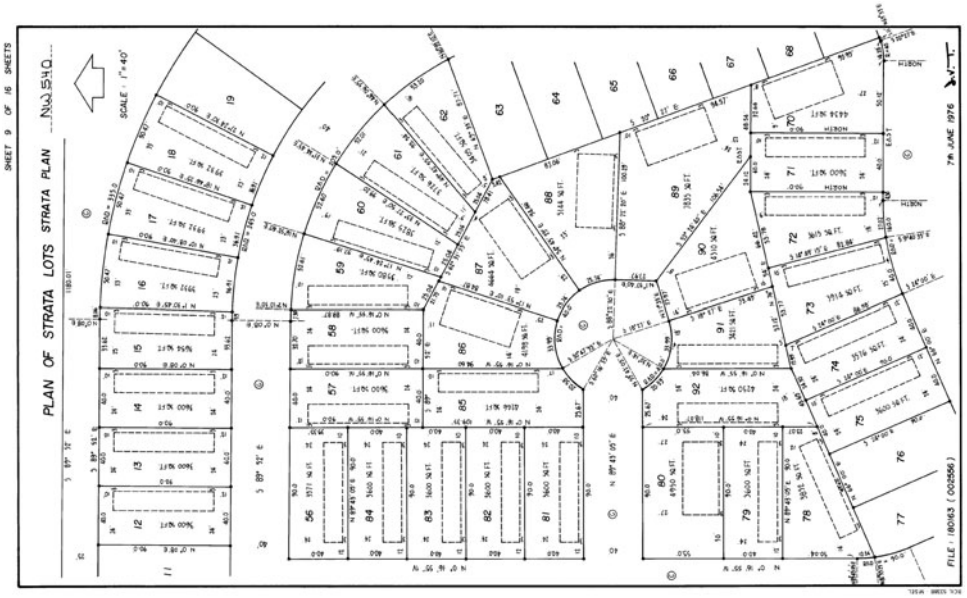

Figure 1.
Strata Plan NWS540, 1976, sheet 9, showing a portion of a support-structure strata plan creating 157 strata lots in the Baker Trail Village development on the outskirts of Chilliwack. The dashed-line outlines of long, narrow support structures (68' x 13' or 50' x 25') within the strata lots indicate their intended use for manufactured or mobile homes. Credit: Land Title & Survey Authority.

subdivide a parcel of lakefront land into four strata lots and then to expand that development the following year to thirty-four lots (Figure 3). Other owner-developers followed quickly once it became apparent that laying concrete paving stones, nailing boards to outline future building sites, or even stating the intention to do so on a strata plan was enough of a "support structure" to subdivide unbuilt land under the Strata Titles Act. In 1976, owner-developers registered nineteen new support-structure developments.

These early support structure subdivisions were scattered across southern British Columbia and varied considerably in size and form. On average, a strata plan created thirty-one lots, but developments ranged from the 157-lot mobile home park in Chilliwack (Figures 1 and 2) to two developments that divided existing lots into just two strata lots. A number of the strata plans created clusters of waterfront strata lots, such as the one on Shuswap Lake (Figure 3), an oceanfront property in Desolation Sound (Figure 4), and an island in Lac La Hache (Figure 5). Several created developments with duplexes by showing support structures on adjoining strata lots that shared a wall. All the strata plans produced residential subdivisions of varying descriptions, except one development in the city of Kelowna, which was described on the plan as "for entirely non-residential use."

Owner-developer interest in the support structure scheme continued to grow. In 1977, there were twenty-six new subdivisions, but not all were created with support structures. That year, the provincial government, then formed by the right-of-center

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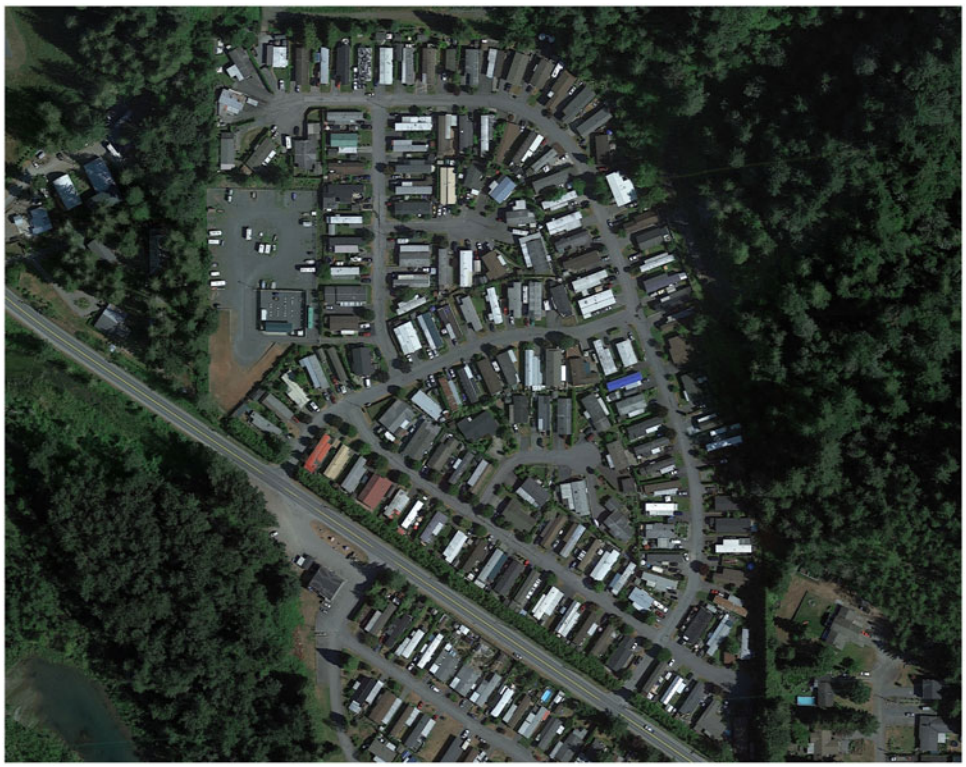

Figure 2.
Aerial image of the Baker Trail Village manufactured home subdivision in Chilliwack created by bare land Strata Plan NWS540. The cul-de-sac in the upper center of the image corresponds to the cul-de-sac shown on the strata plan in Figure 1. Credit: 46511 Chilliwack Lake Road, Chilliwack, BC, Google Earth, July 29, 2022.

Social Credit Party, replaced the support-structure regime with bare land strata title. The impetus for this change appears to have been growing public concern that owner-developers were utilizing support-structure subdivisions to circumvent local government zoning. The minister of municipal affairs and housing explained the issue during legislative debate in the following terms:

> Mr. Speaker, in 1975 the Land Registry Act was amended to allow the subdivision of land under the Strata Titles Act—support-structure strata plans—without the approval of the approving officer. On reflection that move of 1975 is to be regretted. . . . In some instances, Mr. Speaker, there was a potential of very large areas being subdivided in this manner, completely contrary to local, community or regional planning directives, and obviously against the wishes of residents and citizens of a particular area, as well as the local government jurisdiction concerned.[7]

7. British Columbia, Legislative Assembly, *Official Report of the Debates of the Legislative Assembly (Hansard)*, August 5, 1977, 4338 (HA Curtis, Minister of Municipal Affairs and Housing).

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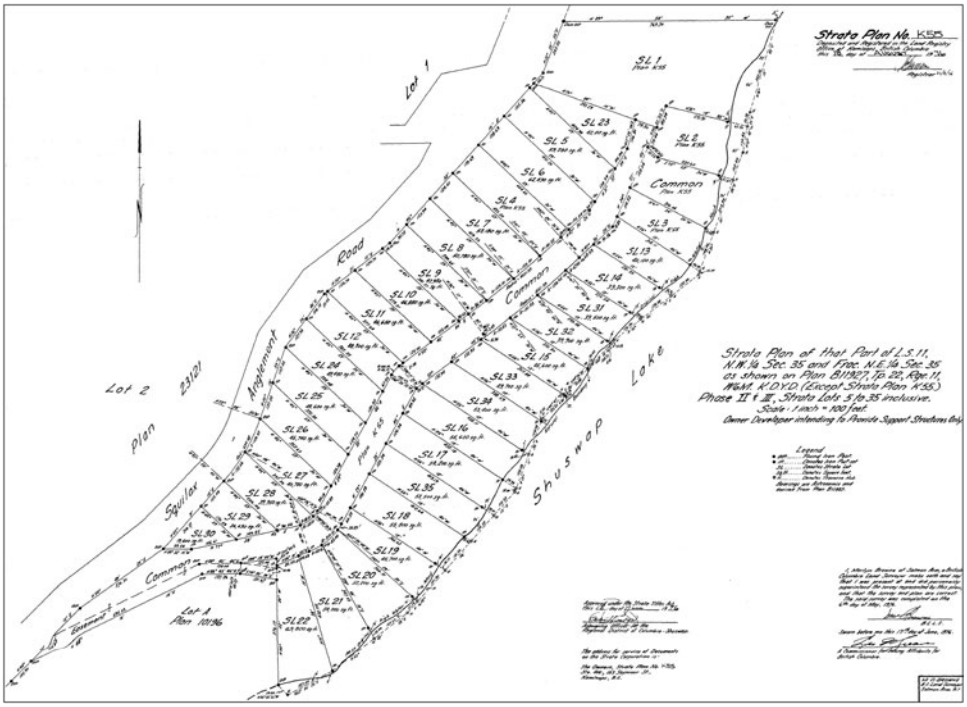

Figure 3.
Strata Plan KAS55, Phase 2, 1976, sheet 1, showing the expanded subdivision of the first support-structure strata plan on the shore of Shuswap Lake. The common property includes a roadway through the middle of the subdivision and a lot-sized area, between SL2 and SL3, to provide access to the water. Credit: Land Title & Survey Authority.

At a following press conference, the minister described the "loophole" that the government was attempting to close as "a case of planning out the window."[8] Put another way, the legislation had shifted important decisions in the planning process from public to private spheres, and the government was responding to the outpouring of concern that had resulted.

Conventional subdivision (outside the strata property framework) occurred under the provisions in the Land Registry Act (now the Land Title Act) and required the endorsement of an approving officer,[9] who, before granting this authorization, was required to ensure compliance with local land use bylaws,[10] including those stipulating minimum lot sizes. In 1975, the NDP government had removed the requirement that an approving officer sign off on strata property subdivisions,[11] thereby enabling support

8. Hugh Curtis, minister of municpal affairs and housing, press conference, "Minister of Municipal Affairs and Housing Hugh Curtis announcing the plugging of loopholes in the Strata Titles Act," June 24, 1977, sound recording, AAAB2933, T2687:0004, Track 1, BC Archives.

