

LOCAL GOVERNMENT HERITAGE PLANNING LEGISLATION IN
BRITISH COLUMBIA

By

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ABSTRACT

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by Allison Margaret Habkirk

Local Government Heritage Planning Legislation in British Columbia investigates and critiques the community planning policies of the provincial government white paper Toward Heritage Legislation. This investigation is undertaken from the perspectives of the experience of other jurisdictions and the views of professional heritage planners in British Columbia.

The primary objectives of this thesis are:

- i) to illustrate by examining the history of heritage conservation legislation in other jurisdictions that there is a common pattern to the evolution of conservation legislation and that the proposals of Toward Heritage Legislation are consistent with this pattern
- ii) to examine the views of professional heritage planners regarding the proposed policies and
- iii) to argue that the proposed policies demonstrate both strengths and weaknesses and that a strong implementation framework will be required if the policies are to be implemented effectively.

These objectives are achieved by the use of two methods. First, the history of heritage conservation is traced through a review of the relevant historical literature on the legislation of other jurisdictions. Second, fifteen professional heritage planners from across British Columbia are interviewed regarding their views on the proposed policies.

The first conclusion of the thesis is that there is a pattern to the development of heritage legislation in other jurisdictions. This pattern illustrates that early heritage legislation focuses largely on the conservation of individual sites and monuments and that over time the legislation evolves and ultimately demonstrates three characteristics: one, the recognition of the context of individual sites including grouping of individual sites to form historic areas and districts, two, the integration of heritage planning into the day to day planning processes of local government and three, the devolution of responsibility for heritage conservation from senior to local governments.

The data collected from the consultations with professional planners indicates that there is broad support for the conceptual basis of the proposed policies but that there are significant weaknesses in the details of the proposals. The planners indicate that in particular there are weaknesses in the ability to implement the policies within existing local government administrative practises.

The thesis also concludes that the community planning proposals of Toward Heritage Legislation are consistent with the policies of other jurisdictions and in fact represent the logical next step in the development of heritage legislation in British Columbia. However, the planners interviewed clearly cautioned that the details of the policies must be reviewed, clarified and

modified if they are to be successfully implemented. Their concerns focused on three general areas: the planners indicated in some cases that they did not support individual policies as proposed, secondly they requested clarification and detailing of the implementation of individual policies and thirdly, they advised that additional resources will be required to successfully implement the policies.

The final conclusion of the thesis concerns the importance of training personnel to implement new heritage legislation. The consultations with the planners highlighted the current weaknesses of training for heritage planners and emphasized the importance of this shortcoming for the future of heritage conservation in British Columbia.

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INTRODUCTION

Heritage conservation planning is relatively young in British Columbia having become an accepted specialization of the planning profession in the province over the last ten years. It is therefore, a relatively undeveloped field of study in British Columbia. It is significant then, that the practice of heritage planning may soon undergo a major evolutionary development as a result of a proposal to create new provincial heritage conservation legislation.

Legislation proposed in the government White Paper Toward Heritage Legislation, was released to the public in January 1990. The policies included in the White Paper represent a significant shift in government policy respecting heritage conservation. It is suggested that if the proposals contained in the White Paper are passed into law the practice of heritage planning in the Province will change profoundly.

Purpose

The purpose of this thesis is to examine, from a planning perspective, the community planning policies proposed in Toward Heritage Legislation.

More specifically, the purpose of this thesis is three fold:

- i) To illustrate by examining the history of heritage conservation legislation in other jurisdictions that

there is a common pattern to the evolution of conservation legislation. Given the examples of other jurisdictions it is argued that the policies outlined in Toward Heritage Legislation are the logical next step in the development of conservation legislation in British Columbia.

ii) To examine the views of professional heritage planners regarding the community planning policies included in Toward Heritage Legislation. The intention of this examination is to draw attention to the strengths and weaknesses of the proposed policies.

iii) To argue that the policies contained in Toward Heritage Legislation demonstrate both strengths and weaknesses and specifically, to argue that a strong framework for implementation is required if the policies are to be implemented effectively.

Context

Although relatively young in British Columbia and indeed Canada, heritage planning is well establish^d in other countries. Most notably, planning for the conservation of heritage resources has a long history in both Great Britain and the United States. In these countries heritage planning is an accepted part of the day to day community planning process. Though the approach in Great

Britain differs somewhat from that of the United States, both countries view heritage planning as a part of managing both the physical environment and change in their communities. In this regard both countries have well developed legislation which regulates heritage conservation planning.

The literature on conservation planning and legislation in Great Britain and the United States is rich. By comparison, relatively little of Canada's experience in the field has been documented. This perhaps reflects the immature state of conservation planning in Canada.

Significance

The significance of this thesis is that it sheds light on the experience of other jurisdictions with respect to the development of heritage legislation and it examines British Columbia's current policy proposals in the context of these experiences. Further, this thesis demonstrates that conceptually the proposals contained in Toward Heritage Conservation are not radical in approach but are consistent with the evolutionary pattern of legislative and conservation practices of other locales.

Moreover, given the rapid changes taking place in both urban and rural environments in the province today, heritage planning is significant in that it represents an effort to manage

environmental change. Indeed there are commentators such as Kevin Lynch and John Costonis that believe the value of heritage conservation is not so much the saving of architecturally or historically significant buildings but the management of environmental change in a rapidly changing society. To some, heritage conservation is considered one aspect of environmental and resource management. It is interesting to note that the White Paper, Toward Heritage legislation, refers to heritage as a "sustainable resource" (Ministry of Municipal Affairs, Recreation and Culture, 1990, p.2).

It is also important that the process of heritage planning itself be planned. This thesis allows an opportunity for planners to provide comment on, and input into, the development of heritage planning policy and legislation.

Methodology

As the objectives of this thesis include an examination of the history of conservation legislation and an assessment of the planning policies included in Toward Heritage Legislation, two research methods are utilized. First, conservation legislation literature from Great Britain, the United States and Canada is surveyed. The purpose of this review is to examine the history of conservation policy and legislation and to illustrate the patterns of legislation development in other jurisdictions.

The second method used is a survey of fifteen professional heritage planners from across British Columbia who were consulted to solicit their views on the policies included in Toward Heritage Legislation. This was undertaken to identify the strengths and weaknesses of the proposed legislation from the point of view of heritage planners and to assess the implementation requirements of the policy proposals.

Scope and Limitations

This thesis is intended to focus primarily on heritage planning policy development in British Columbia. More specifically, it focuses on the community planning aspects of heritage planning and it does not address the issues of conservation of natural or archaeological resources. It is therefore primarily concerned with the conservation of the built environment.

Further, this thesis is limited to examining heritage conservation policy from the perspective of professional planners and it does not purport to reflect the opinions or attitudes of the private or political sectors. Though these components are recognized as vital, significant and essential to the over all effectiveness of legislation, they are not within the scope of this research.

Organization

Chapter One consists of three parts: the Development of Heritage

Conservation Legislation in other jurisdictions, the Canadian Legislative Context and the British Columbia Legislative Context. This chapter provides a context for the two main themes of the thesis: heritage conservation legislation and heritage conservation planning policy. It includes a review of the literature relevant to heritage conservation legislation and planning.

Chapter Two outlines the methods used in the consultations with professional heritage planners (Appendix "D" details the consultation results).

Chapter Three provides an analysis of the consultation results and specifically reviews the strengths and weaknesses of the policies of Toward Heritage Legislation as described by those surveyed.

Chapter Four summarizes the conclusions of the thesis and outlines areas for further research.

Definitions

Heritage conservation terminology is frequently misunderstood or misused. The glossary at the end of the thesis provides definitions of commonly used terms.

Perhaps the most important term is the word heritage itself. In the past this word has often been used in a limited way to refer only to buildings or structures of historic or architectural importance. Currently however, the term heritage has taken on a much broader meaning and it is generally accepted to include the built environment, the natural environment and cultural history. For the purposes of this research the broader definition of the word is used.

The terms conservation and preservation are also important in this discussion. Though they are frequently used interchangeably, for the purposes of this thesis, a distinction is ~~be~~ made. Conservation implies that what is being conserved is done so in the context of a changing environment and that conservation is responsive to that environment. Preservation on the other hand, is used to refer to protection of a resource which is undertaken in isolation of its environment.

CHAPTER 1 HERITAGE PLANNING IN CONTEXT

This chapter provides an overview of both the legislative and planning policy contexts of heritage conservation planning. The Chapter consists of three parts: an overview of the history and development of conservation legislation in Great Britain and the United States, an overview of the development of Canadian legislation and an analysis of British Columbia's conservation legislation.

The purpose of this overview is to establish that other jurisdictions have a much longer history of heritage conservation legislation than does Canada and that there is a pattern to the development of conservation legislation. This overview places British Columbia's contemporary legislative policy proposals in the context of international experience.

