

by Joan Russow PhD

Global Compliance Research Project

My reason for appearing are and the substance of my presentation is as follows:

2. Silverspray issue involves the citizens of the CRD Capital Regional District not just those of East Sooke

1. Consequences of the tactic used by the applicant to intimidate those opposed to this development

- Failure of the CRD to hold a public information meetings

3. Failure to have prevented the practice of developers determining what environmental features would trigger an environmental assessment review and then proceed to destroy these

features

4. Failure of the CRD, and the Ministry of the Environment and Forestry to adhere to the principle agreed to in the Caracas Declaration. (the need to move away from the "island mentality"-- permitting inappropriate commercial and residential development adjacent to protected areas

5. Failure of the CRD and the Ministry of Environment and Forestry to implement the Biodiversity Convention through acknowledging that it applies both to private and public lands

6. Failure of the CRD to respect the Office of the Ombudman in its deliberation on this matter

7. Concern about the unethical manipulative techniques used by the applicant as evidenced in his own book 27 ways to profit from the land prices

In a letter dated March, 1992, from both the Provincial Ministry of Forests and the Provincial Ministry of Environment (sent to members of the public presumably from a government mail-out list), the following intention is imputed:

As we, in BC Parks and BC Forest Service begin to work on implementing our components of B.C.'s protected areas under the aegis of the Commission on Resources and Environment, we will be mindful of this Declaration [Parks Protected Areas and the Human Future: the Caracas Declaration] and its implications. Our objective will be to have a system of protected areas which we are proud to present to the world.

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Through this intention to be "mindful of this Declaration" the Provincial Government of B.C. through its Ministries of Environment and Forests has recognized the Caracas Declaration and the UN Resolution 37/7 (1982) World Charter for Nature.

B.C. has failed to fulfill a commitment made through B.C.'s endorsement of the Caracas Convention (Parks Protected Areas and the Human Future: the Caracas Declaration, February 1992) and in its participation in the Caracas Congress to "move from logging old growth to second growth" (Report on implementation requirements of the Caracas Declaration, Mar. 1992)

has failed to adhere to recommendations by the Caracas Congress on means to fulfill the Caracas Declaration

Obligations under the "Parks, Protected Areas and the Human Future: The Caracas Declaration" (February, 1992), and under recommendations by the Caracas Congress (CHECK Ref.).

The Caracas Declaration was adopted by over fifteen hundred leaders and

participants at the Fourth World Congress on national parks and Protected Areas. (Feb. 1992).

3.2. Conserving Biodiversity

The congress urgently requested that all countries urgently undertake surveys to identify additional sites of critical importance for conservation of biological diversity, and wherever possible, accord total protection to them. Harvesting should be relocated from primary to secondary forests and tree plantations in previously deforested areas; or - where this is not possible - sustainable forest harvesting systems which favour natural species diversity should be developed and introduced. p 8

3.3. Conservation on a regional scale

Protected areas have sometimes been seen as islands of nature and tranquillity, surrounded by incompatible land uses. But the congress made it clear that such an "island mentality" is fatal in the long run. The congress recognized that it is unlikely that protected areas will be able to conserve biodiversity if they are surrounded by degraded habitats that limit gene-flow alter nutrient and water cycles and produce regional and global climate change that may lead to the final disappearance of these "island parks". Protected areas, therefore need to be part of broader regional approaches to land management. The term bioregion was used to describe extensive areas of land and water which include protected areas and surrounding lands, preferably including complete watersheds, where all agencies and interested parties have

agreed to collaborative management.

recommendation 3

Global efforts to conserve biological diversity.

"the loss of biodiversity has reached crisis proportion and if present trends continue up to 25 % of the world's species may be sentenced to extinction or suffer severe genetic depletion in the next several decades, accompanied by equally significant and alarming degradation of habitats and ecosystems. This loss of biological diversity is impoverishing the world of its genetic resources, its species, habitats and ecosystems.

All species deserve respect, regardless of their usefulness to humanity. This Principle was endorsed by the UN Assembly when it adopted the World Charter for nature in 1982. The loss of the living richness of the planet is dangerous, because of the environmental systems of the world support all life, and we do not know which are the key components in maintaining their essential functions.

the IVth World Congress on national Parks and Protected Areas recommends that:

a) governments make the protection of biological diversity, including species and habitat richness, representativeness and scarcity, a fundamental principle for the identification, establishment, management and public enjoyment of national parks and other protected areas;

b) all countries urgently undertake surveys to identify additional sites of critical importance for conservation of biological diversity and wherever possible, accord total protection to them. Harvesting should be relocated from primary to secondary forests and tree plantations in previously deforested areas; or — where this is not possible — sustainable forest harvesting systems which favour natural species diversity should be developed and introduced: p. 30

Recommendation 4:

entitled legal regimes for protected areas.