9. Land Registry Act, R.S.B.C. 1960, c. 208, s. 88 (Land Registry Act, 1960).

10. Land Registry Act, 1960, s. 94.

11. Strata Titles (Amendment) Act, S.B.C. 1975, c. 74, s. 4(b), amending Strata Titles Act, 1974, s. 3(5)(f).

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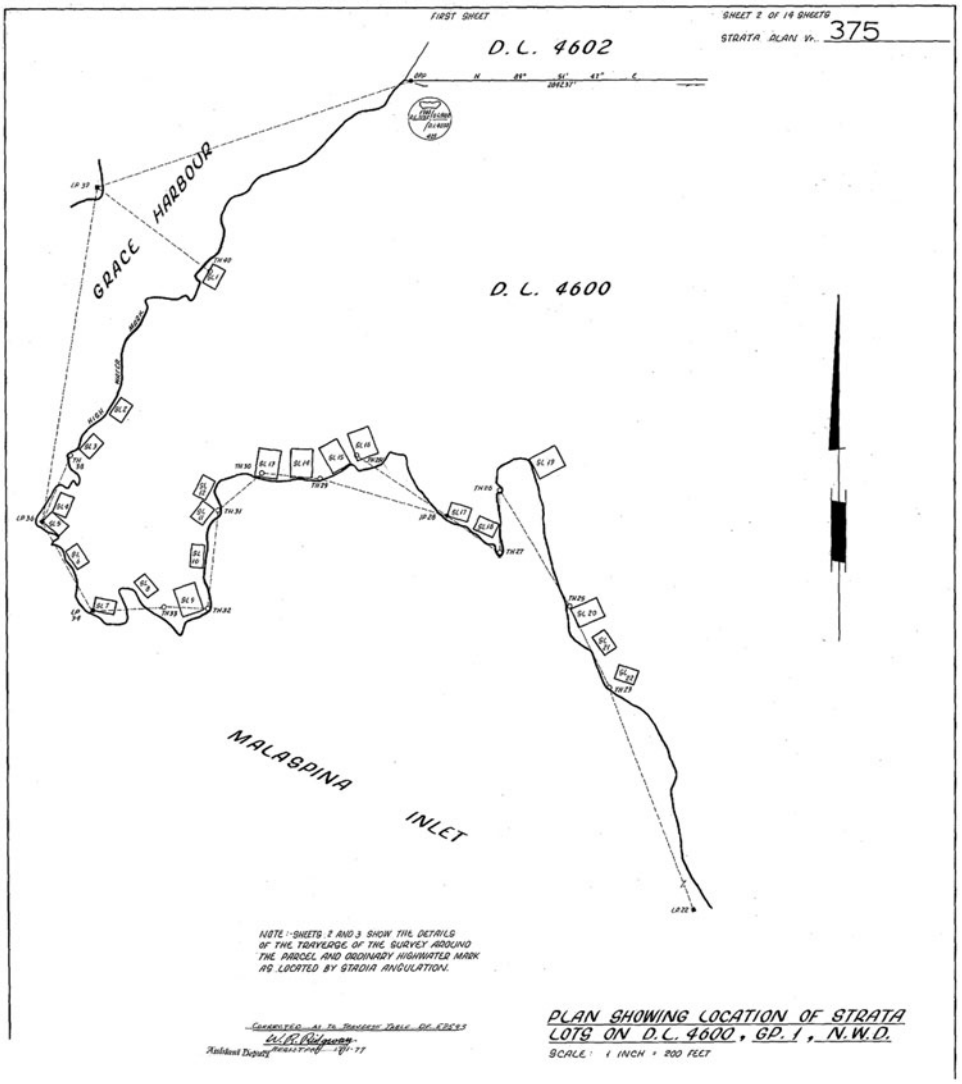

Figure 4.
Strata Plan VAS375, 1977, sheet 2, showing a portion of the development in Grace Harbour, Desolation Sound, north of Powell River. The non-contiguous oceanfront building sites are marked as strata lots; the rest of the area is common property. Credit: Land Title & Survey Authority.

structure subdivision of land into lots that were smaller than local land use regulations permitted. Several subdivisions attracted particular public attention, including those that set out small, non-contiguous oceanfront lots in Desolation Sound (Figure 4) (*The Province* 1977b, 1977c). The subdivision of the island in Lac La Hache was another flashpoint (Figure 5). This strata plan indicated twenty-one lots, each approximately half an acre, in an area where regional zoning regulations established a ten-acre minimum for recreational properties. Although powerless to stop the subdivision, the

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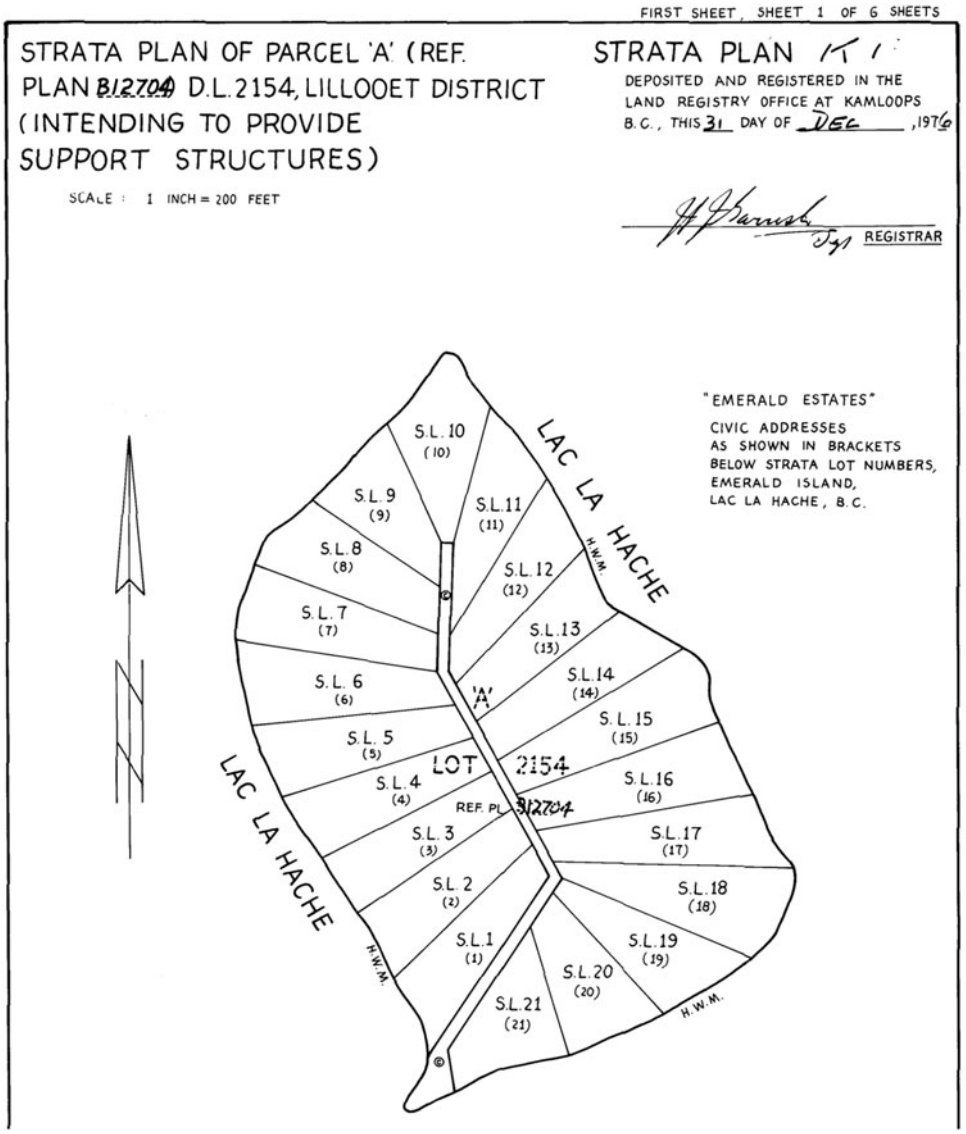

Figure 5.
Strata Plan KAS136, 1977, portion of sheet 1, showing the subdivision of an island in Lac La Hache into twenty-one strata lots. Regional zoning bylaws stipulated a minimum lot size of ten acres, which precluded the conventional subdivision of the ten-acre island. Credit: Land Title & Survey Authority.

regional district said it would refuse building permits and that owners should expect court action if they attempted to build (*Vancouver Sun* 1977; *The Province* 1977a).

Some owner-developers raced to file support-structure strata plans,[12] hoping to launch a development before the provincial government eliminated the "loophole"

12. *Boon v. Registrar of Kamloops Land Registration District*, [1978] 2 ACWS 84, [1978] CarswellBC 901.

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with a stop-gap provision, tacked to the end of the statute, that required local approving officers to endorse plans before they could be registered.[13] A few weeks later, it introduced a more substantial set of amendments to create bare land strata title.[14] Gone was the need to place anything on the land; lot boundaries in a bare land strata subdivision could be "defined on a horizontal plane by reference to survey markers … and not by reference to the floors, walls and ceilings of a building."[15] A surveyor's lines on a bare land strata plan, just as those on a conventional subdivision plan, were enough to subdivide land. The minister of municipal affairs and housing enthusiastically described the new regime as

> similar to the fairly common American concept of planned unit development. Basically, the concept is somewhat like a local improvement area, where a special tax or a levy is imposed on owners benefiting from a particular amenity. I am happy to say that the amendments before us will permit this kind of land development without the technical problems created by the existing legislation. In effect, it allows for the subdivision of bare land so that a purchaser will own his parcel of land and a share of the common facilities and all strata owners will pay for the maintenance of such common facilities. The government believes that this provision has significant potential for good quality and innovative land development and, in many cases, for the preservation of natural amenities associated with the development. The approval of such bare-land subdivisions by municipalities and regional districts will be the same approving officer who now approves land subdivisions under the Land Registry Act.[16]

The stated goal was to enable owner-developers to emulate planned communities in the United States, most commonly established with a homeowners association, and modifying condominium legislation was the means to do so. It remained possible to pursue a conventional subdivision under the Land Registry Act and even to impose a building scheme with restrictive covenants that might establish enforceable rules governing land use within a subdivision (Sabey and Everton 1999), but the statutory condominium regime also enabled the creation of a governing association with the power to set and collect levies and, thus, fiscal capacity to support the continuing costs of common infrastructure and collective services. The province might have done something similar by introducing legislation to allow positive covenants to run with the land.[17] Instead, it chose, with slight modification of the Strata Titles Act, to extend an existing, increasingly popular, and "off-the-rack" property package (Rose 1999, 217)—strata title—to unbuilt land, a step that likely enhanced the confidence of all involved, including

13. Strata Titles (Amendment) Act, S.B.C. 1977, c. 43.

14. Strata Titles (Amendment) Act (No. 2), S.B.C. 1977, c. 64 (Strata Titles (Amendment) Act (No. 2), 1977).

15. Strata Titles (Amendment) Act (No. 2), 1977, s. 1(1).

16. British Columbia, Legislative Assembly, *Official Report of the Debates of the Legislative Assembly (Hansard)*, 31st Parl., 2nd Sess., August 23, 1977, 4847 (HA Curtis, Minister of Municipal Affairs and Housing).

17. This is commonly described as abolishing the rule in *Austerberry v. Oldham Corp*, (1885) L.R. 29 Ch. D. 750 (C.A.) (O'Connor 2011).