Understanding the international context is important as it has been suggested that "The only western country which gives less protection to landmarks and neighbourhoods (than Canada) is Monaco" (Denhez, 1976, p.29). The paucity of Canadian heritage conservation legislation has been blamed on more than the youth and inexperience of Canadian legislators. Denhez, Canada's eminent heritage conservation lawyer suggested that "provincial legislatures in Canada have frequently exercised a kind of willful blindness to international precedents, ostensibly based upon the sublimely parochial notion that their problems bore no

resemblance to those of anywhere else in the world" (Denhez, 1976, p.30).

The following detailed examination of legislation from other jurisdictions illustrates that there is a pattern to the development of conservation legislation. Identifying this pattern is important as it allows the legislation in British Columbia to be viewed within the context of the experience of other jurisdictions. This review is undertaken in an effort to demonstrate that the proposals in Toward Heritage Legislation are consistent with the experience of other jurisdictions.

1.1 Development of Conservation Legislation

This section briefly outlines the history of the development of conservation legislation in Great Britain and the United States and suggests that the development of legislation in each locale follows a typical and predictable pattern.

As legislation is the legal translation of policy, tracing the evolution of legislation helps us to understand the development and evolution of policy. In the case of heritage conservation, the evolution of legislation illustrates the development of conservation planning policy from the early monument preservation movements to the contemporary comprehensive planning approach.

The development of British and American heritage preservation legislation and policy is well documented by others including Jane Fawcett (ed) in The Future of the Past, John Harvey in Conservation of Buildings and Williams and Kellogg (eds) in Readings in Historic Preservation. However, little effort has been made to identify a pattern in the development of the legislation. Not only is it valuable to illustrate that historic conservation has existed, in some form, since "there has been something historic to preserve" (Williams, 1983, p.5) but also that there is a pattern to the evolution of legislation. It is argued that jurisdictions initially develop legislation which identifies and protects individual sites and that over time this legislation expands and develops to include three significant characteristics:

- 1) Recognition not only of individual sites, but also their contexts and further, recognition of historic districts.
- 2) Integration of heritage planning into the conventional planning practices of the jurisdiction.
- 3) Devolution of responsibility for heritage conservation to local governments.

Great Britain

The first conservation statute passed in Great Britain is largely attributed to the efforts of William Morris who founded the Society for the Protection of Ancient Buildings in 1877 (Suddards, 1982, p.1). In 1853, John Ruskin, a contemporary of William Morris and author of The Seven Lamps of Architecture, wrote,

"It is...no question of expediency or feeling whether we shall preserve the buildings of past times or not. We have no right whatever to touch them. They are not ours. They belong partly to those who built them, and partly to all generations of mankind who are to follow us"

(Williams, 1983, p.21)

The first conservation legislation in Great Britain, the Ancient Monument Protection Act, was passed in 1882 five years after the founding of the Society for the Protection of Ancient Buildings (Suddards, 1982, p.2). This Act listed for protection 29 monuments, all "earthworks, stone circles and the like-of which the most important was Stonehenge" (Williams, 1983, p.26). The Ancient Building and Monument Act was the first in a series of acts in Great Britain which concerned conservation. The development of this early legislation supports the contention that conservation legislation begins with individual monument preservation.

The acts which followed this simple legislation expanded the scope and purpose of conservation legislation. Contemporary conservation legislation in Great Britain provides for the conservation of monuments, sites, areas, districts, neighbourhoods and complete towns. Figure I outlines the development of the legislation in Great Britain and a discussion of the significant policy developments illustrated in the legislation follows.

FIGURE I

THE DEVELOPMENT OF CONSERVATION LEGISLATION IN GREAT BRITAIN

Sources Used: Fawcett, 1976 Suddards, 1982 & Williams, 1983

1882 Ancient Monuments Protection Act

- * Registry of 29 prehistoric monuments

1900 Ancient Monuments Protection Act

- * Expanded the registry to include medieval buildings as well as prehistoric remains. The Act defined a monument as "any structure, erection or monument of historic or architectural interest" other than an inhabited dwelling house.

1907 National Trust Act

- * Created the National Trust

1913 Ancient Monuments and Protection Act

- * The Commissioners of the Board of Public Works "empowered to prepare and publish a list of monuments whose preservation was considered to be of National Importance".
- * Empowered commissioners to make a preservation order placing the monument under protection of the local authority or the Ministry of Works as guardians.

1931 Ancient Monuments and Protection Act

- * Increased the powers of the Board and required that preservation orders be registered in the Local Land Charges Registry.
- * Enabled local authorities to establish preservation schemes to protect areas around monuments thus introducing the concept of area conservation.

1932 Town and Country Planning Act

- * Local authorities authorized to make preservation orders with the approval of the Minister.

1933 Ancient Monuments and Protection Act

- * Created interim preservation notices which were valid for a period of 21 months after which time they would expire if a preservation order was not in place.

1937 City of Bath Act

- * Created to protect and preserve the character of the City of Bath.

- 1944 Town and Country Planning Act
* Amended to enable the Minister of Town and Country Planning to prepare lists of buildings of special architectural or historic significance to guide local authorities.
- 1947 Town and Country Planning Act
* "Group Value" of buildings recognized.
- 1953 Ancient Monuments and Protection Act
* Minister of Works authorized to make grants for the maintenance or repair of significant buildings and their contents and for amenity lands.
- 1957 Civic Trust Established
- 1967 Civic Amenities Act
* Enable control of conservation areas.
* Protected only listed buildings; non-listed buildings remained unprotected.
- 1968 Town and Country Planning Act
* Procedures changed and lists became automatic preservation orders.
- 1971 Civic Amenities Act
* Repeal of the Civic Amenities Act and re-enacted conservation areas as part of the Town and Country Planning Act.
- 1972 Town and Country Planning Act
* Authorized to control the demolition of unlisted buildings in conservation areas and to provide grants for work in conservation areas.
- 1974 Town and Country Amenities Act
* Consolidated legislation and required the preparation of preservation and enhancement proposals by local planning authorities. Provisions for the protection of trees were also included in this Act.
* Protected all buildings within a conservation area (previously only listed buildings were protected).

Several important trends are apparent in Figure I. First, over the period of a century the focus of conservation legislation has shifted away from protecting individual monuments to protecting whole conservation areas. Evidence to support this idea is found in the 1931 Ancient Monuments Protection Act which enabled local authorities to establish preservation schemes to protect the area around monuments. This was the introduction to the concept of conservation areas. The need for this protection came about as a result of damage caused by the quarrying of the area around Hadrian's wall (Fawcett, 1976, p.21).

Secondly, many of the powers for the protection of historic buildings and areas have been incorporated into the Town and Country Planning Act and thus conservation legislation is integrated into 'conventional' community planning practices. Integration of conservation powers into local government planning legislation took place as early as 1932 when local authorities were empowered to establish "preservation schemes" under the Town and Country Planning Act. Two areas which immediately took advantage of these provisions were Elm Hill in Norwich and the City of Bath (Fawcett, 1976, p.21).

Finally, it is demonstrated that there is a devolution of responsibility for conservation from the national government to local government. Devolution of conservation powers began as early as 1913 with the Ancient Monuments Protection Act which

enabled Boards of Public Works to list "monuments of national importance". Since that time local authorities have received increased powers under successive legislation. The Town and Country Planning Act (1932) is notable in this regard.

This pattern of development of conservation legislation is not unique, in fact, it will be demonstrated that it is typical and that the American experience duplicates this pattern. Further, it will be shown that though incomplete, the pattern of development of Canadian conservation legislation is similar. It is argued that the proposals in Toward Heritage Legislation are the logical next step in the pattern for British Columbia.

United States

The development of conservation legislation in the United States, chronicled in Figure II, follows a pattern similar to that of Great Britain. The first interest and the first legislation in the United States focused on the preservation of individual historic monuments. "Early efforts in preservation dealt with landmarks as artifacts held separate from the community for veneration, pleasure or education" (Murtagh, 1988, p.11). Generally, these early examples of preservation in the United States emphasized sites and buildings of historic and patriotic significance. Although this differed from the architectural or archaeological emphasis which characterized the conservation efforts of Great Britain it illustrates that early

FIGURE II

THE DEVELOPMENT OF CONSERVATION LEGISLATION IN THE UNITED STATES

Sources Used: Bell (1985), Early, (1984), Hosmer (1981)
Jacobs (1966), Murtagh (1988), Roddewig (1983) & Williams (1983)

- 1853 Mount Vernon Ladies Association formed (chartered 1856)
* First nationwide preservation organization which was formed to preserve George Washington's home.
- 1872 Yellowstone National Park Act
- 1906 United States Antiquities Act
* Authorized the protection of historic landmarks, structures and objects on lands controlled by the United States (Casa Grande, Arizona the first monument recognized under this Act).
- 1916 National Park System Organic Act
* Established the National Parks Service and gave it responsibility for national parks, monuments and reservations.
- 1931 Charleston, South Carolina, Preservation Ordinance
* First municipal preservation ordinance in the United States.
- 1935 Historic Sites Act
* Declared preservation of historic sites, buildings and objects of national significance a national policy. Also, directed the Secretary of the Interior to undertake programs with respect to historic preservation.
- 1937 New Orleans, Louisiana, Vieux Carre Preservation Ordinance
* Preservation ordinance to protect the Vieux Carre district in New Orleans.
- 1939 San Antonio, Texas, La Villita Preservation Ordinance
* Preservation ordinance protecting the La Villita district in San Antonio, Texas.
- 1949 National Trust for Historic Preservation Established
- 1966 National Historic Preservation Act
* This Act created the National Register of Historic Buildings, provided for the creation of state and local programs and provided grants for programs.