Protected areas require a mutually reinforcing system of international and national environmental law for their establishment, maintenance and management. International treaties establish a harmonized set of obligations with regard to areas within national jurisdictions and activities having effect beyond national jurisdictional boundaries. These obligations must be reflected in national legislation; otherwise, the treaties cannot be implemented. In turn, innovative national legislation provides a basis and impetus for further international law. The dynamic interaction between the two levels is thus conducive to further progress. p. 31

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The Caracas Congress which is responsible for interpreting the Declaration made the following recommendations that have been ignored by B.C.:

B.C. has failed to move from harvesting primary to secondary forests as recommended by the Caracas Congress

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116. B.C. has failed to ensure sustainable forest harvesting systems which favour natural species diversity should be developed and introduced: p. 30

117. B.C. has failed to prevent incompatible land use. as recommended by the Caracas Congress

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118. The Congress also addressed the urgency and the need for global efforts to

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It will be contended in the Appeal that not only has B.C. not complied with commitments made to the international conference on Parks at Caracas, but also B.C., through its actions in Clayoquot Sound, has failed to adhere to recommendations by the Caracas Congress on means to fulfill the Caracas Declaration

Through this declaration the Provincial government has recognized that

- nature has intrinsic worth and warrants respect regardless of its usefulness to humanity

- this natural wealth is being eroded at an unprecedented rate, because of the rapid growth in human numbers, the uneven and often excessive consumption of natural resources, mistaken and socially harmful styles of development, global pollution and defective economic regimes, so that the future of humanity is now threatened;

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- many people must modify their styles of living and the world community must adopt new and equitable styles of development, based on the care and sustainable use of the environment, and the safeguarding of global life-supporting systems (CD)

ACCORDINGLY, and bearing in mind the message of *Caring for the Earth: A strategy for Sustainable Living, The Global Biodiversity Strategy*, launched at this Congress, and the earlier messages of the World Conservation Strategy, the World Charter for Nature and the World Commission on Environment and Development, WE, the

From the Commitment in the Caracas Declaration, it would appear that the Provincial government has also reaffirmed Canada's commitment to UN Resolution 37/7 (1982), the World Charter of Nature, which states that the UN Assembly is

14. The principles set forth in the present Charter shall be reflected in the law and practice of each State, as well as at that international level.

Convinced that:

(a) Every form of life is unique, warranting respect regardless of its worth to man, and to

accord other organisms such recognition's, man must be guided by a moral code of action,

Persuaded that:

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3. all areas of the earth, both land and sea, shall be subject to these principles of conservation; special protection shall be given to unique areas, to representative samples of all the different types of ecosystems and to the habitats of rare or endangered species.

(a) Living resources shall not be utilized in excess of their natural capacity for regeneration;

(b) Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effect are not fully understood, the activities should not proceed;

This section appears to suggest that there is the intention to shift the burden of proof from the opponents of an intervention having to demonstrate harm to the proponents of the intervention having to demonstrate the expected benefits. If this were applied to the injunction it would be the responsibility of industry to have to demonstrate that the expected benefits [jobs] outweigh the potential damage to nature.

(e) Areas degraded by human activities shall be rehabilitated for purposes in accord with their natural potential and compatible with the well-being of affected populations 16. All planning shall include, among its essential elements, the formulation of strategies for the conservation of nature, the establishment of inventories of ecosystems and assessments of the effects on nature of proposed policies and activities; all of these elements shall be disclosed to the public by appropriate means in time to permit effective consultation and participation.

19. The status of natural processes, ecosystems and species shall be closely monitored to enable early detection of degradation or threat, ensure timely intervention and facilitate the evaluation of conservation policies and methods.

Exhibit C. is a letter from the Ombudsman's office indicating the findings of the Ombudsman's office related to the Russow/Gage inquiry into the way the B.C. government will be fulfilling international commitments.

2Compliance with International Agreements.

Direct personal discussions were held with Mr. Cheston, Assistant Deputy Minister of Operations Division, Ministry of Forests, and Mr. Owen, Commissioner on Resources and Environment. Both Mr. Cheston's and Mr Owen's responsibilities reflect the government's priority for those issues of concern to you...

From these meetings, as well as from additional discussions with senior staff from the Ministry of Forests and the Ministry of Environment, Lands and Parks, we have determined that BC intends to comply with the agreements signed at the UNCED in June 1992.