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developers, financiers, local officials, and purchasers. The choice also had the advantage of retaining, for the subdivision of unbuilt land, the elements of consumer protection within the statutory condominium regime. If the condominium form worked within buildings—new development and conversion of residential tenancy buildings to condominiums were proliferating in Vancouver in the 1970s (Harris 2011)—then why not apply it to unbuilt land?

There was one more important step. In 1978, the Social Credit government introduced regulations that prevented approval of a bare land strata plan unless it complied with applicable official community plans and zoning bylaws,[18] with one exception. Where zoning bylaws established minimum lot sizes, the regulations allowed for smaller individual lots so long as the total area covered by the strata plan, divided by the number of lots, was equal to or greater than the minimum lot size.[19] Under this provision, most lots in a bare land strata subdivision could be smaller (in some cases, much smaller) than the required minimum if there were one or more large lots or if the common property (excluding the access routes) were substantial. So long as the total area divided by the number of lots was equal to or greater than the minimum lot size, an approving officer could approve the bare land strata plan. This lot-size averaging provision, by allowing for the clustering of lots, created not only considerable flexibility for owner-developers but also controversy, discussed later in this article.

There is little in the historical or legislative record to explain why the government chose to grant to developers this form of private discretionary zoning. The minister's comments, reproduced above, suggest a desire to foster "innovative land development" and the "preservation of natural amenities," and this explanation for the shift in planning power to owner-developers followed a turn in land use planning in the 1960s and 1970s to cluster housing. As developments with uniform lot sizes marched across many American landscapes in the decades after the Second World War, attention shifted to cluster developments, combining higher densities of housing in some areas and open spaces in others, not only to preserve natural features but also to reduce development costs (Urban Land Institute 1968, 99). However, it also seems clear that land could be subdivided and developed more profitably under a regime that permitted many small lots in close proximity to a valuable amenity, such as waterfront.

British Columbia was the first province in Canada to introduce statutory condominium and then to extend this framework to the subdivision of unbuilt land,[20] but all the other provinces and territories eventually introduced a similar option (listed in chronological order in Table A1 in the Appendix). With minor amendments to their condominium statutes, the provinces and territories indicated that a "bare land unit," a "vacant land condominium," a "bare-land condominium," or "horizontal (divided) co-ownership" could be defined in two dimensions and thus created in the absence of a building. As a result, all the statutory condominium regimes in Canada now construct a distinction between building condominium and bare or vacant land condominium (in Quebec, it is a distinction between "vertical" and "horizontal" divided co-ownership),

18. Bare Land Strata Regulations, B.C. Reg. 75/78, s. 2(1) (Bare Land Strata Regulations 75/78).
19. Bare Land Strata Regulations 75/78, s. 2(2).
20. On the Ontario case law involving attempts to use the Condominium Act, RSO 1970, c. 77, to create single-house lot subdivisions, see Pavlich 1978b, 65, n. 28.

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although there is little difference between these forms, except that the former requires subdivision in three dimensions within a physical structure, while the latter permits it in two dimensions on unbuilt land.

THE SPRAWL OF BARE LAND STRATA PROPERTY

British Columbia's version of condominium for unbuilt land has proven a popular alternative for residential land subdivision and occasionally for commercial, industrial, and agricultural land as well. From the first support structure strata plan in 1975 to the end of 2019, there have been 2,601 bare land strata developments creating 46,341 bare land strata lots (see Table 1). The rate of development over these forty-four years has not been consistent. Bare land strata subdivision has moved sharply between peaks and troughs that tend to follow and accentuate the general pattern of housing starts in the province. Moreover, development has concentrated on southern Vancouver Island, in the Okanagan, and in the Fraser Valley, the principal regions in the province where, over these decades, developers were subdividing rural and suburban land for single-house residential lots. In the next two subsections, we set out the numbers and map their distribution.

Bare Land Strata: Numbers

The creation of the bare land strata property regime produced an initial surge of residential subdivisions in the late 1970s, but then the number of new developments each year bounced between the mid-twenties and the mid-forties through the 1980s (Table 1). The low point occurred in 1985 at the end of a widespread economic recession in North America, when owner-developers registered only twenty-five new plans. In the early 1990s, bare land strata subdivision accelerated sharply, reaching a high of 109 new developments in 1994 (Figure 6), but the boom did not last. The number of new projects fell to fifty-four in 2000 and remained stagnant for several years, before shooting up in 2003 and climbing to a peak of 120 in 2008. The subsequent drop in 2009 and 2010 was precipitous, and the numbers kept falling to a low of twenty-seven new bare land strata plans in 2014, before climbing modestly again in 2015 and hovering around forty new plans each year to 2019.

The production of bare land strata lots has followed a similar pattern, although the figures in Table 1 require some explanation. Most strata lots are created with the deposit of the initial strata plan, but some developments occur in phases, with plans for subsequent phases adding more strata lots. The first phase of the Arbutus Ridge development on Vancouver Island in 1987 produced sixty-three lots, but the project would continue over nineteen additional phases, with strata lots 642–46, the final five, emerging in 2012 with the twentieth phase. In Table 1, all 646 strata lots at Arbutus Ridge are counted with the registration of the original plan in 1987, which helps to explain the sharp jump in the number of strata lots that year. In short, the figures for strata lots do not correspond exactly with the year, but Arbutus Ridge, the largest bare land strata

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TABLE 1.
Bare land strata plans and strata lots registered in British Columbia, 1975–2019

Year	Bare land strata plans*	Bare land strata lots**	Average bare land strata lots/plan (nearest whole number)
1975	1	36	36
1976	19	580	31
1977	27	1,015	38
1978	34	1,196	35
1979	33	751	23
1980	32	882	28
1981	41	1,001	25
1982	29	703	24
1983	44	792	18
1984	26	598	23
1985	25	298	12
1986	34	444	13
1987	41	1,165	28
1988	42	747	18
1989	53	805	15
1990	69	927	13
1991	49	1,133	23
1992	86	1,811	21
1993	75	1,366	18
1994	109	1,541	14
1995	96	1,236	13
1996	79	1,454	18
1997	83	1,255	15
1998	77	1,463	19
1999	62	1,083	18
2000	54	680	13
2001	66	912	14
2002	57	1,722	30
2003	85	1,137	13
2004	88	1,398	16
2005	105	2,098	20
2006	117	2,193	19
2007	116	1,981	17
2008	120	2,482	21
2009	87	1,264	15
2010	67	859	13
2011	64	888	14
2012	55	887	16
2013	33	284	9
2014	27	331	12
2015	42	695	17
2016	43	534	12
2017	35	697	20
2018	37	645	17
2019	37	372	10
Total	**2,601**	**46,341**	**18**

Notes: *Includes all plans in existence in 2021. Registered plans that were cancelled are not included. **Includes all strata lots in registered plans as of 2021. Some bare land strata developments are built out in phases so include more strata lots than shown in the initial strata plan.

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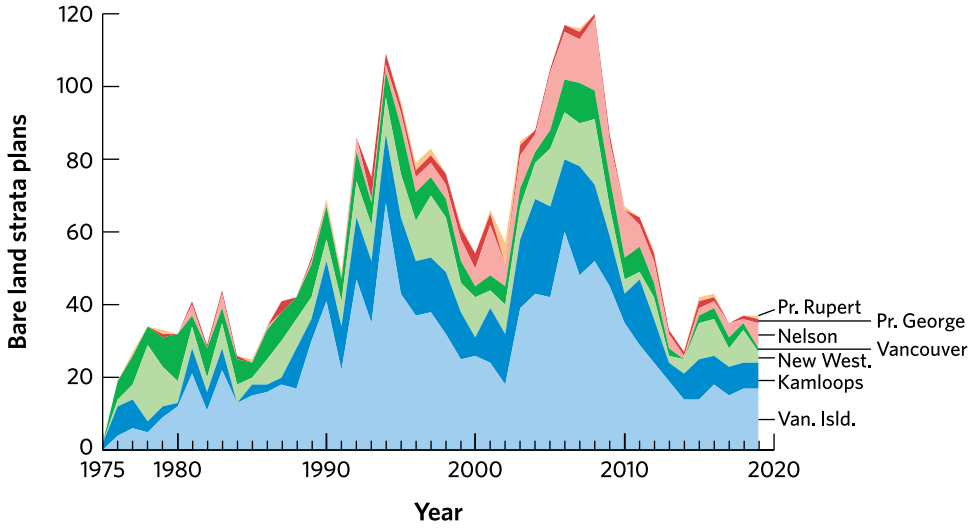

Figure 6.
Bare land strata property plans registered in British Columbia, 1975–2019.
Credit: Douglas C. Harris and Guy Patterson.

development by number of lots (and discussed in more detail later in this article), is an outlier.

Most bare land strata developments subdivide land for residential use. A small proportion of developments—approximately 3 percent—involve subdivision for commercial or industrial purposes, and a handful are marked as agricultural subdivisions. Given the residential focus, it is not surprising that the numbers track the general trend for housing starts in British Columbia, which also shows pronounced peaks in 1981, 1993, and 2007 and deep troughs in 1984, 2000, and 2009 (Statistics Canada, n.d.). The most significant divergence appears after 2009, when general housing starts rose quickly after the recession, stabilized, and then rose again to reach new highs by 2016. On the other hand, bare land strata development continued to decline over the six years after the economic downturn in 2008 and only recovered modestly beginning in 2015 (Figure 6). This tepid recovery in recent years may indicate a diminishing enthusiasm for bare land strata subdivision, but it also appears that some owner-developers, by indicating on the strata plan that each building is a separate strata lot, are using the building strata form to produce what is, in effect, a bare land strata subdivision (see the discussion later in this article). These developments are not included in this accounting.

Most bare land strata subdivisions produce a modest number of lots. In fact, the average number of lots per plan dropped from twenty-seven in the 1970s, to twenty-one in the early 1980s, and then to approximately seventeen over the next twenty years (Table 1). Since the early 2000s, the numbers have dipped further, although part of the explanation for this decline may lie in the fact that some of the later developments are still expanding with additional phases of development. Over the entire period, bare land strata developments average eighteen lots per plan. The most common subdivision—accounting for 463 or 18 percent of strata plans—is to divide an existing

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lot into just two lots (see the discussion later in this article). As a result, the median bare land strata development creates a seven lot subdivision, well below the average.

Bare Land Strata: Regional Distribution

Most of British Columbia's five million inhabitants live in the southwestern corner of the province, near the coast and the US border. The 2.5 million people who live in Metro Vancouver account for half of these inhabitants, and there are approximately one million more in the Fraser Valley and southern Vancouver Island. The pattern of bare land strata subdivision, with developments concentrated on southern Vancouver Island, the Okanagan, and the Fraser Valley, reflects this general orientation (Figure 7). The provincial Land Title Office divides the province into eight land title districts, and over the first six years of the bare land strata property regime, the focus of development moved between the Kamloops, New Westminster, and Vancouver districts (Figure 7). However, in the early 1980s, the effort shifted to the Vancouver Island district. In 1981, just over half of the forty-one new bare land strata plans subdivided land on Vancouver Island, and, from that year until the end of 2019, there have been more plans filed in the Vancouver Island district each year than in any other district. In many years, the district accounts for well over half of new bare land strata subdivisions, and, at the end of 2019, 46 percent of all such developments. The Kamloops district, including the Okanagan Valley, is the next largest, accounting for 19 percent. This district recorded the first such project (Figure 3) and the most activity in the first three years, but then fell behind the New Westminster and Vancouver districts, as well as the Vancouver Island district, through most of the 1980s. This changed in 1990, and, since then, the Kamloops district has usually had the most developments after Vancouver Island.