- 1966 Department of Transportation Act
* Established a policy of preserving natural and man-made sites along highway routes.
- 1966 Demonstration Cities Act
* Established a policy of the Secretary of Housing and Urban Development which recognized preservation and permitted funding of preservation projects.
- 1969 National Environmental Protection Act
* Stressed federal responsibility for preservation and required environmental impact assessment studies.
- 1971 Executive Order #11593
* Stated "The federal government shall provide leadership in preserving, restoring and maintaining the historic and cultural environment of the nation".
- 1976 Tax Reform Act
* Tax incentives created to encourage rehabilitation of heritage buildings.
- 1981 Economic Recovery Tax Act
* Additional tax saving provisions for rehabilitation of heritage buildings created.
- 1982 National Environmental Protection Act
* Addition of preservation provisions to this Act.
- 1986 Economic Recover Tax Act
* Reduced tax incentives for rehabilitation.

American legislation focused on individual sites and monuments.

The first formal historic conservation organization in the United States was the Mount Vernon Ladies Association was founded in 1853 with the single purpose of restoring George Washington's home (Williams, 1983, p.38). Generally, this and other early examples of historic conservation in the United States are described as having narrow aims such as the preservation of a single building (Williams, 1983, p.38). These early American initiatives differed from those in Great Britain in that they were frequently sponsored by private individuals as opposed to government (Murtagh, 1988, p.37). They had in common with the British tradition the goal of preserving single buildings and sites.

During the same period as the Mount Vernon Ladies Association was working to preserve the built environment another movement was forming to preserve the natural environment in the United States. "Writers like Thoreau and Emerson...espoused the mystical virtues of the vanishing wilderness before the middle of the Nineteenth Century. The desire to preserve some part of the wilderness was a central motif in the founding of Yellowstone National Park" (Marty, 1984, p.64). Yellowstone Park, the world's first national park, was established with the passing of the park bill on March 1, 1872 (Early, 1984, p.78). Cornelius Hedges, a proponent of the establishment of

Yellowstone Park said at the time, "This great wilderness does not belong to us. It belongs to the nation. Let us make a public park of it and set it aside...never to be changed but to be kept sacred always" (Marty, 1984, p.64).

There are commentators who suggest that the establishment of the park was motivated by development interests who had profits rather than preservation in mind. Whatever the motivations, the creation of the park, "though it did not establish an immediate trend..was important to subsequent preservation movements" (Early, 1984, p.72). Further, in this regard, a contemporary writer comments "Yellowstone started something. Ever since men have tried to safeguard some of the best of what is, and what has been, even though it has meant giving quality priority over profit". He added that Yellowstone is "a world symbol, a flaming evangelist to those who believe remembrance of some things past is necessary for sanity in a mad present" (Frantz in Early, 1984, p.75).

The first conservation legislation in the United States bears out the idea that single monument conservation dominated early legislation. The United States Antiquities Act, passed in 1906,

"authorized the President to set aside historic landmarks, structures and objects located on lands controlled by the United States as national monuments, required permits for archaeological activities on federal land and established criminal and civil penalties for violation of the Act"

(Bell, 1985, p.6)

Two decades later John D. Rockefeller Jr. initiated the restoration and reconstruction of Williamsburg and by doing so expedited the evolution of historic conservation planning and conservation legislation in the country.

"By recreating a town at the finest period of history and operating it solely as a museum, the Williamsburg preservationists popularized an approach to landmark preservation that has captured the public's imagination... Many cities have recognized the opportunity for applying the broad vision of the planners of village restoration projects to the preservation of urban historic districts."

(Williams, 1983, p.43)

Following the example of Williamsburg, other communities across the country began to look at the conservation potential of their own neighbourhoods and districts and at their policies and laws that would enable them to undertake conservation efforts.

The first American local government ordinance created to protect an historic area was passed in 1931 in Charleston, South Carolina. Ordinances to protect the Vieux Carre in New Orleans in 1937 and the La Villita in San Antonio in 1939, soon followed. The purpose of these early preservation ordinances was to "freeze a building or a neighbourhood at a point in time" (Roddewig, 1983, p.2). These early ordinances became the models for district conservation throughout the country and they signified the recognition of conservationists that more than individual buildings and monuments needed to be protected if the character of districts and neighbourhoods was to be preserved.

The Historic Sites Act of 1935 declared the importance of the preservation of historic sites as a national policy. However, the provisions for implementation of this policy were weak and it failed to effectively integrate conservation into other national policies and initiatives. (Bell, 1985, p.6).

By the 1950's, the potential of historic district preservation was being recognized and "it became clear that historic preservation could be a catalyst for the revitalization of neighbourhoods." (Roddewig, 1983, p.2). Two decades had passed since the first local government district ordinance had been passed and historic zoning and ordinances had become an accepted part of the conservation planner's tool kit.

The 1966 National Historic Preservation Act outlined a comprehensive and integrated approach to historic conservation planning. The Act made several important changes to existing legislation and policies. First, it provided for the expansion and maintenance of the National Register of Historic Places by the Secretary of the Interior. Second, the Act encouraged State and local preservation programs. Under the terms of the Act state programs must include: the appointment of a State Historic Preservation Officer, the establishment of a State Preservation Review Board and adequate public participation. In addition, the state Historic Preservation Officer must inventory the historic properties in the state and prepare and implement a

historic preservation plan. It is also important to note that in concert with the provisions of this Act, many States are making provisions to allow local governments to undertake preservation activities (Bell, 1985, p.7). Third, the Act provided matching grant funds to States for preservation activities.

In 1969 the federal government passed the first National Environmental Protection Act (NEPA). The Act "stressed federal responsibility for preservation and required environmental impact studies to focus the attention of federal agencies on the effect their projects have on their surroundings" (Murtagh, 1988, p.74).

Significant tax incentive provisions for building rehabilitation were created in the Tax Reform Act (1976), Economic Recovery Act (1981) and the Economic Recovery Tax Act (1986). These tax reforms provided the means for implementation of heritage conservation policies in the United States. They encouraged the participation of the private sector in conservation programs through the use of financial incentives. It should be noted that the latest of these acts, the Economic Recovery Tax Act, reduced the level of incentive allowed in the two earlier acts.

The National Environmental Policy Act of 1982 reinforced the federal government's commitment to heritage conservation by

adding to NEPA a policy which requires the federal government to "carry out its plans and programs in such a way as to preserve important historic, cultural and natural aspects of our national heritage" (Bell, 1985, p.17).

Although the history of conservation legislation is shorter in the United States than that of Great Britain, the pattern of development is similar. The first trend evident is the transition from monument preservation to the more comprehensive area and district approach to conservation planning. In the case of the United States, the progression from monument preservation to district preservation took place over a relatively short period of time and may be attributed to the influence and experience of Great Britain and to the work of John D. Rockefeller Jr. at Williamsburg.

In the United States it was local governments such as New Orleans and Charleston which through the use of local ordinances lead the way to the creation of historic districts. Historic districts were formalized nation wide with their inclusion in the 1966 National Historic Preservation Act.

The second important trend, also similar to that of Great Britain, is the incorporation of conservation policies into conventional planning legislation. This was accomplished much more quickly in the U.S. than in Great Britain with the creation

of the Charleston, South Carolina Ordinance and those which followed. These ordinances established a precedent for heritage conservation as a planning purpose in the United States.

Later examples of integration include provisions of the Department of Transportation Act which required preservation of man made and natural sites along highways, Demonstration Cities Act which encouraged HUD to adopt a policy of preservation rather than demolition and replacement and the National Environmental Protection Act which required environmental impact studies.

Finally, there is a clear trend in the United States toward the devolution of authority for conservation to local government. This is evidenced by the enabling of local government ordinances, by the National Historic Preservation Act provisions which encourage local government programs and initiatives and the vital role of local authorities in the national register.

