

4.4.4 Additional Information on Regulatory Tools for Senior Governments

Species at Risk Act

For information and updates on the *Species at Risk Act*, see the Environment Canada website

www.speciesatrisk.gc.ca/species/index_e.cfm

Sensitive Ecosystems Inventory: East Vancouver Island and Gulf Islands 1993-1997. Volume 2: Conservation Manual

M. McPhee, P. Ward, J. Kirkby, L. Wolfe, N. Page, K. Dunster, N. Dawe, and I. Nykwist. 2000. Environment Canada, Canadian Wildlife Service Technical Report Series 345.

Section Two, Conservation Tools, describes a variety of regulatory tools available to senior governments (federal and provincial).

Available on-line from srmwww.gov.bc.ca/sei/index.html

Land Development Guidelines for the Protection of Aquatic Habitat

B. Chillibeck, G. Chislett and G. Norris. 1992. Fisheries and Oceans Canada and Ministry of Environment, Land and Parks.

Guidelines for the protection of fish and fish habitat during land development activities.

Environmental Objectives, Best Management Practices and Requirements for Land Developments

Ministry of Water, Land and Air Protection. Version 3. March 2001.

This best management practices document sets out the expectations of the Ministry's Vancouver Island regional office for proactive environmental management and protection with respect to land development activities. Available on-line at wlapwww.gov.bc.ca/vir/region_reports.html. Updated versions will be posted from time to time.

Stormwater Planning: A Guidebook for British Columbia

Ministry of Water, Land and Air Protection and Environment Canada. 2002.

The Guidebook presents a framework for effective stormwater management for British Columbia. It provides a comprehensive

understanding of the issues and a framework for implementing an integrated approach to stormwater management. Case study experiences are included.

Provincial legislation

Copies of provincial legislation are available on-line at www.legis.gov.bc.ca/legislation/index.htm

Federal legislation

Copies of federal legislation are available on-line at <http://laws.justice.gc.ca/en/publaw/index.html>

4.5 Incentives for the Protection of Natural Areas

Sometimes natural areas get protected, not because there is a legal requirement to do so, but because there are financial or other incentives to protect these lands. Through the use of economic and other incentives it is sometimes possible to harness the power and motivations of the marketplace to encourage conservation.

Some incentives encourage more development in a less environmentally sensitive area; in return for the protection of a natural area elsewhere (see Clustering, Density Bonusing, Density Transfer and Alternative Development Standards below). These may also bring developers the incentive of lower servicing costs, and speedier approvals because of greater public support.

Some incentives provide economic benefits for landowners who provide for the protection of their property (see Riparian Tax Relief, Assessment Relief and Ecological Gifts).

4.5.1 Encouraging Development in Less Environmentally Sensitive Areas

4.5.1.1 Clustering

The term “clustering” is used where development is concentrated in one part of a land parcel, allowing another part of the site to be protected as greenspace.

Clustering benefits developers by reducing the amount of infrastructure, while allowing the same number of building units. This can reduce the capital cost of subdivision by 10-33%. For example, clustering can

minimise the amount of new road construction – one of the most expensive costs of development – needed to access the lots. There can be similar savings in the construction and maintenance of sewer and water lines, hydro lines, sidewalks, etc. Clustering also reduces the size of area to be cleared and graded.

“Cluster development can reduce the need to clear and grade 35 to 60% of the total site area. Since the total cost to clear, grade and install erosion control practices can range up to \$5000 per acre, reduced clearing can be a significant cost savings to builders.”
(Schueler 1995)

The community benefits both from the retention of greenspace, and lower costs of maintaining the infrastructure (e.g., road maintenance costs) after the development is complete.

The developer can also benefit, as properties sell more easily and at higher prices when there is greenspace nearby (see Chapter 3: Benefits).

The Loma Linda subdivision in Langford used clustering to preserve an environmentally sensitive area (ESA). The residents jointly own the ESA through strata title, and a conservation covenant protects the ESA from development in the long term (M. Baldwin, pers. comm.).

4.5.1.2 Density Bonusing

Density bonusing may also be called an amenity bonus.

Density bonuses allow a developer to increase the density of development (i.e. create additional lots) on a given site, in return for the provision of public amenities. Greenspace is considered a public amenity. For example, on a large parcel of land, the zoning might permit a maximum of 10 residential lots, but the Council might agree to “upzone” the property to allow 12 lots if public parkland and trail corridors are provided and constructed.

The developer benefits from the sale of additional lots, and the community benefits from the public amenity and from increased tax revenues from the increased floor space. This density bonus is voluntary – it may be suggested by a Council but cannot be required.

The amenities do not have to be on the land that is being developed but they must be precisely described. For example, “one extra residential lot

will be permitted if the following is provided: 1 ha of parkland (as shown on Map A) is dedicated and a multi-use trail 1.5 metres wide within a five metre wide corridor between the Road and the Park (as shown on Map B).” Because the park and trail amenities need to be described fairly accurately in the rezoning bylaw, it is vital to have these area and routes identified either in the Official Community Plan or during the conceptual planning process.