Although bare land strata development is concentrated in regions of the province with the largest populations, larger-scale mapping reveals that it is primarily a suburban, exurban, and rural phenomenon. It is not a prominent feature in the province's largest cities, where building strata is rapidly becoming the dominant form of land ownership (Harris 2011), and nor is it a feature in cities that developed early. The city of New Westminster is the oldest in the province as well as one of the smallest by area and one of the densest. It has only one bare land strata development within its boundaries (Figure 8). Similarly, the city of Vancouver, because of its density and the fact that most subdivisions of unbuilt land occurred before bare land strata existed, has very few such developments. The larger metropolitan region also has relatively few bare land strata subdivisions, although the numbers increase in municipalities on its outer edges, including Delta, White Rock, and Maple Ridge, where land is still being subdivided into single-house lots. The same applies to the cities in the Fraser Valley beyond Metro Vancouver, particularly Abbotsford (sixty-three developments) and Chilliwack (eighty developments), where owner-developers have made extensive use of bare land strata to produce residential subdivisions (Figure 8). Finally, there is a cluster in the resort town of Whistler, 120 kilometers north of Vancouver.

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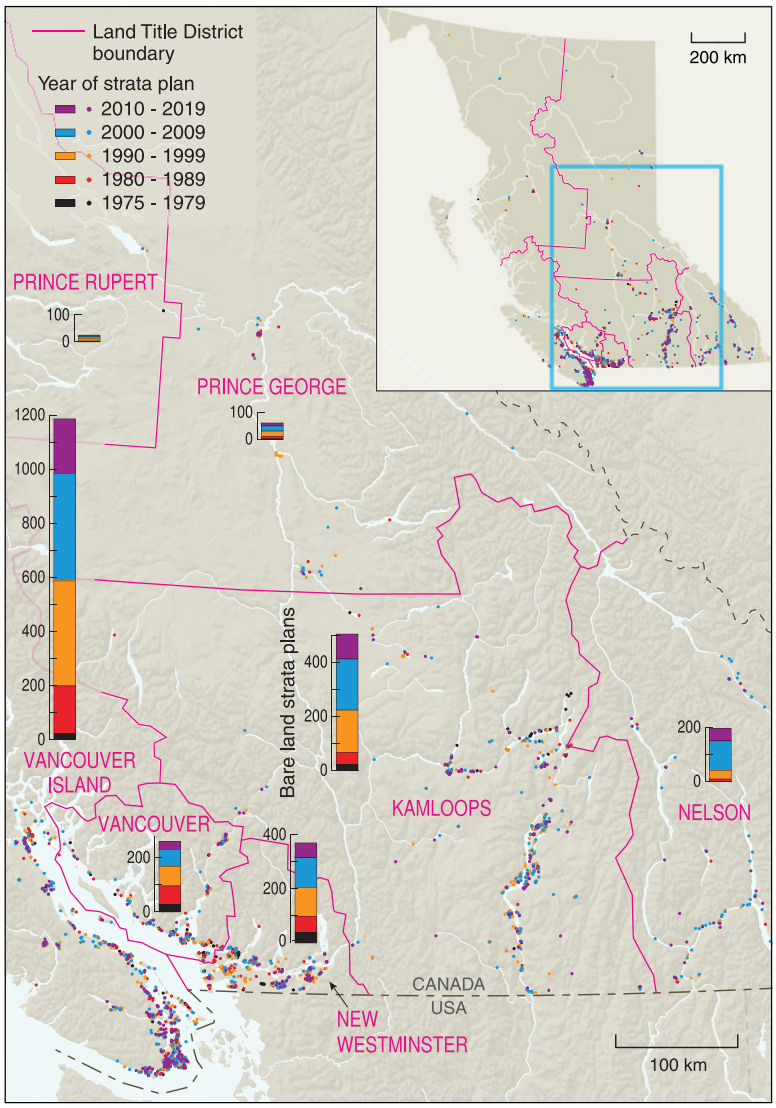

Figure 7.
Bare land strata plans in British Columbia, 1975–2019, showing numbers by land title district. Credit: Douglas C. Harris and Guy Patterson.

A similar pattern exists in Greater Victoria, known as the capital regional district (Figure 9). The city of Victoria itself, one of the oldest cities in the province with a population of nearly ninety-two thousand in 2021, has few bare land strata subdivisions, but the numbers increase to the north in Saanich and even more so in the suburban municipalities of Esquimalt, View Royal, Colwood, and Langford. In fact, these relatively small, albeit rapidly growing, municipalities, the largest of which is Langford with a population approaching forty-seven thousand in 2021, are the focal points of bare land strata property development in the province. As of the end of 2019, Langford had 163 bare land strata subdivisions within it, more than any other municipality in the

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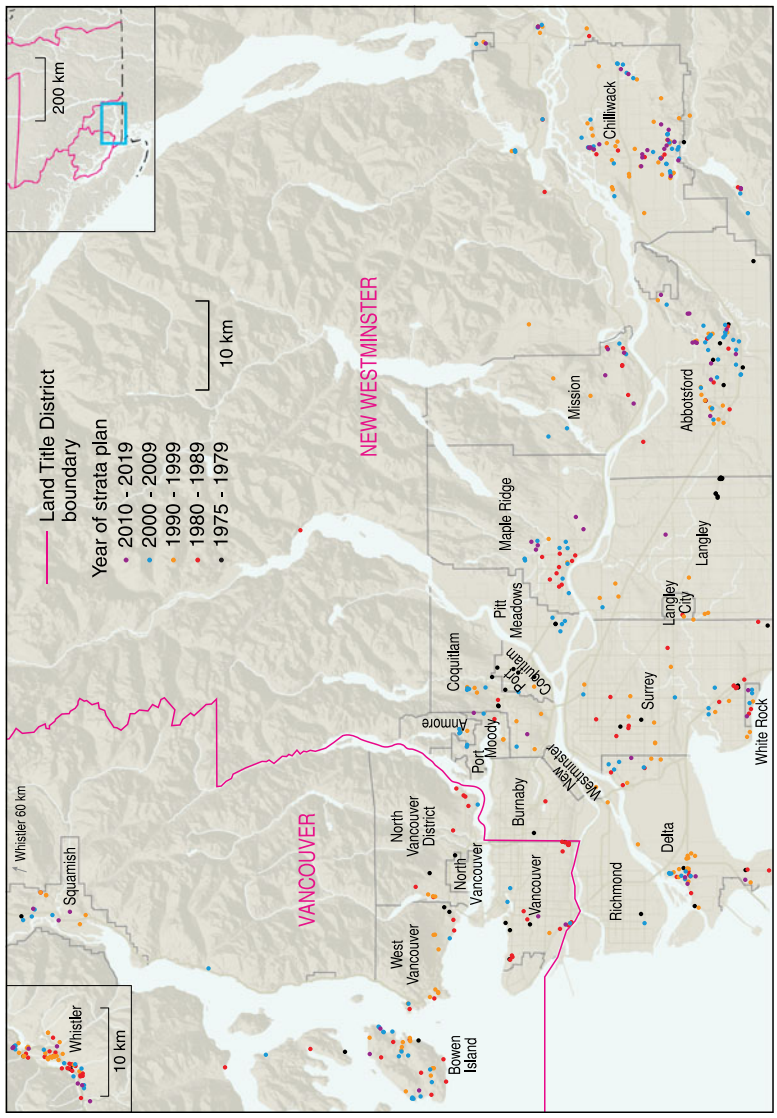

Figure 8.
Bare Land Strata Plans in Metro Vancouver and the Lower Fraser Valley. The City of Vancouver and Metro Vancouver contain relatively few bare land strata subdivisions. Activity increases as one moves away from the urban core, particularly in Delta, South Surrey and White Rock, and Maple Ridge within Metro Vancouver, and then Abbotsford and Chilliwack in the Lower Fraser Valley. The resort municipality of Whistler, 120 kilometers north of Vancouver, also includes a tight cluster of bare land strata developments (see inset map). Credit: Douglas C. Harris and Guy Patterson.

province. Moving up Vancouver Island, beyond Victoria and the Saanich Peninsula, there are bare land strata subdivisions strung along the east coast, with clusters in and around many of the towns, including Duncan and further north in Comox and Campbell River.

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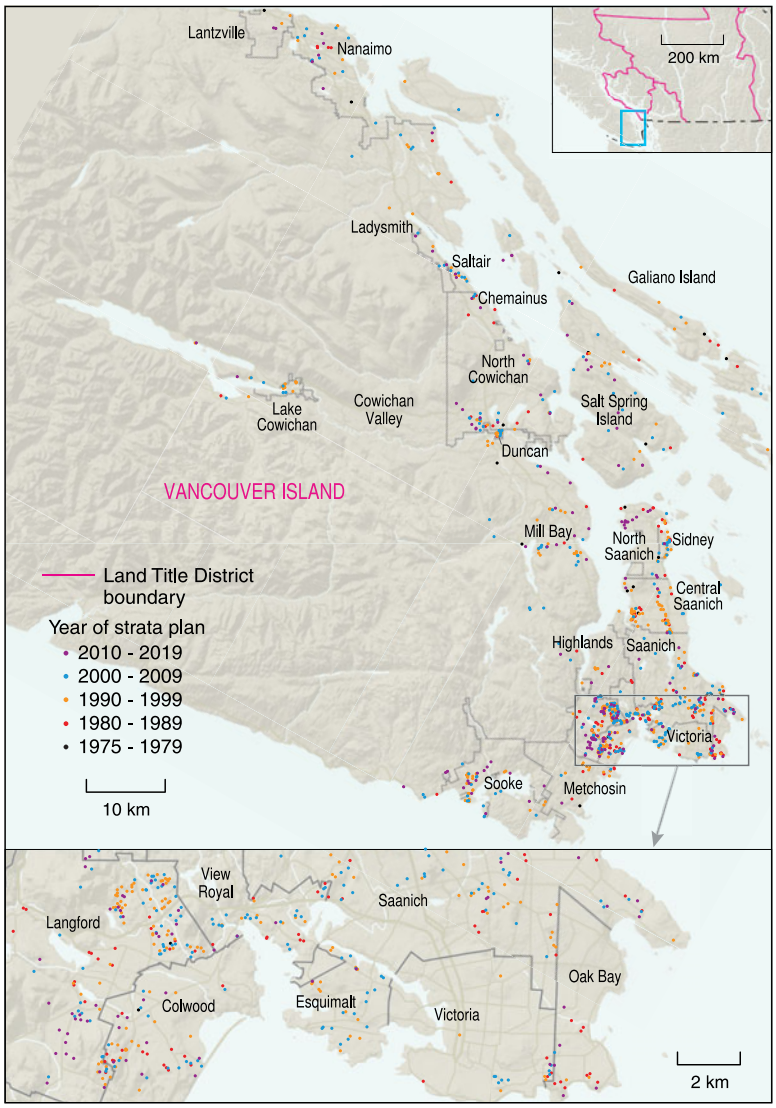

Figure 9.
Bare land strata developments on south eastern Vancouver Island. The city of Victoria has few bare land strata developments, but they have proliferated in the surrounding municipalities of Saanich, Esquimalt, View Royal, Colwood, and Langford (see inset map). Credit: Douglas C. Harris and Guy Patterson.