1.2 Canadian Legislative Context

This section focuses on the history of Canadian conservation legislation in an effort to trace the development of Canadian conservation policy and legislation. It illustrates that because of the legislative powers of the Federal Government of Canada the bulk of the responsibility for heritage conservation falls to the Provincial governments and that the federal role is

therefore limited.

Federal

The British North America Act of 1867, subsequently renamed the Constitution Act, significantly limits the extent to which the Federal government in Canada may become involved in heritage conservation. Under these Acts, responsibility for property matters and local government is allocated to the provinces. The relatively minor role the Federal Government plays in heritage conservation in Canada is in marked contrast to both of the previously discussed examples of Britain and the United States which demonstrate strong senior government involvement in heritage conservation. Indeed both countries have passed numerous national statutes governing heritage conservation practices.

Canada on the other hand, with limited Federal Government powers, has only minor federal statutes concerning heritage conservation. These include the Historic Sites and Monuments Act, Indian Act, National Parks Act and Cultural Property Import and Export Act (Ward, 1988, p.65). Government sponsored heritage conservation efforts on a national scale are therefore limited in large part to incentives and persuasive initiatives. Specifically, the role of the Federal Government is limited to: management of property over which it has control, research and finance (Denhez, 1978, p.12). Figure III outlines the development of conservation legislation in Canada.

FIGURE III

THE DEVELOPMENT OF CONSERVATION LEGISLATION IN CANADA

Sources Used: Denhez (1978), Lazear (1981), Orr (1986) &
Ward (1988)

- | | |
|------|---|
| 1885 | Order in Council to establish the Banff Hot Springs reserve |
| 1887 | <u>Rocky Mountains Park Act</u>
* Created to establish what is now called Banff national Park and referred to the "preservation" of the Park. |
| 1919 | Historic Sites and Monuments Board established to advise the Minister on the national historic significance of persons, places or events. |
| 1930 | <u>National Parks Act</u>
* Prohibited 'industrial exploitation' in national parks. |
| 1953 | <u>Historic Sites and Monuments Act</u>
* Enabled the Federal Government to commemorate, care for and acquire historic sites and to establish museums. |
| 1970 | Canadian Inventory of Historic Buildings (CIHB) initiated |
| 1973 | Heritage Canada Foundation established |

The first significant Canadian national policy which concerned heritage conservation was the establishment of the Historic Sites and Monuments Board in 1919 which was created "for the purpose of advising the Minister on the national historic significance of persons, places or events" (Lazear, 1981, p.6). As is the case in Great Britain and the United States, this policy was created in order to recognize individual historic sites and monuments.

Integrally related to this early policy was the creation of national parks in Canada. In 1883 William Van Horne, inspired by the beauty of Lake Louise, initiated the idea of a 'Nation's Park' for Canada (Pearce, 1962, p.54). On November 25 1885, by Order in Council, the Banff Hot Springs Reserve was approved thus creating the world's third national park preceded only by Yellowstone Park in the United States and Royal National Park in Australia (Marty, 1984, p.41). The Order in Council referred only to the reserve's "sanitary advantage to the public" and it was not until later that the notion of preservation entered into the picture (Marty, 1984, p.40).

On June 23, 1887 the Rocky Mountain Park Act was passed to formally protect both the Banff Hot Springs and the area surrounding the springs (Pearce, 1962, p.12). The Act stated that the park was to be a "A public park and a pleasure ground for the benefit, advantage and enjoyment of the people of

Canada" (Luxton, 1975, p.57). The Act also included Clause 4(a) which provided for the "care, preservation and management of the park" (Marty, 1984, p.64). Though the legislators of the time had modelled the Act on the American Act which dedicated Yellowstone National Park, the Canadian legislators "tried to frame an act that would make the reserve a commercial success, but save it from the abuses of the ignorant and the avaricious...one very important word was used in connection with the Minister's powers in 1887: the word preservation" (Marty, 1984, p.64).

Four decades later in 1930 the National Parks Act was passed. This Act was significant in that it removed 'industrial exploitation' from the National Parks (Marty, 1984, p.99). The wording of the Act illustrates a policy shift, "National Parks are dedicated to the Canadian people for their benefit, education and enjoyment, but they must be left unimpaired for the pleasure of future generations" (Luxton, 1974, p.84).

Under the direction of the first Commissioner of Dominion Parks, J.B. Harkin, the first historic parks were established in Canada: Fort Howe in New Brunswick in 1914 and Fort Anne in Nova Scotia in 1917. J.B. Harkin "was one man who strove to do something concrete to keep the past alive in the national consciousness. He felt that conservation of historic sites and structures, and the commemoration of historic events significant

to the whole nation, could be best carried out by the National Parks Branch. The Act of 1930 provided for historic parks to be establish and managed by the National Parks Branch (Marty, 1984, p.146).

The Historic Sites and Monuments Act, passed in 1953, specifically addressed the issue of establishment and management of Canadian historic sites and monuments. This Act enabled the Federal Government to commemorate historic sites, to make agreements regarding the care of historic sites, to establish historic museums and to acquire historic sites. Under this Act the federal government is able to name national historic sites, however it cannot protect these properties and such designations have no legal effect (Murtagh, 1988, p.3). This statute has received only minor revisions over the last thirty-five years.

In 1970 the support services provided to the Historic Sites and Monuments Board by the Ministry of the Environment undertook to create the Canadian Inventory of Historic Buildings. The Inventory surveyed buildings across the country and documented the nation's historic buildings (Lazear, 1981,p.6).

In 1973 the Federal Government established the Heritage Canada Foundation as an independent charitable foundation and provided the Foundation with a \$12 million endowment fund (Heritage Canada, 1973-74, p.2). The Heritage Canada Foundation was

established "for the purpose of holding and preserving buildings, national areas and scenic landscapes that are part of the Canadian heritage" (Falkner, 1977. p.36). The priorities of the Governors of Heritage Canada were outlined in the first edition of the Foundation's well known magazine Heritage Canada: "stronger legislation to protect heritage, acquisition of land, public education, support for local groups, strong membership base and increasing professional and trade skills" (Phillips, 1974, p.3).

Other Federal initiatives include a 1976 agreement to adhere to the Convention Concerning the Protection of the World Cultural and Natural Heritage otherwise known as the UNESCO World Heritage Convention (Denhez, 1978, p.4). This convention outlines general principles for the preservation of historic sites and monuments.

Although Federal Government protective powers for preservation are limited it should be noted that one federal act does have considerable impact on conservation in Canada. The Income Tax Act treats demolished property as "lost" which means that demolition avoids "recapture" of any over-depreciation of the property for tax purposes and secondly, permits total deduction of the book value of the building which is demolished (Ward, 1988, p.7). This Act therefore encourages, or at least provides incentive for the demolition of properties.

As evidenced by the above, the heritage conservation initiatives of the Federal Government in Canada are limited in comparison with those of Great Britain and the United States. In this country, due in large part to the nature of the Constitution Act of 1867, the lion's share of the legislated effort is undertaken at the provincial level.

Provincial

As the Constitution Act allocates the powers related to heritage conservation to the provinces, each province has sought to create its own conservation legislation. In this regard Falkner writes,

"Provisions of the BNA Act permit any province to control by legislation the protection of the objects, lands and buildings that have been a part of that province's history. What is of historic consequence in Quebec may be quite different from that of New Brunswick or British Columbia, for example. It is therefore up to each province to consider its own particular evolution and culture."

(Falkner, 1977, p.38).

Several attempts have been made to survey the contemporary provincial conservation legislation in Canada including Heritage Canada in 1974, Denhez in 1979, Ward in 1986 and a partial survey by Orr in 1986. A survey of provincial legislation is considered to be a "monumental task...(as) provincial acts affecting buildings, or sites with buildings, differ from one province to another. They may also have various titles and fall within the jurisdiction of several different departments" (Falkner, 1977, p.39).

Both Denhez and Orr conclude that conservation legislation varies significantly from province to province and thus the powers under each statute vary significantly. This is particularly true of those regulations which concern the delegation of powers to municipalities (Denhez, 1979, p.30) (Orr, 1986, p. 1).

Ward's study of provincial legislation complies^{es} both provincial and local government legislation from across the country. A summary of his work is included in two tables which form Appendix "A" of this thesis. Several aspects of his work are worthy of note.

First, most provinces are able to provide for district conservation. It is important to note however that only Quebec's legislation addresses the issue of district conservation specifically. Other provinces refer only to sites which may be as large or small as the government chooses to designate. This suggests that in most cases, at least in practice, provincial legislation has evolved beyond the single monument stage. It does remain however, that the legislation has perhaps not evolved to meet the demands of practice.

Second, with reference to the integration of heritage conservation into conventional planning practices Ward comments, "In no province are municipalities obliged, as they are under

the British Civic Amenity Act, to plan for conservation" (Ward, 1988, p.15). This indeed suggests that provincial legislation in Canada has not yet evolved to the point where conservation planning is viewed as a routine aspect of local government planning.