It is also possible for the amenity to be provided in cash to be put in a reserve fund for future parkland purchases and physical improvements.

The District of Highlands has successfully used the density-bonus provisions of the Local Government Act to acquire almost 1000 hectares of parkland and has over 125 hectares of private land protected by conservation covenants (K. Key, pers. comm.).

In View Royal, one development property has protected four acres of heron nesting habitat through a restrictive covenant. It includes a ‘green’ buffer around the perimeter with a swath along the waterfront for common use. In return, the development received a density bonus to enlarge the project from 45 to 72 home sites.³

4.5.1.3 Density Transfer

Density transfer means allowing the permitted density from one parcel of land to be transferred to another property. Under the *Local Government Act*, which controls these types of transaction, there are currently no provisions for making this type of deal – but there are no legal restrictions either. It can be a complex arrangement, but has some merits and might be considered under the right circumstances.

Advantages in the transfer of density include: placing roads and home sites in the best areas for groundwater, sewage disposal, views, shared services, driveways etc. and avoiding hazard lands and environmentally sensitive areas. The developer benefits, as the same number of lots can be built, but the servicing costs are lower (because fewer roads, sewers, etc. need to be built). The community benefits from additional greenspace at little or no cost. Policy and mapping for this process should be established in the Official Community Plan.

³ Background information prepared for the Sensitive Ecosystems Inventory. Unpublished.

Density transfer consists of a sending area (where development might have notable negative impacts or where desired parkland exists) and a receiving area (where development is more suitable). Salt Spring Island has designated "donor" and "receiving" areas for the transfer of development potential. Donor areas include environmentally sensitive areas, watersheds, intact forest lands and other areas requiring protection. A developer is allowed to transfer development potential from the donor area to a receiving area, and the donor site is then covenanted to protect it from future development. The donor developer is compensated by the receiving developer in a private transaction. The transfer is achieved through rezoning both the donor and receiving sites. A 32 hectare park has been obtained this way on Salt Spring Island, and protection of 100 additional hectares has just been completed.

"Density transfer works in circumstances where the lot would be difficult or expensive to develop anyway, so often it's to the benefit of the owner to transfer that latent development potential to somewhere else, where there is already infrastructure, less costly to develop." (L. Adams, pers. comm.)

4.5.1.4 Alternative Development Standards

Alternative Development Standards (ADS) are ways to develop land that "save money, decrease the environmental impacts and make better communities." (van Hausen 2002)

ADS include:

- narrower road standards that use less land for roads – leaving more for habitat protection;
- higher density land uses – clustering of houses, or building up rather than out, again saving land for other purposes such as conservation; and
- the promotion of greenway policies that promote pedestrian/bicycling links and wildlife corridors.

There are an increasing number of examples of the use of ADS in BC, along with compelling sources of information on the cost savings associated with their use.

"Using a City of Surrey site for illustrative purposes, a denser development (248 units on 5.6 ha compared to 41 units on 4.3 ha) reduced unit land development and infrastructure costs to \$4400 per unit as opposed to \$23,500 per unit for standard development." (Ibid.)

4.5.2 Economic Incentives for Land Protection

4.5.2.1 Riparian Tax Relief

The *Local Government Act* allows for a property tax exemption for a landowner who conserves land along a watercourse or lake. The exemption is voluntary and requires approval by Council through a site-specific bylaw and the registration of a covenant on the riparian land. The exemption applies only to that part of the land that is riparian, not the entire property. The legislation also allows the municipality to require repayment of the taxes that had been exempted (plus interest) if conditions in the bylaw or the covenant are contravened.

“[E]ligible riparian property means property that meets all the following requirements:

- (a) the property must be riparian land;*
- (b) the property must be subject to a covenant under section 219 of the Land Title Act that relates to the protection of the property as riparian property;*
- (c) the municipality granting the exemption under this section must be a covenantee in whose favour the covenant referred to in paragraph (b) is made;*
- (d) any other requirements prescribed under subsection (6).”*

[Local Government Act, s.941 (1)(b)]

4.5.2.2 Assessment Relief

Some local governments are offering tax relief to landowners who covenant their land, to offset the loss of development potential.

The Islands Trust has succeeded in having special provincial regulations enacted to offer property tax relief to landowners who covenant natural areas for protection. Where landowners have permanently protected eligible natural features on their land, they can receive 65% reduction on property taxes for the protected area. The Natural Area Protection Tax Exemption Program is now (2003) in place as a pilot program in the Gambier Island area, and can be extended to other parts of the Islands Trust Area where there are agreements in place with the applicable Regional District (L. Adams, pers. comm.).

The City of Victoria is investigating a tax incentive program for property owners on the Gorge Waterway who restore the shoreline, remove docks, and then register a conservation covenant on the property's title. The City is hoping to do this in partnership with local conservation organisations (B. Sikstrom, pers. comm.)

