

Programs for Land-Based Habitat Conservation in B.C.: A Report to the CRD Roundtable Sub-Committee on Land-Based Habitat

Nitya Harris. 2001. Report prepared for the Capital Regional District Roundtable on the Environment.

This report outlines the initiatives, targets, programs and policies for the protection and conservation of land-based habitat implemented by local governments within and outside the Capital Regional District. Issues examined included areas of remnant natural terrestrial ecosystems, status of endangered plants, and population trends of bird species. Available on-line at www.crd.bc.ca/rte/habitrpt.pdf

4.4 Tools for Federal and Provincial Governments

Senior governments – the provincial and federal governments – also have powers that can be used to protect natural areas in the Capital Region.

4.4.1 Federal Laws and Regulations

Federal laws that can help to protect natural areas include the following.

4.4.1.1 Species at Risk Act

The purposes of the *Species at Risk Act* (SARA) are to prevent Canadian indigenous species, subspecies, and distinct populations from becoming extirpated or extinct, to provide for the recovery of endangered or threatened species, and encourage the management of other species to prevent them from becoming at risk. SARA will provide for the scientific assessment and listing of species, for species recovery, for protection of critical habitat, for compensation, for permits and for enforcement. It will provide protection for the species listed in Schedule 1 to the Act. (This list will be updated on a regular basis.)

SARA) was passed on December 12, 2002. It will not be fully in effect until all related regulations are passed.² More information will become available as regulations are fully developed.

In addition, the *Accord for the Protection of Species at Risk* (1996) between the provinces, territories and Canada committed each jurisdiction to “establish complimentary legislation and programs that provide for effective protection of species at risk”.

² For the most updated information, see <http://www.speciesatrisk.gc.ca/>

SARA is the federal response to this Accord. However, where provinces do not meet their commitments to the accord, the “safety net” provisions in SARA may apply within areas of provincial and municipal jurisdiction.



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4.4.1.2 Canada Fisheries Act

The *Fisheries Act* allows for the protection or restoration of productive fish habitat. The federal government will review and authorise (or not) development proposals that have the potential to affect fish habitat. They may require some form of compensation (including the creation of alternative fish habitat) if there is unavoidable destruction of fish habitat.

The *Fisheries Act* also contains provisions to prosecute offenders for unauthorised destruction of fish habitat.

Fish habitat is defined as “spawning grounds and nursery, rearing, food supply and migration areas on which fish depend either directly or indirectly in order to carry out their life processes.” (Fisheries Act, s. 34)

4.4.1.3 Canadian Environmental Assessment Act

This Act is used for a full-scale assessment of large projects with the potential to affect the environment. (There is also a provincial B.C. *Environmental Assessment Act* with some overlapping responsibilities.)



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4.4.1.4 Canada Wildlife Act and Migratory Birds Convention Act

The *Canada Wildlife Act* applies to National Wildlife Areas, of which there are currently none in the Capital Region.

The *Migratory Birds Convention Act* applies to Migratory Bird Sanctuaries. There are three in the Capital Region – Esquimalt Lagoon, Victoria Harbour and Shoal Harbour. The Act primarily covers restrictions on hunting, and avoiding the disturbance or destruction of migratory birds’ nests, eggs or shelters.

4.4.2 Provincial Laws and Regulations

Provincial laws that can help to protect natural areas include the following.

4.4.2.1 Local Government Act

The *Local Government Act* gives a wide variety of powers to local governments, including the powers to create Official Community Plans and Regional Growth Strategies, both discussed above.

4.4.2.2 Islands Trust Act

The *Islands Trust Act* gives local governments in the Islands Trust Areas a special mandate to preserve and protect the unique environment and amenities of the Islands Trust Area. The Act recognises the provincial significance of the Trust Area, and indicates that the provincial government will cooperate with others to protect British Columbia's coastal islands.