Finally, Ward's work suggests that some delegation of responsibility to local governments has taken place. Much of this delegation however appears to be a consequence of statutes which already exist such as land use controls rather than legislation which is designed to specifically address the issues of heritage conservation (Ward, 1988, p.9).

Given the work of Ward, this thesis does not attempt to survey the various provincial statutes from across Canada in detail. Rather, development of heritage legislation in the Province of British Columbia is detailed in order to provide the context within which to consider the more recent legislative proposals.

1.3 British Columbia Legislative Context

This section traces the development of heritage conservation legislation in British Columbia. In addition to examining the history of the Provincial legislation it also includes an examination of the existing Heritage Conservation Act and provides an overview of the community planning policies included in Toward Heritage Legislation.

Illustration IV outlines the development of conservation legislation in British Columbia and the following discussion provides background information on the major policy changes to the provincial legislation.

The first conservation legislation in British Columbia was passed in 1925. The Historic Objects Preservation Act enabled the Lieutenant Governor in council to "declare any primitive figure or legend cut in or painted upon any rock, or group of such figures or legends, or any structure, or any natural object existing within the Province to be a 'historic object'". As was the case in Great Britain, this early legislation focused on archaeological sites and monuments.

The next generation of conservation legislation was developed and adopted by the Provincial Legislature in 1960. The Archaeological and Historic Sites Protection Act distinguished between sites and objects, a principle which has carried through to the current legislation (Ward, 1988, p.73). This Act provided for the designation of archaeological and historic sites and it identified, and prevented removal of, historic objects but it did not provide for their designation. Other important features of this Act included the repeal of the 1925 Historic Objects Preservation Act but it heldover the designations of the Act.

FIGURE IV

THE DEVELOPMENT OF CONSERVATION LEGISLATION IN BRITISH COLUMBIA

Sources: Historic Objects Preservation Act (1925),
Archaeological and Historic Sites Protection Act (1960),
Archaeological and Historic Sites Protection Act (1972)
Municipal Act (1973)
and Heritage Conservation Act (1977)

1925 Historic Objects Preservation Act

- * First conservation act in British Columbia.
- * Provided for recognition of archaeological objects only.

1960 Archaeological and Historic Sites Protection Act

- * Distinguished between sites and objects.
- * Provided for designation of archaeological and historic sites but not for objects.
- * Introduced the concept of compensation.

1972 Archaeological and Historic Sites Protection Act

- * Broadened the definition of archaeological site.
- * Compensation clause not included in this Act.
- * Designations made under Archaeological and Historic Sites Protection Act carried over under new Act.

1973 Municipal Act

- * Enabled councils to designate buildings, structures or lands.
- * Enabled councils to establish heritage advisory committees.

1977 Heritage Conservation Act

- * Recognized a distinction between provincial and local government powers for heritage conservation.
- * Devolved provincial powers to local governments.
- * Specifically identified "architectural" sites.
- * Provided for the creation of municipal heritage advisory committees.
- * Established the British Columbia Heritage Trust.
- * Provided for discretionary compensation by local governments.
- * Did not repeal designations made under Archaeological and Historic Sites Protection Act (1972).

Perhaps the most significant feature of the 1960 Act was the introduction of the concept of compensation. Prior to 1960 there was no requirement for, or mention of, compensation for loss or injurious affect which resulted from the designation of a historic object. The 1960 Act however, included a clause which provided for determination of compensation by the Supreme Court for any diminishment of value which resulted from an excavation or alteration of an historic site.

The Archaeological and Historic Sites Protection Act was revised in 1972. It is interesting to note that the compensation provision of the 1960 Act was not heldover in the 1972 Act. Although designations made under the earlier Act continued to be valid under the later Act, compensation was not provided for.

Related to the 1972 revisions was a later amendment to the Municipal Act in 1973. The amendments which added Section 714(a) to the Act enabled councils to designate "buildings, structures or lands" for heritage conservation purposes. It also provided for the establishment of municipal heritage advisory committees.

By comparison with Great Britain and the United States, British Columbia was late in adopting legislation which recognized the value and provided for the protection of historic buildings on architectural grounds. It was not until 1977 that the

Provincial Government passed the Heritage Conservation Act which for the first time in British Columbia's history specifically allowed for the designation of heritage sites which included sites of "historic, architectural, archaeological, palaeontological or scenic significance". The second significant feature of the Heritage Conservation Act is that it distinguished the powers of the Provincial Government from those of Municipal Governments.

A number of trends are apparent in this chronicle of British Columbia's conservation legislation. First, as we have seen in the jurisdictions discussed previously, the focus of early legislation is consistently site specific. That is to say that the legislation does not provide for the protection of the site and the site context. Secondly, British Columbia has been relatively slow to develop its legislation and by comparison with Great Britain and the United States it has not reached the same level of sophistication in terms of management of the built environment. Specifically, the legislation does not integrate the concept of heritage conservation into the normal planning practices of local governments. Thirdly, the individual acts of 1925, 1960, 1972, 1973 and 1977 illustrate a gradual devolution of responsibility for heritage conservation from the Province to local government.

One further comment on the substance of the Acts is the changing

position of the Provincial Government with respect to the issue of compensation. Compensation will be discussed in greater detail in a later section of this thesis but let it suffice to say that the Provincial Government has been inconsistent in their policies regarding this issue.

In order to more fully understand the context of the proposed legislative policies it is necessary to examine in detail the 1977 Heritage Conservation Act.

Heritage Conservation Act

The following discussion examines the Heritage Conservation Act of 1977.

"The (Project Pride) Task Force received incontestable evidence that the Heritage Conservation Act requires significant changes to make it an effective aid to heritage conservation."

(Stewardship and Opportunity: Report of the Ministerial Task Force on Heritage Conservation, 1987, p.47)

"The law in British Columbia relating to the identification and protection of our heritage is seriously defective. The deficiencies of the Heritage Conservation Act are particularly disturbing, as many of them had their origins not in deliberate and informed choice but in superficial research or careless drafting. A further cause for concern is the limited availability of municipal and regional planning powers for the purposes of heritage protection. The legal framework of heritage conservation in British Columbia is inadequate for the task."

(Ward, 1988, p.106)

"When the Heritage Conservation Act was passed in 1977, it was considered to be the best heritage legislation in Canada. However, since then the legal, technical and political context of the Act has changed and it has become increasingly apparent that the present legislation does not provide an adequate basis for conservation programs."

(Toward Heritage Legislation, 1990, p.4)

When the Heritage Conservation Act was introduced in 1977 it marked a significant shift in the policy direction of the Provincial Government in that it broadened the definition of "heritage" to specifically include architectural sites, it recognized the role of local governments in conservation planning and it provided incentive programs for local governments and property owners through the creation of the British Columbia Heritage Trust.

As the above three commentaries suggest, the Heritage Conservation Act has been the focus of much criticism in conservation circles. The strengths and weaknesses of the Heritage Conservation Act have been well documented by Orr (1986), the Project Pride Task Force (1987) and Ward (1988). These commentaries focus on both the legal drafting and the policy weaknesses of the statute. In large part the criticisms of the Act focus on the provisions which deal with designation, notification, compensation, protection of designated properties, preventative measures, enforcement, planning powers, the balance of the rights of the public versus private property rights and incentives for conservation.

In 1987 the Project Pride Task Force was established by the Minister responsible for heritage conservation and was given the mandate "To review heritage legislation, policy, and programs in British Columbia, through a process of broad public consultation with a view to providing the Minister of Tourism, Recreation and Culture with the guidelines for an approach to taking care of our past for generations to come" (Project Pride Task Force, 1987, p.5).

The report of the Task Force includes over 40 recommended changes to the Heritage Conservation Act. The recommendations of the Task Force are included in Appendix "B". The recommendations focus largely on the areas of weakness noted above and they include a wide range of proposed amendments. These recommendations formed the basis for the development of the policies contained in the White Paper Toward Heritage Legislation.

Toward Heritage Legislation

The Provincial White Paper, Toward Heritage Legislation, was released in January 1990 as a policy document and was intended to form the policy basis for drafting new conservation legislation for the Province. The policy proposals included in the White Paper were based on four key principles:

- (1) Heritage conservation law must achieve a fair and effective balance between the rights of the private property owner and the objectives of the community.

(2) Community heritage planning must be better integrated into normal local government planning processes, so that last-minute crisis response management is less necessary and less prevalent.

(3) There need to be more incentives and special provisions to encourage and facilitate heritage stewardship.

(4) There must be realistic penalties for those who lawfully damage or destroy protected heritage resources.

(Toward Heritagee Legislation, 1990, p.6)

The White Paper includes policy proposals which cover a broad range of topics including archaeological and pre-historic sites, community planning, the built environment, trees, incentives for conservation and transition issues. As this thesis focuses on community planning heritage policy and legislation, the following summary of the White Paper policies includes only those policies which primarily concern the built environment and community planning practices. Although it is recognized that archaeological and pre-historic sites are relevant to community planning because of the distinctions made in the legislation regarding the powers of local government, this discussion will be confined to those policies over which local government will have direct control.