4.5.2.3 Ecological Gifts

If a person or corporation donates environmentally sensitive land to an approved government or organisation, they may be eligible for a federal tax credit for the value of the land donated (corporations receive a deduction). Eligible recipients include the federal, provincial or territorial governments, Canadian municipalities, or one of about 136 approved charities.⁴

Ecological gifts are gifts of the full title to a property, or of the value of a conservation covenant attached. Landowners are able to receive federal and provincial tax assistance for donations of environmentally sensitive land and conservation covenants. Unlike other charitable donations, these credits and deductions can be used against up to 100% of annual income. Unused portions of the tax credit or deduction can be carried forward for up to five additional years. The February 2000 federal budget introduced further changes to the *Income Tax Act* that reduced by 50%, the amount that would otherwise be included as income on any capital gains associated with the gift.

A private forest company donated a property to the Village of Cumberland on Vancouver Island. Because there were sensitive wetlands on the site, the forest company was able to receive significant tax benefits from this donation (M. Fraser, pers. comm.).

“Environmentally sensitive lands” include lands designated or protected by government (including lands identified as sensitive ecosystems in the Sensitive Ecosystems Inventory), sites that are deemed to have significant actual or potential ecological value, and natural buffers around sensitive areas such as streams or wetlands. The Ministry of Water, Land and Air Protection and Environment Canada can certify lands as “environmentally sensitive.”

*As with most tax laws, the provisions are complex and **legal advice should be sought.***

⁴ For a list of qualified recipients of ecological gifts, see http://www.cws-scf.ec.gc.ca/ecogifts/intro_e.cfm

4.5.3 Additional Information on Incentives

The Smart Growth Guide to Local Government Law and Advocacy.
Linda Nowlan, Chris Rolfe and Kathy Grant. 2001. West Coast
Environmental Law.

A comprehensive guide to local government planning processes,
with a view to promoting 'smart growth', including the protection of
green space in communities. Available from Smart Growth BC,
www.smartgrowth.bc.ca

Density Bonus Provisions of the Municipal Act: A Guide and Model Bylaw

Ministry of Municipal Affairs and Housing. 1997.

A guide to density bonuses, including a model zoning bylaw
amendment with a provision for density bonusing.

Leading Edges: Alternative Development Standards in British Columbia Municipalities

Michael von Hausen with Bryce Gauthier. 2002. Real Estate Foundation
of British Columbia and The Land Centre.

A look at alternative development standards in use in some British
Columbia municipalities, the value of this approach and some of the
barriers to implementing ADS.

Green Space and Growth: Conserving Natural Areas in B.C. Communities

Calvin Sandborn. 1996. Prepared for the Commission on Resources and
Environment, Wildlife Habitat Canada, Fisheries and Oceans Canada and
Ministry of Municipal Affairs and Housing.

A research paper that reviews ways to conserve natural areas in
urban and rural areas, with suggestions as to how the tools to protect
natural areas might be expanded.

Ecological Gifts: Implementing Provisions of the Income Tax Act of Canada

Compiled by Clayton Rubec and Manjit Kerr-Upal. Updated October 18,
2000. Canadian Wildlife Service, Environment Canada, Ottawa, ON.

A review of the recent changes to the *Income Tax Act* relating to the
donation of environmentally sensitive land, and an outline of the

process for certifying ecological gifts, as well as criteria for defining environmentally sensitive lands. For copies contact Environment Canada, ecogifts@ec.gc.ca

Information is also available at http://www.cws-scf.ec.gc.ca/ecogifts/intro_e.cfm

Giving It Away: Tax Implications of Gifts to Protect Private Land
Ann Hillyer and Judy Atkins. 2000. West Coast Environmental Law Research Foundation, Vancouver BC.

A guide for government agencies and conservation organisations about the potential tax benefits and tax liabilities of gifts of land or an interest in the land, where the gift is made for the protection of ecologically significant spaces or environmentally significant features. A guide to the laws, regulations and policies governing tax issues when a landowner donates private land or grants a conservation covenant. Also available at www.wcel.org

Natural Area Protection Tax Exemption Program

More information on this program can be found on the Islands Trust website at www.islandstrust.bc.ca

4.6 Land Acquisition

Sometimes the best way to protect a natural area is for a local government or conservation organisation to purchase the land outright.

Historically, the acquisition and management of natural spaces was left to government, often through the purchase of land as a public park. While this is still an important role, the escalation of land prices and the reduced availability of agencies to purchase lands outright have led to new approaches.

Revisions to provincial legislation over the last decade have meant that local governments and land trusts can work more flexibly and cooperatively with land developers and landowners to acquire lands for the protection of natural areas.

4.6.1 Municipal Acquisition

There are several ways in which a municipality can acquire land for the purposes of protecting natural values:

- Acquisition during **subdivision**;