The Islands Trust includes the Islands Trust Fund; a land trust dedicated to conservation in the Trust Area.

4.4.2.3 Fish Protection Act

One of the major impacts of the *Fish Protection Act* is the ability to protect riparian (streamside) vegetation in urban areas. The Streamside Protection Regulation, enacted in January 2001, enables local governments to establish "streamside protection and enhancement areas" in residential, commercial and industrial zones and to identify these areas through their land use plans and regulations. This creates a buffer zone along streams in which the natural vegetation is protected, and no development is allowed.

The purpose of the regulation is

"to provide protection for the features, functions and conditions that are vital in the natural maintenance of stream health and productivity. These vital features, functions and streamside area conditions are numerous and varied and include such things as sources of large organic debris (fallen trees and tree roots), areas for stream channel migration, vegetative cover to help moderate water temperature, provision of food, nutrients and organic matter to the stream, stream bank stabilization and buffers for streams from excessive silt and surface runoff pollution." (MWLAP 2002c)

This regulation is still being phased in, and has been controversial in some areas. Unless its provisions are changed, it should be fully in place by 2006.

The District of Langford and District of Highlands both have a 30m minimum setback for development in riparian areas, using the recommended setback of the Streamside Protection Regulation (District of Langford Zoning Bylaw subsection 3.16.01).

4.4.2.4 Wildlife Act

The *BC Wildlife Act* focuses on designated endangered species and the control of Wildlife Management Areas, of which there are none in this region. However, its provision may be used to protect the nests of eagles, herons, peregrine falcons, osprey, gyrfalcon or burrowing owls.



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4.4.2.5 Water Act

The *Water Act* regulates the use of surface water. Notification can be required for works in or around streams.

4.4.3 Standards and Best Management Practices

In addition to legislative powers, the federal and provincial governments provide information in the form of standards and best management practices to which local governments are encouraged to adhere. These include those described in the following sections:

4.4.3.1 Land Development Guidelines for the Protection of Aquatic Habitat

The Land Development Guidelines have been around for over a decade, and provide a number of specific standards and guidelines intended to “protect fish populations and their habitat from the damaging effects of land development activities” (Chillibeck et al. 1992). It includes information on leave strips, erosion and sediment control, instream work, culverts and fish passage mechanisms.

All work in and around streams should meet these guidelines.

4.4.3.2 Best Management Practices for Land Developments

The Ministry of Water, Land and Air Protection (Vancouver Island Regional Office) has documented the Ministry’s environmental objectives and recommendations for land development and land management proposals (MWLAP 2001b). This document also specifies requirements where the proposed land development is wholly or partly regulated by provincial legislation.

The document addresses a wide range of best management practices that can be used to protect natural habitats, including:

- habitat management and protection (watercourses, riparian habitat, sensitive ecosystems, rare plants, wildlife habitat);
- mechanisms to protect sensitive habitats;
- work in and around streams;
- fish habitat protection; and
- considerations during construction.

The document includes a variety of specific recommendations such as on setbacks from sensitive ecosystems, buffer areas around nests, etc.

4.4.3.3 Stormwater Guidelines

At first glance, the management of stormwater may seem irrelevant to the protection of natural areas. However, the way we manage stormwater can have huge impacts on stream habitats (water quality and quantity). Further, many scientists are recommending that we retain more natural areas because of their contributions to stormwater management (see Chapter 3: Benefits).

The federal and provincial governments have recently released a document outlining best management practices for stormwater management. *Stormwater Planning: A Guidebook for British Columbia* promotes an integrated approach to stormwater planning that encourages the retention of forest cover and the reduction of impervious surfaces (surfaces such as pavement that do not allow water to pass through).

“Objective 7: Limit impervious area to less than 10% of total watershed area.

Objective 8: Retain 65% forest cover across the watershed.”

Stormwater Planning: A Guidebook for British Columbia (MWLAP and Environment Canada 2002)

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