The following is a brief summary of the local government community heritage planning policies proposed in Toward Heritage Legislation:

COMMUNITY PLANNING FRAMEWORK

Perhaps the most significant aspect of the White Paper is the proposal to incorporate heritage planning into the routine planning practices of municipalities and regional districts. To this end, the White Paper proposes to move policies and regulations relevant to community heritage planning from the Heritage Conservation Act to the Municipal Act. In this way, it is hoped that heritage planning will become a part of community planning practices in general.

In addition to this significant structural change in the legislation, several specific requirements will be added to the provisions of the Municipal Act. These include:

Official Community Plan Policies

The White Paper proposes that municipalities and regional districts incorporate policies which address the issues of conservation of community heritage resources into their Official Community Plans. It is proposed that these policies will provide the basis for all other community heritage initiatives. It is also proposed that communities not be able to undertake other initiatives if community heritage policies are not included in their OCP.

The most important aspect of this initiative is the proposal which will require inclusion in the OCP of standards for identification and assessment of community heritage resources. The White Paper is not specific about the level of detail required for these policies.

Heritage Inventory

The White Paper proposes that following the adoption of OCP policies the municipality or regional district may undertake an inventory of the community's heritage resources. The inventory is to be based upon the assessment standards set out in the OCP.

Heritage Registry

Following the completion of an inventory, a council or regional board may by bylaw create a Heritage Registry. This registry is to include those properties that the council or board deems to meet the selection standards set out in the OCP.

HERITAGE IMPACT ASSESSMENT

The White Paper proposes that a council or regional board may request a developer to undertake a heritage impact assessment study in cases where in the council or boards view the developers proposal may adversely affect a registered heritage property. The White Paper does not specify the requirements of impact assessment studies.

TEMPORARY PROTECTION

The White Paper provides councils and regional boards with the ability to temporarily protect properties for a period of two months by resolution. The purpose of this period would be to allow the council or board to study conservation alternatives. An additional protection period of two months may be allowed if a designation or heritage zoning bylaw is introduced.

A one-time nine month heritage control period may also be enacted by a council or regional board to allow for a major community planning effort.

HERITAGE ZONING

The heritage zoning proposals of the White Paper recommend consolidation of all land use controls related to heritage properties into heritage zoning bylaws. It is proposed that the following controls be included into heritage zoning:

- heritage protection similar to designation
- design control
- use and density reflecting the existing situation
- flexibility similar to Development Variance Permits and Boards of Variance
- maintenance standards

Heritage zoning would only be available to those communities which have adopted OCP heritage policies and a heritage registry. Further, heritage zoning would only be available to properties on a heritage registry. The White Paper also recommends that a green door policy be established for applications that meet the conservation standards set by a municipality or regional district.

HERITAGE DESIGNATION

The White Paper proposes to clarify the issue of compensation for designation by recommending specific provisions for compensating individuals whose property has been designated.

Ambiguity will no longer exist with respect to compensation as monetary compensation will become mandatory for all designated properties which suffer a loss of value resulting from the designation.

MAINTENANCE REQUIREMENTS

The proposed policies will allow local governments to enter into agreements with private property owners to provide grant funds for maintenance of heritage properties where the cost of maintenance can not reasonably be expected to be paid by a property owner. Further, it is proposed that a local government may in cases, where a property owner can not be contacted or who fails to respond, undertake maintenance work to prevent loss or deterioration of a site and to charge the costs to the owner.

REVIEW PROCESS

The White Paper recommends that a review process be established for all individuals affected by heritage zoning, designation, temporary protection, impact assessment order or the general regulations or support programs. The review process would be established through the Office of the Inspector of Municipalities.

PENALTIES

It is proposed that the penalties for infractions of regulations relevant to heritage issues be increased to maximums of \$50,000 and two years imprisonment for an individual and \$1,000,000 and two years imprisonment for a corporation.

SUPPORT PROGRAMS

The following support initiatives are proposed to be initiated or continued by the policies in the White Paper:

- non-financial
 - regulatory flexibility
 - green-door policy
 - fire and building code compliance alternatives
- financial
 - waiving of all application fees
 - authority to provide financial assistance
 - ability to give tax relief
 - B.C. Heritage Trust Programs

COVENANTS AND EASEMENTS

It is proposed that local governments may use covenants and easements for heritage conservation purposes.

EXPROPRIATION

The White Paper proposes that heritage conservation be added to the existing public-use and redevelopment purposes for expropriation.

TRANSITION ISSUES

The White Paper proposes that designations made under the Heritage Conservation Act remain in force for a period of five years after which time they would have to be re-enacted under the new legislation and they would be subject to the regulations of the new legislation.

It is suggested that the above outlined proposals will begin to develop heritage conservation legislation in British Columbia to a level consistent with legislation in Great Britain and the United States. It is apparent from the proposals that the legislation will address more than individual sites, secondly that it will integrate heritage planning into the conventional planning practices of local government and thirdly that it will devolve responsibility for heritage conservation to local government.

Summary

This Chapter has examined the development of conservation legislation in Great Britain, the United States, Canada and in a detailed way, British Columbia. Figure V summarizes the significant legislative developments in all of the jurisdictions discussed.

FIGURE V
SUMMARY OF THE DEVELOPMENT OF CONSERVATION LEGISLATION IN

	Great Britain	United States
1880		(1853) Mount Vernon Association formed
	1882 <u>Ancient Monuments Protection Act</u>	(1872) Yellowstone National Park est.
1890		
1900	1900 <u>Ancient Monuments Protection Act</u>	
	1907 <u>National Trust Act</u>	1906 <u>United States Antiquities Act</u>
1910	1913 <u>Ancient Monuments and Protection Act</u>	1916 <u>National Park System Organic Act</u>
1920		
1930	1931 <u>Ancient Monuments and Protection Act</u>	1931 Charleston Ordinance
	1932 <u>Town and Country Planning Act</u>	1935 <u>Historic Sites Act</u>
	1933 <u>Ancient Monuments and Protection Act</u>	1937 Vieux Carre Ordinance
1940	1937 <u>City of Bath Act</u>	1939 San Antonio Ordinance
	1944 <u>Town and Country Planning Act</u>	
	1947 <u>Town and Country Planning Act</u>	1949 National Trust est.
1950	1953 <u>Ancient Monuments and Protection Act</u>	
	1957 Civic Trust Established	
1960		1966 <u>National Historic Preservation Act</u>
	1967 <u>Civic Amenities Act</u>	1966 <u>Department of Transportation Act</u>
	1968 <u>Town and Country Planning Act</u>	1966 <u>Demonstration Cities Act</u>
1970	1971 <u>Civic Amenities Act</u>	1969 NEPA
	1972 <u>Town and Country Planning Act</u>	1976 <u>Tax reform Act</u>
	1974 <u>Town and Country Amenities Act</u>	
1980		1981 <u>Economic Recovery Tax Act</u>
		1982 <u>Environmental Protection Act</u>

GREAT BRITAIN, THE UNITED STATES, CANADA AND BRITISH COLUMBIA

	Canada	British Columbia
	1885 Banff Springs Reserve	
	1887 <u>Rocky Mountain Park Act</u>	
	1919 Historic Sites and Monuments Board est.	
		1925 <u>Historic Objects Preservation Act</u>
	1930 <u>National Parks Act</u>	
	1953 <u>Historic Sites and Monuments Act</u>	
		1960 <u>Archaeological and Historic Sites Protection Act</u>
	1970 Canadian Inventory of Historic Buildings	
	1973 Heritage Canada est.	1973 <u>Municipal Act (Sec. 714a)</u>
		1977 <u>Heritage Conservation Act</u>

The object of this examination is to suggest that a pattern exists in the development of conservation legislation. Specifically, the pattern illustrates that jurisdictions typically initiate legislation that focuses on specific individual monuments or sites and that it is only after a period of time and experience that more comprehensive legislation is produced. Ultimately, this legislation possesses three characteristics:

- 1) Recognition of individual sites and their contexts and recognition of historic districts.
- 2) Integration of heritage planning into the conventional planning practices of the jurisdiction.
- 3) Devolution of responsibility for heritage conservation to local governments.

This Chapter also suggests that Canadian legislation in general and British Columbian legislation in particular is underdeveloped relative to the legislation of both Great Britain and the United States. It has been illustrated that conservation legislation in British Columbia remains focused on single sites and on designation. Second, that the concept of area conservation and integration of conservation planning into conventional planning practices has been limited. Thirdly, it is illustrated that the Heritage Conservation Act (1977) enabled some responsibility for heritage conservation to be devolved to local governments.