Undoubtedly, to comply with the principles from UNCED such as those stated above it would require a moratorium on the logging of Old Growth until an environmental assessment review of the forest practices that could have a significant impact on biodiversity could be assessed; until the full life cycle analysis and true environmental accounting could be carried out; until indigenous rights have been settled; and until non-destructive use values, examined. It would appear to be against all principles of equity that the research into impacts on biodiversity should be carried out after much of the biodiversity has been altered. If the precautionary principle, life cycle analysis principle, environmental impact assessment principle, and the positive duty to indigenous people is to be fulfilled, there should be an injunction preventing all activity which could be irreversible, irreparable harm.

ADDITIONAL REGIONAL PRINCIPLES AND REGULATIONS RELATED TO
DEVELOPMENT AND REAL ESTATE

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Unfortunately the development community is following the adage “Buy land they’re not making it any more” rather than a new adage, “Protect land for cultural and ecological, agricultural heritage of the community”.

Regulations need to be in place to prevent the following:

- Demolition by neglect

Establish measures and policies to reverse the trend of developers - especially absentee owners - allowing their heritage properties to deteriorate to the point where demolition may be the only option

- Eradication of significant environmental features

Ensure that the Environmental Assessment Review Act prevents the practice where developers request information about the environmental features that could trigger an EAR and then proceed to destroy these features

- Impositional rather than empathitic design

Encourage house design to follow natural features rather than destroy natural features to accommodate preconceived design

- Shortage of land enticing exploitation using foreign organization

Propose measures to raise awareness about the implicatons of property rights groups such as USA Liberty Matters forming associations such as the Association of BC Landowners to prey and profit on the immediate and pending land squeeze in B.C.

- Regional Growth strategy is not in place to limit land speculation

Propose that Oak Bay municipality play a more proactive role in the Regional Growth Strategy so as to contribute to the development of regulations and bylaws to limit land speculation.

- Misuse of RRSPs

Propose measures to curb the use of RRSPS for land speculation

- Pooling of resources to enable large scale land speculation and diversification

Propose measures to address the practice of pooling resources to enable large scale land speculation including the establishing of extensive portfolios that increase control over development

- Targeting urban reserve areas for future residential expansion.

Propose information packages about the strategies of speculators to target urban land reserve areas

- Benefiting from tax-free compounding

Propose the ending of the tax benefit scheme that allows for the compounding of land value through the current practice where tax free benefits on land continue until the land is sold

- Allurement of 'trade-ups'

Propose information packages about the seduction of "trade-ups" in influencing community attitude towards development projects

- Waiting in the wings for piggy-backing

Propose information packages about the strategies of land speculators to buy adjacent properties to development rezoning proposals and to benefit from the change of zoning of the proposals

- Municipalities compromising principle to balance budgets

Propose that municipalities end the practice of sacrificing principles of heritage preservation and ecological preservation for the sake of short term financial gain

- Device of using rezoning process as means of increasing profit of land

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Propose information packages about the device of using time and energy of municipal councils and citizens opposing development to apply for rezoning and thus benefiting from each successful stage which contributes to increased value of the property.

- Failure to recognize that the Convention on Biological Diversity also applies to private land

Support the application of the Convention on private land to prevent developers from profiting from logging and thus destroying biodiversity in ecological sensitive areas

- Strategic law Suits Against Public Participation (SLAPP)

Propose legislation to prevent further SLAP suits against citizens or elected officials that oppose development

- Strategic prevention of community participation

Propose legislation to prevent developers from suing individuals for legitimate protest and then arguing that because the individuals are under investigation the individuals should not be able to vote on issues involving the developers who has sued them

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- Inappropriate development adjacent to protected areas

Ensure compliance with the Caracas Declaration: the BC Ministry of Forests and Environment endorsed the Caracas Declaration in 1992, and in this declaration signatories undertook to prevent the “island mentality”— a protected area surrounded by inappropriate development

strive for a standard of highest tenable principles

- Stack public meetings with vested economic interest

Discourage the practice of stacking the meeting with persons with vested economic interest in the development and thus manipulating the political process so that those who ordinarily would not be involved never the less are given a vote

- Lowest common denominator for economic gain

Propose the institution of extensive quality regulations and controls and the precautionary principle to prevent costly rectification of errors such as in the leaky condo situation

- Intimidation of Heritage Commissions through claims of economic impossibility

- Propose that decisions should be made independently of any intimidation from developers who, to justify demolition, raise economic impossibility of other alternatives.

- Incomplete information about potential forced heritage designation

- Propose that all real estate agents provide full information to developers who purchase potentially designatable heritage property about the possibility of forced heritage designation and about the obligation to maintain the property

- Economic growth at any cost

Ensure that there are general principles in place that will prevent urban sprawl, megabusiness container box stores the detriment of socially equitable and environmentally sound community development , and to labour rights

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- Incomplete application of international law

Ensure compliance with the Biodiversity Convention whose purpose is to conserve biodiversity on both private and public lands