The particular dispersion of bare land strata developments across the province and within each region appears to be explained largely by the timing of single-house lot subdivision and the willingness of municipal and regional governments to permit and even encourage that form of development. In older urban centers, where the subdivision of land into single-house lots occurred in an earlier era (Lauster 2016), there are few bare land strata developments. Conversions of existing subdivisions to bare land strata are possible but unlikely—we have not identified any—given the need for

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unanimous consent among lot owners. In municipalities where subdivision into single-house lots has continued after bare land strata existed as an option, commonly where rural land is in the process of becoming suburban, the template has been widely, although not evenly, deployed. Certain municipalities appear particularly receptive, including Langford and Saanich on southern Vancouver Island, Abbotsford and Chilliwack in the Fraser Valley, Vernon in the Okanagan, and the resort town of Whistler. In general terms, the concentrations in southern and eastern Vancouver Island, in the Okanagan, and in the Fraser Valley are notable. They also correspond with the spatial distribution of gated communities, a form of development that relies on the statutory condominium form (Grant 2005, 277). Indeed, the opportunity to produce private communities, whether gated or not, is the principal innovation of bare land strata property, and we turn to the delegation of private power in the following section.

BARE LAND STRATA PROPERTY AND PRIVATIZATION

The decision of provincial governments in the 1970s to enable the subdivision of unbuilt land under the statutory condominium regime was also a decision to enable the formation of private local government. Indeed, the creation of bare land strata should be understood primarily as a means to delegate authority to owner-developers and then to communities of owners. This delegation includes ceding responsibility for shared infrastructure and services, conferring powers of discretionary zoning, and enabling private rule-making and rule-enforcing capacities.

Private Infrastructure and Services

Residential single-house lot subdivisions typically require the installation and maintenance of extensive and expensive infrastructure, including roadways, sidewalks, lighting, systems for managing sewage and storm water, and networks for transporting or conducting basic utilities. Then, there are services such as waste collection, fire protection, and police as well as community centers, libraries, recreational facilities, and parks. In most residential communities across Canada, public governments at the municipal or regional level provide this infrastructure and these services. However, the statutory condominium regime, when extended to unbuilt land, enables owner-developers to construct private residential communities with the governing authority and fiscal capacity to do some of these things. The infrastructure and services may include gates, cameras, and security personnel, and, where they do, the resulting privatization of what are otherwise public spaces—roads, sidewalks, parks, recreational facilities—is clear. Only owners or those authorized by an owner may enter. However, even without gates or walls, the statutory condominium framework enables the privatization of what is otherwise public space and decision making.

Furthermore, British Columbia has enhanced the appeal of bare land strata subdivision by permitting owner-developers to build necessary infrastructure to less onerous standards than if it were public. The province's Local Government Act empowers

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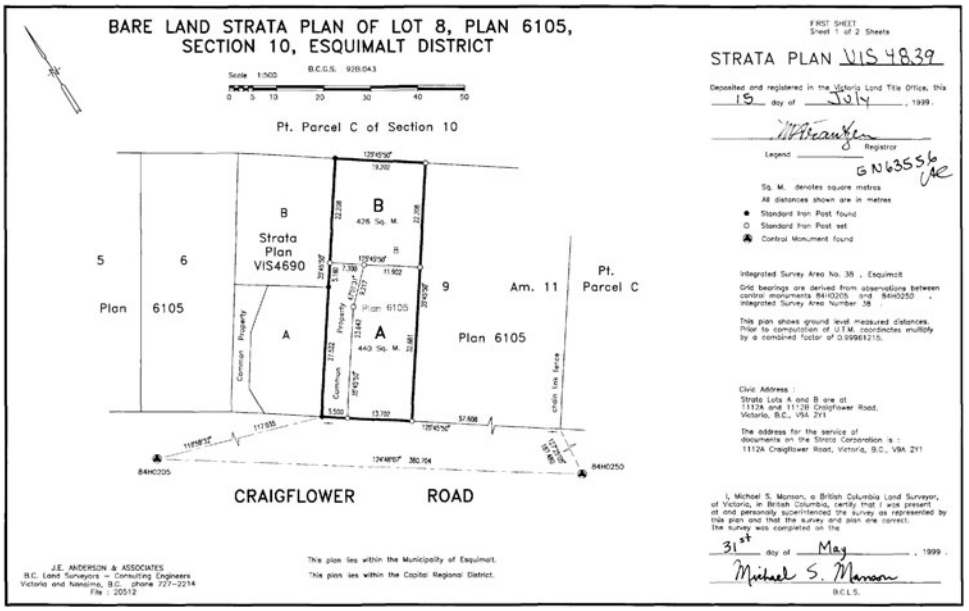

Figure 10.
Strata Plan VIS4839, sheet 1, provides an illustration of a two-lot bare land strata subdivision. Note the common property driveway along the length of Lot A to provide road access to Lot B. There is a similar subdivision in the neighboring lot. Credit: Land Title & Survey Authority.

municipalities to insist that subdivisions include basic infrastructure and to set the standards for that infrastructure.[21] However, strata property subdivisions are exempt from much of this regulatory oversight,[22] an exemption that is most apparent in the design of roadways. Local approving officers cannot impose the public standard for internal roads unless such a standard is necessary to connect private roads to the existing or planned road system.[23] Roads must also be adequate for emergency services, provide "practical and reasonable access to the strata lots," and be designed in accordance with "good engineering practice."[24] However, approving officers may not otherwise require roads within a bare land strata subdivision to meet the requirements for public highways.[25] As a result, the private roadways are commonly narrower and may be built to steeper grades than public roads (Curran and Grant 2006).

The most common bare land strata subdivision creates two lots from a single parcel. In many cases, the impetus is simply to create a shared driveway that connects both lots to a public road. The strata plan in Figure 10 produced front and back strata lots—Lots A and B—with a driveway beside Lot A marked as common property to provide vehicle access to Lot B. There is a similar subdivision in the neighboring lot to the west, and a total of five front-and-back bare land strata subdivisions in

21. Local Government Act, R.S.B.C. 2015, c. 1, s. 506(1).
22. Local Government Act, 2015, s. 506(1), s. 506(3).
23. Bare Land Strata Regulations 75/78, s. 5.
24. Bare Land Strata Regulations 75/78, s. 6.
25. *Norgard v. Anmore (Village)*, 2007 BCSC 1571; *Norgard v. Carley*, 2008 BCSC 1236.

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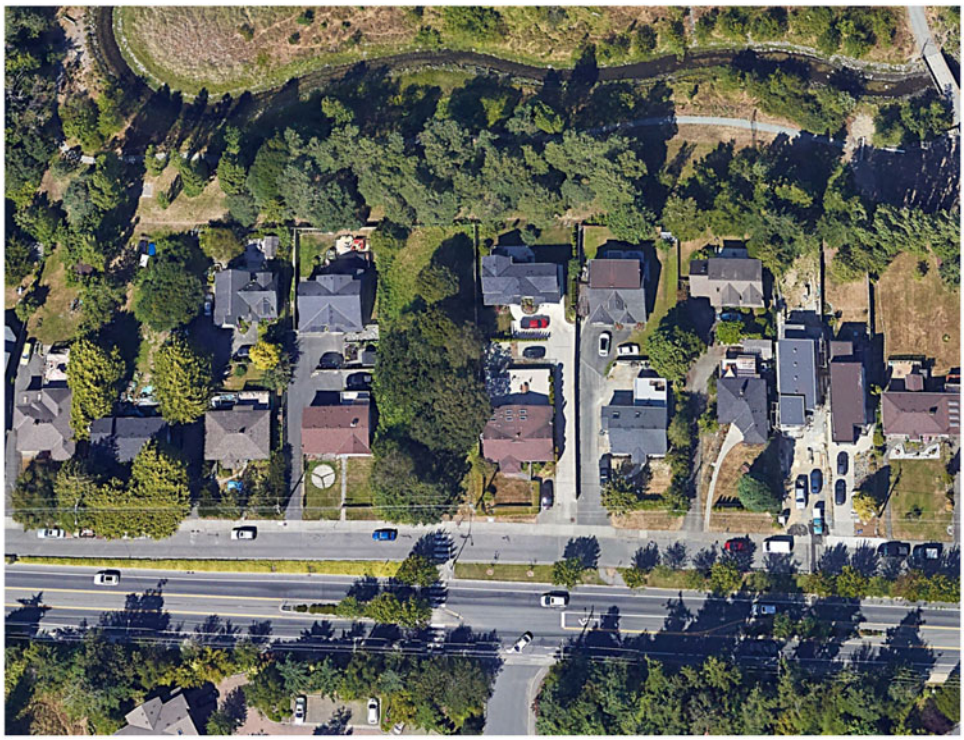

Figure 11.
There are five front-and-back bare land strata subdivisions on this block of Craigflower Rd in Esquimalt, each with a common property driveway to provide the lot at the back with car access to the public road. The front-and-back subdivision on the right of the five is the one created with strata plan VIS4839 reproduced in Figure 10. To its right is a side-by-side subdivision, with both lots fronting on the public road so not requiring the common property that the bare land strata plan produces. Credit: 1112A Craigflower Road, Esquimalt, BC, Google Earth, July 18, 2018.

the same block in the municipality of Esquimalt on southern Vancouver Island. The aerial image (Figure 11) reveals the distinctive pattern of development as well as one side-by-side subdivision with each lot fronting on the public street and, thus, not employing bare land strata.

In these two-lot subdivisions, the bare land strata framework enables little more than the sharing of a driveway to secure access to a second lot from a public road. However, larger developments involve extensive private roadways and may include other common spaces. What would otherwise be public spaces and attendant public services become "club goods," owned, maintained, and governed by groups of land owners, and available only to the members (Webster 2002; Glasze 2003). Bare land strata, by creating a means to compel payment from owners, produces fiscal capacity that makes possible the private provision of, and control over, collective services.