It has been shown that the existing legislation in British Columbia is deficient and that it requires major revision. The

Provincial Government having recognized these deficiencies proposed major policy changes to the legislation which are outlined in this Chapter.

The proposals included in Toward Heritage Legislation are an attempt to create more comprehensive conservation legislation for the Province and it is suggested that given the experience of the other jurisdictions discussed, revised legislation is the logical next step in the development of conservation legislation in British Columbia.

CHAPTER 2 CONSULTATION PROCESS

2.1 Methodology

Given that a need for new heritage legislation has been established and that policies for new legislation have been proposed by the Province, evaluation of the proposals is warranted prior to drafting and enactment of new legislation.

In the preface to Toward Heritage Legislation, the Minister of Municipal Affairs, Recreation and Culture wrote, "Before advancing our final recommendations(for legislation), I would like to continue the dialogue that we began with 'Project Pride' and receive your views on our proposals" (Ministry of Municipal Affairs, Recreation and Culture, 1990, p.i). This thesis and the consultation survey in particular is an effort to provide feedback to the Ministry which is collected and analyzed ⁱⁿ a systematic way.

This Chapter outlines the rationale for the thesis research, details the research design and outlines the interviewee selection process. The data collected in the consultation process is detailed in Appendix "D" and analyzed in Chapter Three.

Rationale

The rationale for this research emphasizes the role of planners in the development and implementation of policy and legislation.

It is suggested that planners, as implementers of legislation, should be involved in the development of legislation because of their intimate knowledge of the implementation process. Although it is recognized that other groups, such as the private sector and politicians, also play a role in the implementation of policy it is suggested that planners possess a unique perspective which is deserving of special attention. It would have been equally valid to have focused upon another sector or if time permitted to have undertaken a comprehensive survey. However, given time and budget limitations this research focuses exclusively on the perspective of local government planners.

Research Design

As a result of the complex nature of the policies proposed in Toward Heritage Legislation it was determined that neither written surveys nor telephone surveys would elicit the detailed responses that were desired. It was concluded that personal interviews of approximately one to two hours each would be necessary to achieve the desired results. A consultation, or survey, format was designed which highlighted all of the major policy areas outlined in Toward Heritage Legislation, individuals were contacted and the consultations were conducted. Finally the results of the consultations were collated.

Interviewee Selection Process

Although heritage conservation planning is becoming more

accepted in British Columbia it remains the province of a small group of professional planners. Analysis and criticism of detailed heritage policies requires experience in implementing existing policies and regulations and some knowledge of the proposed policies. For this reason it was determined that only planners and heritage consultants involved in heritage conservation and specifically heritage planning would be contacted for consultations. The criteria for selection of the consultation candidates was that the individual possess direct experience in the field of local government heritage conservation planning and that preferably they possess some professional local government experience.

The list of interviewees was compiled from a list of professionals who attended an information session on the White Paper which was sponsored by the Union of British Columbia Municipalities on 1990-FEB-21. This initial list was supplemented by the recommendations of representatives of the Heritage Conservation Branch of the Provincial Government.

Virtually all local government planners in British Columbia who have some experience in implementing heritage policies were interviewed. Further, a number of consultants who are involved in the preparation of heritage conservation planning studies were also interviewed. Every effort was made to consult all planners in the Province who met the selection criteria.

The following individuals were interviewed;

Steve Barber, Heritage Planner, City of Victoria
John Bastaja, Planner (responsible for heritage),
Municipality of Maple Ridge
Marta Farevaag, Heritage Planning Consultant
Robert Hobson, Heritage Planning Consultant
Don Luxton, Heritage Consultant
Gary Penway, Planner (responsible for heritage),
City of North Vancouver.
Tamina De Jong, Planner (responsible for heritage),
Coquitlam
Alex Jamieson, Planner (responsible for heritage),
Richmond
Hal Kalman, Preservation Consultant
Robert Lemon, Preservation Consultant
Jaquie Murfitt, Heritage Planner, City of Vancouver
Judy Oberlander, Preservation Consultant
Bill Rapanos, Planner (responsible for heritage),
Burnaby
Debra Sargent, Planner (responsible for heritage),
City of Nanaimo
Valda Vidners, Heritage Consultant

Consultation Design

The consultation format was designed to follow the community planning policies outlined in Toward Heritage Legislation. As implementation was of particular interest each policy question included a request for comment on the implications of implementing the proposed policy. The format was designed with the intention that the consultation process would be as informal as possible and the interviewees were assured that their responses would be kept confidential.

CHAPTER 3 ANALYSIS OF PROPOSED HERITAGE PLANNING POLICIES AND CONSULTATION RESULTS

This chapter summarizes the results of the consultations with heritage planners outlined in Appendix "D" and provides an analysis of the implications of implementing the policies proposed in Toward Heritage Legislation. The chapter is organized by policy and is consistent in format with the organization of the Consultation Format (Appendix "C").

3.1 Background

A number of questions were asked in order to gain a general sense of the level of relevant experience of the interviewees and to determine if conservation planning was a focus of their current work. All of the interviewees confirmed that conservation planning was a part of their current work and all confirmed that they had some experience in local government conservation planning.

3.2 Project Pride Task Force

Because of the direct link between the recommendations of the Project Pride Task Force and the policies proposed in Toward heritage Legislation, the interviewees were asked if they were aware of the Task Force Review and if they had participated in the Review process. Of the fifteen interviewees twelve were familiar with the Review process and ten had participated in in the process.

All of the interviewees indicated that they agreed with the conclusion of the Task Force that the existing heritage legislation in the Province requires revision.

3.3 Heritage Conservation Act

When asked to identify the significant weaknesses of the Heritage Conservation Act the four most common responses were: designation, compensation, lack of integration into routine planning practices and development permit regulations. The four most common strengths identified were: designation, the mere existence of the Act, temporary protection measures and the Act's brevity and simplicity.

Generally the responses to the question regarding legislation in other jurisdictions were weak and no one jurisdiction was regarded as having model legislation.

3.4 Toward Heritage Legislation

All of the interviewees indicated that they were familiar with the White Paper Toward Heritage legislation.

3.5 Municipal Act Heritage Policies

The planners interviewed indicated almost complete consensus in response to the question of whether heritage conservation regulations should be included in the Municipal Act. Only one respondent indicated that heritage regulations should not be

integrated. This overwhelming support was justified by the respondents on the basis that heritage conservation is considered by them to be a legitimate planning purpose and it should therefore be included in the statute which regulates planning in the Province of British Columbia.

The cautionary comments included concerns regarding the possibility of heritage conservation being lost in the midst of other regulations in the Municipal Act and the affect that changes to the Act to accommodate heritage policies, may have on other existing regulations. These comments suggest that heritage conservation should perhaps be identified in the Municipal Act as a separate section of Part 29.

3.6 Official Community Plan Heritage Policies

In response to the general question regarding inclusion of heritage conservation policies in official community plans all of the interviewees supported the concept. The consensus of the respondents may be attributed to current planning practices in the Province. By definition under Section 945 of the Municipal Act, "A community plan is a general statement of broad objectives and policies of the local government respecting the form and character of existing and proposed land use and servicing required in the area covered by the plan". Specifically, the Act refers to the "form and character of existing and proposed land use" which suggests that inclusion

of "broad objectives and policies" for the management of heritage resources would be consistent with current planning practices and with the existing Municipal Act regulations. It is apparent from the responses that planners regard management of heritage resources in a way consistent with the management of other resources in their communities.

The responses included comments regarding the difficulty with which community plans are amended. These concerns relate to the requirement that official community plans, as bylaws, must receive four readings from a municipal council or regional board and must also receive a review at a public hearing. Therefore, any amendments to official community plans require considerable staff time and expense and would normally be undertaken only infrequently. This was the major source of criticism of the concept of including policies in official community plans.

Consistent with the consensus regarding the previous question, when asked about the specifics to be included in the plans the interviewees unanimously supported the proposal to include a general rationale and general heritage planning policies in official community plans. Again these proposals are consistent with current planning practices in the province.

Although there was support for the proposal to include general heritage conservation policies in official community plans, this

support did not always carry over to the questions regarding the inclusion of specific items in official community plans. Only 3 of 14 interviewees supported the concept of including "identification and assessment standards" in official community plans. Although the respondents generally supported the concept of adopting these standards they did not support the idea of including them in official community plans. Of those who did not support the inclusion of the standards, there was general agreement that the amending procedure would become an obstacle. Further, it was suggested that the inclusion of detailed standards in an official community plan would alter the level of specificity of community plans outlined in Section 945 of the Municipal Act and generally accepted in practice throughout the province.

Several interviewees recommended that identification and assessment standards should be referenced in official community plans but that the standards themselves should be in a separate policy document. One other concern which was raised suggested that local governments, with a few exceptions, do not have the expertise to draft identification and assessment standards and that this should be the responsibility of the provincial government.

