

Subject:**Date:** Tue, 3 Feb 2004 10:14:20 -0800**From:** "Ernie Crist" <ernie_crist@dnv.org>**To:** "FONVCA (E-mail)" <fonvca@fonvca.org>, "cageb" <c@yahoo.com>, <c@yahoo.com>

THE DISTRICT OF NORTH VANCOUVER AND THE DEPARTMENT OF FISHERIES ARE PASSING THE BUCK.

Somewhere in the District (I cannot tell you where) there is a river and on that river a property owner, in violation of District bylaws, built an extensive staircase leading down a slope through natural vegetation to the river below. This matter was brought to the attention of Councillor Crist who submitted a motion to District Council requesting remedial action.

In 1993, the District of North Vancouver passed the Environmental Protection and Preservation Bylaw # 6615. This Bylaw provides for the protection of the natural environment by requiring permits when undertaking work in areas affecting trees, steep slopes, soil, and erosion control, contaminated land and aquatic areas, stream corridors and the marine waterfront.

Notwithstanding this District Bylaw, the District passed the matter on to the Department of Fisheries in the hope that THEY would accept responsibility. The fisheries officer and habitat officer, DFO investigated and concluded that the construction of this staircase has caused harm to fish habitat pursuant to the Fisheries Act. The Fisheries Officer submitted a report to Crown Counsel. However, the District has been told that DFO may not pursue this matter and expects that the District will take the lead and prosecute this case pursuant to the District's Environmental Protection and Preservation Bylaw.

However, the District solicitor has concluded that the District has limited powers that severely hamper the District's ability to regulate this construction. The DFO has been advised of these limitations, but the DFO is still reluctant to prosecute under the Fisheries Act.

In order to facilitate the protection of fish habitat, the District of North Vancouver had previously entered into a Memorandum of Understanding with DFO that established the Environmental Review Committee for the purpose of reviewing development applications that potentially impact aquatic area and fish habitat.

District and DFO staff reviewed this case and determined that this staircase would not have been approved and an Aquatic Area permit would not have been issued for the staircase that was built. In support of the denial for the permit, DFO authored a letter to the District stating that this staircase caused harm to fish habitat pursuant to Section 35.1 of the Fisheries Act. The District Solicitor was consulted and he advised that the best course of action would be for the DFO to take the lead pursuant to the Federal Fisheries Act.


Subsequently, the District authorized the Mayor to write a letter to the Minister of Fisheries and Oceans Canada explaining the circumstances regarding the staircase on the bank of the river requesting that the Department of Fisheries and Oceans intervene and take the lead with the investigation of this staircase and that DFO pursue legal action pursuant to the Fisheries Act. If the staircase remains, states the letter by the Mayor, it will set a precedent that could lead to other works on private property along the riverbank elsewhere. Over time, it continues there will be significant loss of vegetation and habitat near the river. The stairs cause disturbances to slope stability and increase the threat to fish and wildlife habitat due to expanding human activity across the riverbank and other riparian areas through the District.

However, since neither the District nor the Fisheries are willing to accept responsibility there is a very good chance that the structure will remain and that the youth, who go there to swim in the summertime and who brought this atrocity to the attention of Councillor Crist, will learn that laws do not mean very much which will surely tempt at least some of them to also violate them.

I am bringing this matter to your attention for information. The question which comes to mind is why do we have a Bylaw if we are unwilling to enforce it? Why were we told, when we adopted the Bylaw, that the purpose of the Bylaw was to protect us from violations?. If the Bylaw is not adequate, provided this is indeed the case, why were we told

otherwise? If our Bylaw is adequate as claimed by DFO, why are we passing the Buck or is there another reason?

Ernie Crist

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