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Private Discretionary Zoning

Local governments in British Columbia have the authority to adopt official community plans in order to guide land use management and planning and to designate general patterns of land use within a community.[26] They may also adopt zoning bylaws (consistent with a community plan) that establish specific rules regarding land use and density, including minimum and maximum parcel sizes.[27] However, the bare land strata regime grants to owner-developers a degree of flexibility in parcel sizes that is not available within a conventional subdivision (Pavlich 1978a). In what amounts to a form of private discretionary zoning, owner-developers may subdivide land into lots that are smaller than a local government's required minimum so long as the average lot size —calculated by dividing the total area of the development (excluding the area devoted to access routes) by the number of lots—meets the minimum lot-size threshold.[28] As a form of internal "density transfer," lot-size averaging enables the clustering of lots to reduce the development footprint, increase the size of common areas, minimize road building, and generally reduce infrastructure costs (Urban Land Institute 1978, 112). It also enables owner-developers to produce small lots near a desirable amenity such as waterfront where land is most valuable. Less valuable land—upland areas away from the water, for example—can be designated as common property or as one or more larger lots in order that the average lot size in a subdivision meets the required minimum.

An attempt by an owner-developer to use lot-size averaging to create one-hectare oceanfront strata lots on Cortes Island became a source of controversy in the early 1980s. The official community plan (then labelled an official settlement plan) designated the land as rural, as did the zoning bylaw, which also stipulated four-hectare minimum lots. The proposed lots were smaller than permitted, but the bare land strata plan included a recently logged sixty-five-acre upland area marked as common property, and the approving officer accepted the proposed density transfer within the development. However, the courts set this decision aside on the grounds that the subdivision subverted the official community plan by creating a residential enclave in an area identified as rural.[29] A developer could not transfer density to produce a subdivision that was contrary to the community plan, and the courts ordered the approving officer to reconsider the decision. Shortly thereafter, the registrar filed a caveat against title to forestall further development.[30]

In response, the provincial government amended the Bare Land Strata Regulations in 1984 to remove the requirement that subdivisions comply with official community plans.[31] A proposed subdivision would still need to comply with regional or municipal bylaws, but local officials could no longer deny an application for not complying with the broader vision of land use management as set out in the community plan. The effect was to enhance the discretion of owner-developers to determine the pattern of land use

26. Local Government Act, 2015, s. 471–74.
27. Local Government Act, 2015, s. 479(1)(d).
28. Bare Land Strata Regulations 75/78, s. 2(2).
29. *Ellingsen v. Raven Lumber Ltd.*, Vancouver Registry, CA 1059 (May 25, 1984) (BC CA); affirming *Ellingsen v. Raven Lumber Ltd.*, BCJ 83/1547 (July 26, 1983) (BC SC).
30. *Raven Lumber Ltd v. Hooper*, 1984 CanLII 826 (BC SC).
31. Bare Land Strata Regulations, B.C. Reg. 137/84.

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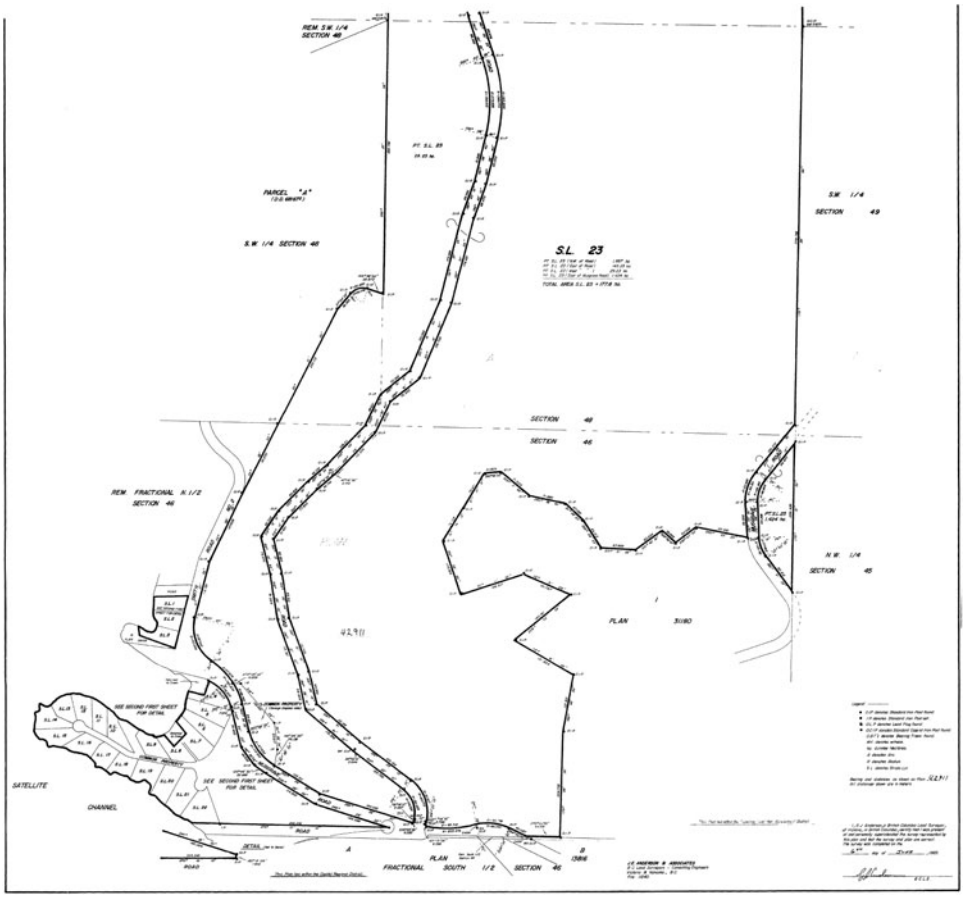

Figure 12.
Strata Plan VIS1453, sheet 2, showing the cluster of small waterfront lots and a portion of the large upland lot—Strata Lot (SL) 23—with the common property roadway snaking through it. The upland lot increases the average lot size, enabling the development to conform with the zoning bylaw even though all the lots except SL 23 are smaller than the required minimum. Credit: Land Title & Survey Authority.

within a development, and the practice of lot-size averaging was soon back before the courts when, later in 1984, the approving officer for Salt Spring Island approved a plan to create a cluster of lots, each approximately 0.2 of a hectare, around Musgrave Harbour, with a large upland lot of nearly 178 hectares (Figure 12).[32]

Opponents argued that the clustered development was denser than contemplated in the official community plan (Mackaroff and Little 1984), but the amended regulations only required compliance with the bylaws. Justice Kenneth Meredith in the BC Supreme Court was quick to uphold the decision of the approving officer, suggesting that the capacity to be flexible with lot sizes was one of the principal attributes of the bare land strata regime: "[T]he useful implementation of the strata-title concept, even as it relates to bare land development, would be greatly inhibited (or nullified)

32. *Mackaroff v. Rico Holdings*, 1985 BCJ 2915 (BC SC).

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if lot sizes could not be reduced to permit the economic and practical installation of common facilities. As it affects bare land development, the Condominium Act strikes a balance between preserving maximum densities regulated by municipal by-laws (in this case, the by-laws enacted by the Island Trust) and the utility of common facilities and the economy of their installation that reduced lot sizes afford."[33] Cluster development can reduce infrastructure costs, but the suggestion that the design of Musgrave Harbour was motivated by "the economic and practical installation of common facilities" seems unlikely. The design was probably driven by an owner-developer's desire to increase the number of valuable waterfront lots.

The decision provoked a vigorous response from one opposition member of the legislative assembly about what he perceived to be a pro-developer bias in the government: "Musgrave Landing on Saltspring is a good example of this interference by Victoria in local decisions and violation of community plans. . . . Is that why you violated the community plan, changed the strata regulations and allowed condos to go ahead at Musgrave–mondo-condo for Saltspring?"[34] Bias or not, the delegation to owner-developers of what amounts to a fine-grained discretionary zoning power through lot-size averaging remains one of the principal distinguishing features and attractions of bare land strata over conventional subdivisions.

However, even with lot-size averaging, minimum lot-size bylaws are a constraint on the density of bare land strata developments. In the late 1990s, another owner-developer proposed a subdivision to accommodate two hundred recreational vehicles with a strata plan showing a "building" divided into two hundred strata lots, each lot occupying a space of 0.098 cubic meters, a size described as equivalent to a mailbox.[35] The plan assigned to each owner of a mailbox-sized strata lot the exclusive use of a recreational vehicle parking site as limited common property—that is, common property designated for the exclusive use of one strata lot owner.[36] In short, the owner-developer was attempting to use a building subdivision to construct what was, in effect, a bare land strata subdivision in order to bypass the approving officer's review, which is not required for building strata plans. The registrar refused to accept the plan, and the courts upheld that decision on the grounds that an owner-developer could not use the pretense of an uninhabitable structure to circumvent the requirements for a bare land strata subdivision, including the approving officer's review for compliance with the local zoning bylaw stipulating minimum lot sizes.[37]

Owner-developers have found other means to construct what are, in effect, bare land strata subdivisions with building strata plans. The plans show detached buildings—usually single houses—as comprising distinct strata lots (Buholzer 2001, para 13.9). The buildings are set apart on what appear to be separate lots, as in a bare land subdivision, but the boundaries of each strata lot are defined by the building structure. The land around each building—what would be the strata lot in a bare land strata plan—is

33. *Mackaroff v. Rico Holdings*, para. 6.

34. British Columbia, *Official Report of Debates of the Legislative Assembly (Hansard)*, 33rd Parl., 3rd Sess., June, 17, 1985.

35. *Swan Lake Recreation Resort Ltd. v. Registrar*, Kamloops Land Title Office, 1999 CanLII 6678 (BC SC), paras. 4–5.

36. Condominium Act, R.S.B.C. 1996, c. 64, s. 1.

37. *Swan Lake v. Registrar*, paras. 9, 35, 36, 69.

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designated as limited common property for the exclusive use of the strata lot owner. The plan is purportedly a building strata, but the result on the ground is indistinguishable from a bare land strata, and the approving officer is not involved. In Michigan, developers have used a similar approach, under the label of "site condominium," to avoid review and approval processes (Soles 1989). The delegation of certain discretionary zoning powers to owner-developers through the lot-size averaging provisions have not forestalled attempts to secure more.

Private Local Government

Condominium creates a fourth order of government that operates beneath federal and provincial or state government and alongside municipal government (Harris 2019). Its authority derives from statute, as does municipal authority in most jurisdictions, and its powers are frequently compared to those of local government. In British Columbia, this fourth order of government takes a corporate form; owners hold voting rights in a strata corporation charged with managing and maintaining the common property and empowered with substantial authority to govern the uses of the private property. In residential developments, each strata lot is allocated one vote, and voting rights are held by owners—residency is immaterial. Absentee owners may participate; resident tenants may not. Some have argued that this is "profoundly undemocratic" (Barton and Silverman 1994, xii); others label it a "shareholder democracy" (Glasze 2003). While one is critical and the other descriptive, both characterizations capture the private nature of this relatively new, increasingly pervasive, and potentially intrusive level of government. The particular rule-making and rule-enforcing powers of these private governing bodies vary with jurisdiction. In British Columbia, the power is broad. A general nuisance bylaw is a standard feature, but bylaws may also contain specific restrictions on noise, smoking, pets, short-term rentals, the conduct of residents or guests, the permitted uses of individual lots, and, until recently, a rental prohibition and a no-children rule.

