



REPORT ON LAND USE AUTHORITY OPTIONS RELATING TO LAND CLEARANCE AND TREE PRESERVATION

RECOMMENDATIONS

1. That following the completion of the flood hazard maps, a work plan be prepared to update the applicable Development Permit Areas for the protection of the natural environment, its ecosystems and biological diversity and for the protection of development from hazardous conditions.
2. That following the completion of the flood hazard maps, a work plan be prepared to explore options to develop a natural asset initiative.

BACKGROUND

At the regularly scheduled Electoral Area Service Committee on October 27, 2020 the following motion was passed:

No.20-405 It was moved and seconded that a report be prepared of the available authority options for the Regional District of Nanaimo to regulate the clearing of land and tree preservation within the Regional District of Nanaimo.

In response, a high-level review of the applicable legislation and use within the Regional District of Nanaimo (RDN)'s land use planning service was completed. The findings are outlined in this report along with recommendations for the Board's consideration.

Local Government Jurisdiction Varies Between Levels of Local and Provincial Government

The Provincial Government delegates powers to local governments, primarily through the *Community Charter* and the *Local Government Act*. When it comes to the protection of the natural environment there is different levels of authority. A significant portion of green infrastructure is designated within the provincial Agricultural Land Reserve, Private Managed Forest Lands and Crown Land. These lands are subject to senior government oversight, limiting the authority of all local governments to control permitted agricultural and forestry practices, such as land clearance and tree preservation.

Municipalities often have broader powers (Section 8(3)(c) and Section 50 of the *Community Charter*) than a regional district to regulate, prohibit and impose requirements to preserve trees. For a regional district, the most important authority available is the ability to use a combination of powers to establish Growth Containment Boundaries, land use zones and Development Permit Areas (DPAs). Other powers, such as conservation designations can also play a role.

Best Practices Support Using a Combination of Policies and Bylaws to Protect the Natural Environment from the Impacts of Development

The RDN's approach aligns with best practices and aims to strike a balance between growth, development and the protection of the natural environment. This review identified 13 possible authority options; the RDN uses 10 of the 13 powers available to a regional district. The remaining three options are more limited in scope and are unlikely to provide additional powers related to land clearance and tree preservation. A detailed summary of the identified legislative authority options and how they relate to the RDN is provided as Attachment 1.

Summary of the RDN's Land Use Framework

Regional Growth Strategy (RGS) - high-level policy direction used to help inform the region's Official Community Plans. The RGS establishes Growth Containment Boundaries and related policies that directs the majority of growth away from rural and resource lands and provides guidance on the sustainable management of water, air, land, the coastal zone and Environmentally Sensitive Areas (under RGS Goals 2 and 4).

Official Community Plans (OCP) - more detailed policy direction for each of the electoral areas and member municipalities in the region. OCPs contain special designated areas known as DPAs. Environmental DPAs are one of the best ways to make site-specific decisions about sensitive ecosystems. A permit can specify conditions, such as tree preservation and replacement that the developer must meet. Environmental DPAs also prohibit site disturbance before approval of a development project.

Zoning Bylaw No. 500 and Bylaw No. 1285 - the RDN's two zoning bylaws establish the permitted uses for the land, lot sizes and setbacks from sensitive ecosystems. These bylaws also include standards for landscaping, subdivision and road design and contain the requirements for developing within DPAs. When landscaping is required by a development permit, the authority to hold a security is often used to ensure the work is completed to the required standard.

Conservation Covenants - a voluntary agreements registered on a property's Land Title in favor of the regional district regarding the use of the land. Often used as part of the development approvals process, customized to conserve corridors of sensitive ecosystems and to manage these areas in a manner to ensure ecological values are retained.

Alongside these tools, public education and enforcement remain an important and on-going consideration to the success of the RDN's approach to protecting the natural environment.

Other Authority Options Considered to Enhance Environmental Protection

A tree protection bylaw is often used by municipalities to establish requirements to promote and protect the urban tree canopy. Regional districts have a more limited authority and may only designate a tree-cutting permit area to lands subject to flooding, erosion, land slip or avalanche. Due to this narrow scope, it is unlikely that a tree bylaw would provide any additional authority than what already exists in the applicable development permit requirements.

Similarly, a heritage conservation bylaw is limited to the protection of features with heritage value. This can include natural landscapes or a single heritage tree. The legislation is very clear that a heritage bylaw cannot be used to prevent the use of real property to prevent development. For this reason, it is unlikely to more broadly address land clearance and tree preservation.

Development Cost Charge (DCC) bylaws can elect to include contributions to provide or improve park land, however, this provision is not supported in the RDN's current DCC bylaws.

Potential Next Steps

Best practice supports a periodic review of policies and regulations to ensure that policies and bylaws continue to meet the desired objectives. Over the next two years, new flood hazard mapping information will be made available. When this project is complete, it would be appropriate to review and update any applicable DPAs for all or select electoral areas, such as Area G. It is, therefore, recommended that following the completion of the flood hazard maps, a work plan be prepared to modernize the applicable DPAs for the protection of the natural environment, its ecosystems, biological diversity and for the protection of development from hazardous conditions.

Additionally, it is recommended that the RDN consider developing a quantifiable financial and operational understanding of the core regional services (e.g., water purification, disaster risk reduction and stormwater management) provided by natural assets (e.g., forest, foreshore, wetlands and riparian areas), and integrate this information into the RDN's official community planning and asset management processes. The City of Nanaimo is one municipality to pilot this approach, which may help to inform and determine the feasibility of the RDN proceeding.

FINANCIAL IMPLICATIONS

There may be financial implication to the proposed 2021-2025 RDN Financial Plan associated with this decision. If the recommendation for a DPA update and/or a natural asset initiative is supported, staff would prepare and present a detailed work plan and financial plan for Board consideration in the 2023 budget.

STRATEGIC PLAN ALIGNMENT

These recommendations align with the Board's Strategic Plan by continuing to anticipate and provide an adaptive response to a changing environment.

Climate Change - Be leaders in climate change adaptation and mitigation, and become net zero by 2032.

ATTACHMENT

1. Summary of Regional District Land Use Authority Relating to Land Clearance and Tree Preservation