The Arbutus Ridge development on south-east Vancouver Island, established as a separate comprehensive development zone within the Cowichan Valley regional district,[38] is the largest bare land strata development in British Columbia as measured by the number of strata lots. Registered in 1987 and built out over twenty phases until 2012, the gated community of 646 strata lots wraps around a golf course that was originally planned as part of the development but now operates separately (Arbutus Ridge, n.d.a) (Figures 13 and 14). The headline on the community homepage announces "A Seaside Community for Active Adults," and the welcome message references Arizona's Sun City (Arbutus Ridge, n.d.b), a much larger development established in the 1960s, that had popularized the concept of "active adult" communities (McHugh and Larson-Keagy 2005; Trolander 2011). Promotional material emphasizes outdoor activities and social opportunities for seniors (Arbutus Ridge 2015), and the community projects itself as what Blakely and Snyder (1997) describe as a "lifestyle" development.

38. CVRD, South Cowichan Zoning Bylaw no. 3520, s. 11.1.

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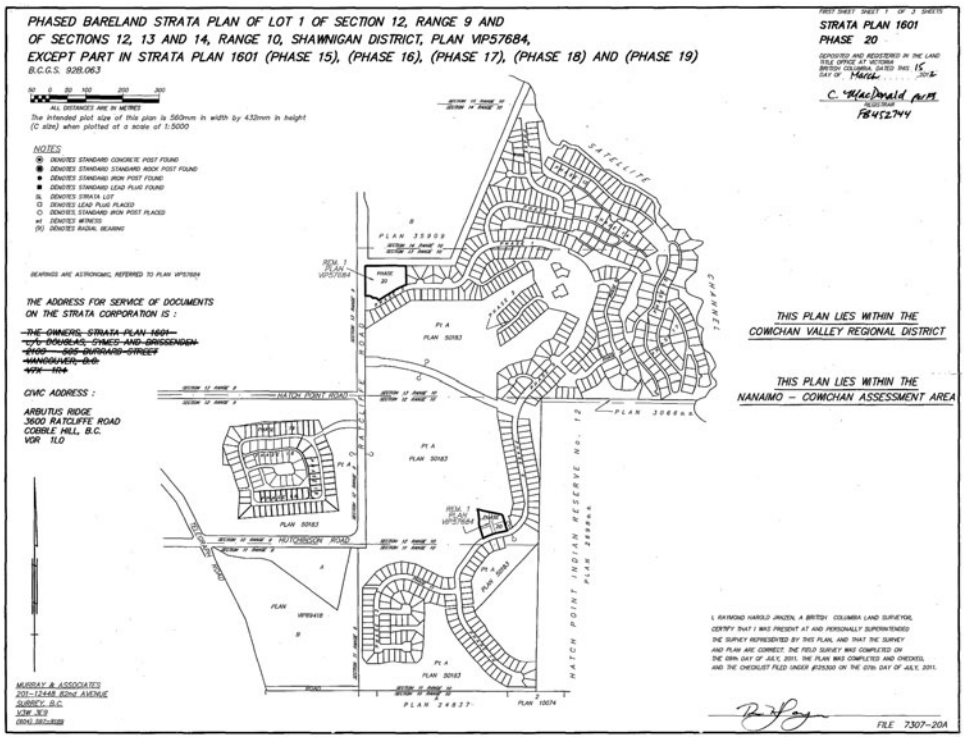

Figure 13.
Strata Plan VIS1601, phase 20, sheet 1. Built out over twenty phases from 1987 to 2012, this 646-lot gated community known as Arbutus Ridge and marketed as "a seaside community for active adults," is, by the number of lots, the largest bare land strata subdivision in British Columbia. Credit: Land Title & Survey Authority.

This "lifestyle" is produced by location, physical design, amenities, and, perhaps most importantly, in the bylaws. At Arbutus Ridge, each lot may have only two residents, one of whom must be at least fifty years old.[39] The result is a community of 1,063 residents in 2016 with an average age of 72.2 years, nearly thirty years above the provincial average (Statistics Canada 2017). Another bylaw restricts rentals to family members or, if not to a family member, then for not less than one month and not more than six months in a calendar year.[40] Residents may park two vehicles, "only one of which may be a truck no larger than a one ton pickup," overnight on their strata lots, but not boats, campers, motor homes, or other recreational vehicles, except within enclosed garages or for no more than forty-eight hours in a calendar month "to facilitate cleaning, loading and unloading."[41] These bylaws, in addition to a standard set of provisions that require owners to secure approval from the strata corporation before undertaking any exterior alteration of buildings or landscaping, enable a particular esthetic and establish the ground rules for an "active adult" lifestyle development. The statutory condominium

39. Strata Plan VIS 1601 Registered Bylaws (January 2019), s. 25(g).
40. Strata Plan VIS 1601 Registered Bylaws, s. 36.
41. Strata Plan VIS 1601 Registered Bylaws, s. 26.

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Figure 14.
Aerial image of Arbutus Ridge, the largest bare land strata development in British Columbia. The owner-developer sold the land now occupied by a fuel storage facility (top center) to help finance construction of the infrastructure. The forested area at the bottom right is the Pauquachin First Nation Hatch Point Indian Reserve 12 (see also notation in Figure 13). In the 1980s, the federal government agreed that the Arbutus Ridge development could cut off road access to the reserve. The Pauquachin launched a specific claim, and, in 2021, the federal government paid forty-one million dollars to settle the claim. Credit: Arbutus Ridge Seaside Community, Cobble Hill, BC, Google Earth, August 18, 2016.

regime confers on developers the power to set these fine-grained rules, which have been used, in this instance, to produce a particularly homogeneous community in terms of resident age, household composition, and physical design.[42]

Conflict between owners in another development reveals that the power to construct a particular community, initially with the owner-developer, extends to the owners. The Skywater subdivision on Salt Spring Island consists of twenty-seven rural lots ranging from between five and seventy-eight acres. Regional zoning allows for agriculture, and the Skywater bylaws list agriculture as one of the permitted land uses, but, in 2019, when an owner indicated the intention to begin commercial cannabis

42. Late in 2022, the provincial government rolled back some of these powers, removing the capacity of strata corporations to prohibit rentals and permitting age restriction bylaws only if the specified age "is not less than 55 years." Strata Property Act, S.B.C. 1998, c. 43, as amended by Building and Strata Statutes Amendment Act, 2022.

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production, which was by then a legal activity in Canada, the other owners convened a special general meeting of the strata corporation and amended the bylaws to prohibit cannabis farming. The courts upheld the new bylaw, ruling that, in a statutory regime that allowed amendments to the bylaws based on a super-majority vote, an owner could have no reasonable expectation that the bylaws would remain as they were when the lot was purchased.[43] In the absence of evidence of wrongdoing, the democratic rights of the majority of owners prevailed over the interests of an individual owner. Statutory condominium regimes construct this balance differently. Some accord more power to the community of owners; others emphasize the rights of individual owners (Van der Merwe 1994; Harris 2021). Whatever that balance, condominium has produced an increasingly consequential order of private government in which the right to participate is based not on residence or citizenship but, rather, on land ownership.

FROM SUBURBS TO CITY AND BACK AGAIN

A newcomer among forms of land ownership, variations of the statutory condominium form now dominate residential property markets in many cities around the world. There are millions of condominium developments producing tens of millions of parcels of land, inhabited by hundreds of millions of people (FCAR 2021b, 2021c; Harris 2023). Most condominium units are apartments that, as separate parcels of land within buildings, are individually owned and collectively governed. In functional terms, these developments emulate the homeowners associations that govern single-house lot subdivisions in the suburbs of many American cities (Hyatt 1975). Indeed, the statutory condominium regimes, widely adopted in the 1960s, brought to inner cities in North America and elsewhere what, in the United States, the homeowners association had already made possible in the suburbs: land ownership within a private residential community with governing authority and fiscal capacity. Instead of the sprawling, sometimes gated communities of the homeowners association, condominium enabled vertical communities with owners and their collective services, spaces, and amenities contained within the volume of apartment buildings (Nethercote 2022). City residents, at least those with means, had the capacity to become landowners on the same terms, and within a functionally similar structure of private government, as did residents of the suburbs. In what could be understood as a mode of "suburban involution"—of "the folding in of suburbanizing rationalities and cultures" with the inner city (Peck, Siemiatycki, and Wyly 2014, 389)—statutory condominium regimes brought the homeowners association to the city. Contemporary commentators expressed the hope, when condominium legislation was introduced, that the legal form would help to reverse urban flight and decay, enticing people back to cities with new possibilities for home ownership (Harris 2011, 703).

In some jurisdictions, including British Columbia, where property law doctrine prevented the emergence of the homeowners association, statutory condominium regimes were then modified to enable a similar form of single-house lot subdivision within an association of owners. Condominium, once established in the city, became

43. *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173.

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available in the form of bare land strata property, or variations on it, to subdivide suburban, exurban, and rural land. However, the principal opportunity that condominium presents in these landscapes, where owners of parcels of land are dispersed in a single layer over the surface of the earth, is private local government. Subdivision of unbuilt land into lots for single houses is already common. The condominium form provides the missing structure of private local government; it empowers groups of owners in single-house lot subdivisions, as it does those in apartment towers, with governing authority and fiscal capacity. In this way, the homeowners association, a twentieth-century American suburban form, which had its functional equivalent introduced in cities through condominium legislation, found its way, via amendments of that legislation, into Canadian suburbs and the countryside beyond.

In their analysis of Vancouver, Jamie Peck, Elliot Siemiatycki, and Elvin Wyly (2014, 406) describe a process of "[f]olding in and flowing back" between city and suburb: "[M]any of the suburban values pulled into the centripetal growth of Vancouver's condo esthetic have since been devolved and re-exported to the city's pre-existing suburbs." This movement, they suggest, is not so linear as the narrative we have offered here that draws a line from the suburbs of the United States, to Canadian urban centers, and then out to surrounding suburbs. In fact, the first use of the statutory condominium form to subdivide a building in British Columbia occurred in Port Moody, a suburb of Vancouver, in 1968. It would be another two years before the first condominium development appeared in Vancouver, but the legal form would soon come to define the inner city (Harris 2011). The use of the condominium form to subdivide buildings has subsequently become a prominent feature of many suburbs and smaller metropolitan regions across the country (Harris and Rose 2019; Novak 2020). It is now also possible to deploy condominium to subdivide unbuilt land for single-house lots and to produce the functional equivalent of the homeowners association. Indeed, it is the statutory condominium form that has provided the vehicle for these transfers, in both directions, from suburb to city and then from city to suburb and beyond. In all these settings, condominium creates the possibility of land ownership within a structure of private local government.

What to make of condominium when it is exported to the country and deployed to subdivide unbuilt land? The longer experience in the United States with the proliferation of homeowners associations has produced vigorous debate (McKenzie 2011). One group of scholars, influenced by neoclassical economics, with many building from the work of Charles Tiebout (1956), has emphasized the importance of consumer choice and the capacity of the market, through price signals, to provide the goods and services that homeowners desire. Some have advocated for legislative change to facilitate the capacity of owners within older neighborhoods to restructure themselves within a homeowners association in order that groups of owners might decide for themselves what collective services they want and are willing to pay for through association fees (Nelson 2005). Another group of critical scholars has argued that meaningful choice is illusory for many, particularly in the case of a residence, and that leaving the provision of public goods (common infrastructure and services) to the market and to groups of owners only entrenches and exacerbates existing inequalities. Some have suggested that extending the capacity to exclude from individual owners to groups of owners, which also control common property and have fiscal capacity to provide services and

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amenities, has further enabled those with means to secede from the larger political community (Blakely and Snyder 1997; Cashin 2001; Franzese 2005).

The privatization of local government that accompanies the extension of condominium to the country in British Columbia warrants attention, certainly more attention than the enabling legislation received in the 1970s. That attention should focus on the powers of condominium government and their consequences for residents within—the micro-politics—and for the broader community—the macro-politics (McKenzie 1994). Does the capacity to build shared infrastructure and provide collective services in residential subdivisions enhance choice and efficient delivery or place undue and unsustainable burdens on homeowners? Is the flexibility accorded to owner-developers, in the form of private discretionary zoning powers through internal density transfers, a means to build innovative projects that are sensitive to site and location or a means to circumvent local aspirations as expressed in community plans and bylaws? Does the extension of local governing power—the capacity to make and enforce bylaws—enable desirable forms of community building or result in oppressive, inadequately regulated conduct toward individuals and produce homogeneous enclaves of privilege?

In raising these questions, most of which should also be asked of condominium within cities, attention to scale is important. The number of bare land strata developments in British Columbia is relatively small, at least in comparison with conventional subdivisions in the province and with homeowners associations in the United States. If single-house lots in gated communities represent the tip of the privatization-of-local-government iceberg, then that tip is small in Canada (Grant, Greene, and Maxwell 2004), and the much larger mass below the waterline—private residential communities without gates—is proportionally small as well. Nonetheless, gated communities are more abundant in British Columbia than in other Canadian provinces, and its 2,601 bare land strata developments creating 46,341 strata lots as of the end of 2019 appear not to be matched elsewhere in the country.

The province's early adoption of condominium—for buildings and then for unbuilt land—may provide a partial explanation for why developers, lenders, and purchasers embraced the opportunity that bare land strata provided to build, finance, and own within single-house lot subdivisions in private residential communities. The simple fact of familiarity—Vancouver has a larger proportion of residents living within condominium than any other urban area in North America (Harris 2011)—must also be a factor. Another explanation may lie in the unusual degree of power that British Columbia has delegated to condominium government, including, until 2022, expansive authority to restrict or prohibit rentals and unfettered power to impose age restrictions, including adult-only bylaws. The province's statutory condominium regime has presented an uncommon opportunity to shape community through these and other bylaws. Others have suggested that the relative concentration of gated communities in Canada's western-most province is connected to its popularity as a retirement destination and the desirability among retirees for the sense of security and stability that gates provide (Rosen and Grant 2011, 786), factors that may also help to explain the regional distribution of bare land strata developments within the province.

There are important regional variations. Our mapping reveals a particular concentration on southern and eastern Vancouver Island as well as in parts of the Fraser and Okanagan valleys. Indeed, in these regions, bare land strata subdivision is integral to the

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unfolding transition from rural to exurban or suburban landscapes. The reasons for this regional concentration warrant further investigation, including the extent to which certain municipalities may have encouraged subdivision within bare land strata, perhaps in an attempt to offload certain expenses to keep municipal taxes low, but much of the explanation appears to lie in the timing of residential development: bare land strata was simply not available when subdivision into single-house lots occurred in older, established neighborhoods and cities. What is less clear are the relative weights of municipal incentives, developer interests, and house-buyer preferences in the regional distribution of bare land strata property developments.

The scale of individual developments, measured by strata lots, is also modest, certainly when compared to the vast developments in the United States as well as with community title developments in Australia. Therese Kenna, Robin Goodman, and Deborah Stevenson (2017) identify 304 such developments in metropolitan Sydney between the first one in New South Wales in 1990 and 2010. Although fifteen years behind British Columbia in the extension of the condominium form to unbuilt land, the scale of the developments in greater Sydney is significantly larger (McGuirk and Dowling 2007). Of the 260 residential developments (the others are commercial or industrial) over the twenty years covered by the study, Kenna, Goodman, and Stevenson (2017, 273) label twenty-three as large scale, defined as including 500 or more properties. This compares with one development that is over 500 units—the Arbutus Ridge development—in British Columbia. Many of the developments in Sydney include considerable non-essential infrastructure, such as tennis courts and swimming pools, as well as child care and retail shops, and the authors, following the critical literature on homeowners associations in the United States, suggest that "this form of fully private residential development is generating profound distinctions and divisions at the local level, with the highest concentrations predominantly in outer areas, creating wealthier enclaves within less affluent areas" (281).

With an average of only eighteen lots per development in British Columbia, there is limited fiscal capacity in these developments to maintain collective infrastructure and to offer services and amenities and, thus, a reduced ability to create enclaves of privilege. The analysis would be different if the bare land strata regime were producing subdivisions incorporating thousands of parcels of land in "condominium towns," which some early commentators encouraged (Marks 1980) and which seems to be happening in the Sydney metropolitan region. Moreover, the creation of the bare land strata regime in British Columbia appears to have been motivated by a desire to enable owners of mobile or manufactured homes to also own the lots on which their units sat. Owner-developers quickly put bare land strata to other uses, but it was never understood as simply a means to construct preserves for the wealthy. Moreover, two-lot subdivisions are the most common, and the median bare land strata development consists of only seven lots, suggesting that, in most instances, the legal form is deployed for the comparatively modest ambition of using a private road to establish the necessary access to a public road for each lot within a subdivision. Even in Sydney, a large proportion of developments (29.5 percent) simply share a small common driveway (Kenna, Goodman, and Stevenson 2017, 274).

The delegation to owner-developers of private discretionary zoning powers, through the capacity to transfer density within a development, has been the most visible

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and controversial element of the bare land strata regime in the province. This delegation does not enable subdivision into more lots than permitted under local government bylaws, but it does allow the clustering of small lots in a manner that, without the ability to transfer density, would contravene minimum lot-size provisions. The result has been the intensification of development in certain areas—usually desirable areas such as waterfront—and a likely increase in the production of recreational or seasonally occupied properties, although this deserves closer study. If controversial for its capacity to enable owner-developers to change the existing or planned character of an area, it is this private zoning power that also enables a responsiveness to location, a smaller footprint of development, and reduced development and servicing costs and that creates the possibility of developments that are more sensitive to features of the landscape than a conventional subdivision with lots of standard sizes. However, the bare land strata regime places that discretionary power with owner-developers, and, thus, the fine-grained decisions over land use rest there.

Scrutiny of the particular powers that accompany the bare land strata regime in British Columbia, while important and necessary, should not obscure or displace a broader consideration of what it enables: the subdivision of unbuilt land into privately owned parcels within private local government. Condominium is, first and foremost, a form of land ownership and one that produces an increase in the density of private property interests and of owners. Grants of private property are intended to confer stable and enduring rights of ownership. The largest such grants—of freehold or fee simple interests in the common law—have the potential to last forever, a feature that is not only their principal virtue but also reason for caution. Private property, once granted, is notoriously difficult to undo. In the case of condominium, which produces many privately owned lots from the subdivision of larger parcels, the difficulty of undoing extends not only to the property interests within but also to the structure of local government that accompanies them. The extension of condominium to the country should be understood as facilitating the sprawl of private local government that, just as with the property interests it creates, will be difficult to reverse. Private local government, with the right to participate based on ownership, will remain an enduring feature of the propertied landscapes into which it is introduced through condominium. This is reason for attention and for caution.

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APPENDIX

TABLE A1.
Bare land/vacant land condominium legislation in Canadian provinces and territories in order of adoption

Province	Year	Label	Introducing legislation	Current legislative provisions
British Columbia	1977	bare land strata	Strata Titles (Amendment) Act (No. 2), S.B.C. 1977, c. 64	Strata Property Act, S.B.C. 1998, c. 43, ss. 1(1), 243
Manitoba	1979	bare land unit	An Act to Amend the Condominium Act, S.M. 1979, c. 13	The Condominium Act, S.M. 2011, c. 30, Schedule A, ss. 1(1), 5, 16
Alberta	1983	bare land unit	Condominium Property Amendment Act, S.A. 1983, c. 71	Condominium Property Act, R.S.A. 2000, c. C-22, ss. 1(1), 8(1)(h)
Northwest Territories	1988	bare land unit	An Act to Amend the Condominium Act, R.S.N.W.T. 1988, c. 3 (2nd Supp)	Condominium Act, R.S.N.W.T. 1988, c. C-15, ss. 1(1), 6
Nunavut	1988 (1999)*	bare land unit	An Act to Amend the Condominium Act, R.S.N.W.T. 1988, c. 3 (2nd Supp)	Condominium Act (Nunavut), R.S.N.W.T. 1988, c. C-15, ss. 1(1), 6
Quebec	1991**	horizontal (divided) co-ownership	Civil Code of Quebec, C.C.Q. 1991, arts. 1038, 3030, 3041	Civil Code of Quebec, C.C.Q. 1991, arts. 1038, 3030, 3041
Saskatchewan	1993	bare land unit	The Condominium Property Act, S.S. 1993, c. C-26.1	The Condominium Property Act, S.S. 1993, c. C-26.1, ss. 2(1©), 9(3)
Yukon	1994	bare land unit	An Act to Amend the Condominium Act, S.Y. 1994, c. 5	Condominium Act, S.Y. 2015, c. 4, ss. 1(1)

TABLE A1. *Continued*

Province	Year	Label	Introducing legislation	Current legislative provisions
Prince Edward Island	1997	vacant land condominium	An Act to Amend the Condominium Act, S.P.E.I. 1997, c. 10	Condominium Act, R.S.P.E.I. 1988, c. C-16, s. 1(1)
Nova Scotia	1998	bare-land condominium	An Act to Amend Chapter 85 of the Revised Statutes, 1989, the Condominium Act, S.N.S. 1998, c. 28, s. 7, 29	Condominium Act, R.S.N.S. 1989, c. 85, s. 12B
Ontario	1998	vacant land condominium	Condominium Act, S.O. 1998, c. 19	Condominium Act, S.O. 1998, c. 19, Part XII
New Brunswick	2009	bare-land condominium	Condominium Property Act, S.N.B. 2009, c. C-16.05	Condominium Property Act, S.N.B. 2009, c. C-16.05, s©4(c), 7(2)
Newfoundland & Labrador	2009	vacant land condominium	An Act Respecting Condominiums, S.N. 2009, c. C-29.1	Condominium Act, S.N. 2009, c. C-29.1, s. 2(1) and Part X

Notes: * Nunavut separated from the Northwest Territories in 1999 but adopted many of its laws, including the Condominium Act. As a result, creating a bare land unit in Nunavut has been possible since 1988, even though the Condominium Act (Nunavut) only came into being in 1999 with the creation of Nunavut. ** The 1991 amendments came into effect on January 1, 1994.