On the question of inclusion of design guidelines in official community plans there was no consensus. Of the fourteen

respondents seven indicated that design guidelines did not belong in official community plans. Of these seven, four individuals specifically noted that design guidelines should be referenced, but not included, in official community plans. The overwhelming reason for not supporting this concept was similar to the previous question in that the respondents noted that a bylaw and public hearing process would be required to amend the guidelines. One respondent noted that if guidelines were in a document adopted by a resolution of council only a resolution would be required to amend them.

The level of specificity of policies in the official community plan was raised again in response to the question which asked if design guidelines should be included in official community plans. The responses expressed concern that detailed design guidelines would alter the accepted level of specificity in existing official community plans. Of the seven individuals who responded positively to this question it was noted that either general guidelines should be included or that the guidelines should be specific to individual areas.

It should be noted that the Municipal Act currently provides for inclusion of guidelines under Section 945(4)(g) for commercial, industrial or multi-family residential development which are included within development permit areas. However, it is not clear in the Municipal Act if design guidelines may be included

for development permit areas designated under Section 945 (4)(c). This section states that areas may be designated development permit areas for "the protection of Provincial or municipal heritage sites, under the Heritage Conservation Act".

When asked if official community plans should include identification of heritage conservation development permit areas the respondents indicated overwhelming support for the concept with twelve of the thirteen responding positively to the question. Though development permits have been used in British Columbia since 1977, there is some debate over the appropriate use of these for heritage conservation purposes.

Development permits "assume their critical importance ... in the control which they allow municipalities to exercise over unsympathetic development in sensitive areas" (Ward, 1988, p.96). Despite revisions to the Municipal Act in 1985 and 1987 however, problems remain with respect to the use of development permits for heritage conservation purposes. Ward outlines these in his critique of the existing Heritage Conservation Act and the Municipal Act.

"...the inherent limitations of the power to establish development permit areas for heritage purposes must be appreciated. Above all, the power may be used to protect only sites designated as such under the Heritage Conservation Act. At present these number only 369 throughout the province - a considerable number of sites, buildings and structures of heritage significance or interest are not designated under the Act. Moreover, it is highly unlikely that development permit areas are appropriate to protect single

heritage buildings or structures. Finally the attempt at clarification made in 1985 generated a major uncertainty, which still exists as to the permissible geographic extent of development permit areas designated for heritage purposes. Could the legislature have intended that such areas must be confined to the boundaries of the heritage sites which they are designated to protect? If that were the case, the added control over unsympathetic development obtained through the development permit system would be minimal, for the Heritage Conservation Act already provides municipalities with the control both over building on municipally designated land and over demolition and external alteration of municipally designated buildings and structures. But if development permit areas may include property situated outside protected sites, where are the boundaries to be drawn? On this the Act is silent."

(Ward, 1988, p.97)

The deficiencies of the existing development permit regulations outlined by Ward are clearly recognized by the planners who were interviewed. Their consensus on the question of inclusion of development permit areas in official community plans suggests that they see a need to utilize development permit areas for heritage conservation purposes and further, that clarification of the existing regulations is needed.

When asked what other policies should be included in official community plans two suggestions were made. The first recommendation was that public awareness program policies should be included and second that there should be reference made to the community's inventory in the official community plan.

In summary, it is relatively clear that the planners consulted believe that official community plans should remain broad policy

documents for communities. Moreover, their responses indicated that specific policies should be referenced in official community plans but for administrative ease they should not be included in the bylaw document.

3.7 Heritage Inventories

The interviewees were asked to respond to the proposal in the White Paper which recommends that communities undertake "heritage inventories, evaluating properties according to the assessment standards established in their official community plans" (Province of British Columbia, 1990, p.11). Further, they were asked to comment on the proposal that would require completion of an inventory prior to implementing heritage zoning.

The majority of the respondents, ten of fifteen, suggested that heritage inventories should not be the first step in the process and further that inventories in some cases, particularly in large municipalities, should be done on a area by area basis. The concern expressed by several of the respondents suggested that large scale inventories are enormous undertakings and that they diffuse the energies of a community. In this regard it was suggested that inventories and subsequent heritage zoning should be implemented on an area basis rather than a community wide basis.

3.8 Heritage Registries

Of fifteen respondents, thirteen supported the concept of creating heritage registries. In general, support was attributed to the belief that heritage registries will help to raise the awareness of the heritage resources in communities and that they will aid in monitoring the resources. Opposition to the concept was made on the grounds that heritage registries will confuse the public on the difference between designated buildings and listed buildings, that they may not include districts and that the creation of an inventory and registry will stretch the resources of communities.

3.9 Heritage Impact Assessment

The proposal to permit local governments to request heritage impact assessment studies produced mixed reaction from the planners interviewed; with four supporting the concept, four opposing and seven calling for clarification. Of those who supported the concept the comment was made that developers should be required to pay for the study but that it should be supervised by local government officials.

Those interviewed who did not support the use of impact assessment studies did so on various grounds. A number of concerns were expressed on process grounds suggesting that impact assessment studies would complicate the approval process and that they would be time consuming and expensive. Further,

there was concern expressed that impact assessment studies are based on the assumption that the proposed project will proceed and that mitigation of negative impacts are the major concern.

One respondent who indicated some experience with the preparation of environmental impact assessment studies noted that while environmental impacts are measurable, cultural impacts such as those which would be enumerated in a heritage impact assessment are not. Based upon this observation he concluded that impact assessment studies are not an appropriate tool for heritage conservation purposes.

Perhaps the most important response to this question was made by those who indicated that clarification of the concept was needed. In total, nearly 50% of the respondents did not understand the concept as proposed. This observation is substantiated by the responses to the next question which asked what the purpose of heritage impact assessment studies might be. The responses suggested that there was confusion about the purpose of heritage impact assessment studies. Some of the responses suggested that an impact assessment study would be similar to a restoration feasibility study which would examine the costs and feasibility of preservation of a building or site. Others suggested that a feasibility study should address mitigation measures.

The confusion about the nature of heritage impact studies carried through to the third question on the topic which asked the respondents to comment on what should be included in a heritage impact assessment study. The responses covered a number of areas including an assessment of the impact of a project on the contextual area with an examination of things like scale, setbacks, landscaping and density, the economics of conserving a building or site or the architectural or historic significance of a building or site. Clearly there is significant confusion about the concept of heritage impact assessment studies which requires further clarification.

3.10 Temporary Protection Periods

When asked to comment on the proposal to extend temporary protection periods from the current ninety days to one hundred and twenty days, ten of the fifteen interviewees indicated that one hundred and twenty days was adequate. Those who supported the addition of thirty days to the temporary delay period indicated that this would allow more time to respond to crisis situations and also that the definition of a specific period gives the developer certainty that a decision will be made.

Those who opposed the length of the period did so on the basis that it is insufficient time to allow for applications to go through the council and public approval process. They indicated that this is of particular concern in the case of rezoning

applications which a number of the respondents indicated take at least six months to be processed. The White Paper proposal allows a two month temporary delay period in a case where a designation or heritage zoning bylaw is introduced. Clearly, the five planners who responded negatively to this question felt that this would be insufficient time to complete the rezoning process.

3.11 Heritage Zoning

The proposal to create a new planning mechanism referred to as heritage zoning sparked controversy amongst the planners interviewed. As a group they were divided in their opinion on the concept with nine in support and six in opposition. It is important to note that of the nine who supported the concept five indicated that the concept needed further clarification.

In general, those who supported the concept of heritage zoning did so on a conceptual basis and indicated that it would allow councils and planners another tool with which to plan for the conservation of their heritage resources.

Those planners who opposed the concept of heritage zoning did so on three general bases: first on the grounds that what was being proposed differed significantly from conventional zoning, secondly, that heritage zoning bylaws would be difficult if not impossible to draft and thirdly, that the administration of such

zoning would be very difficult.

On the first point several planners commented that zoning in British Columbia is used to regulate use and density. Section 963 of the Municipal Act allows local government to regulate "(i) the use of land buildings and structures, (ii) the density of the use of land, buildings and structures, and (iii) the sit~~ting~~ing, size and dimensions of (A) buildings and structures, and (B) uses that are permitted on the land" (R.S.B.C., 1979, C.290). It is not only convention but law in British Columbia that zoning address only use and density issues and that other issues such as design are dealt with by other means such as development permits.

The Canadian Bar Association, B.C. Branch in their report on the White Paper concurred with the planners who noted that what is being referred to as zoning in the White Paper differs significantly from current planning practices. In the report of the Bar Association it was pointed out that "...heritage zoning is different in nature from what is traditionally seen as zoning. Traditional zoning in British Columbia allows the regulation of land use, density, siting and so on, but specifically prohibits the regulation of design detail. Heritage zoning, on the other hand, is aesthetically based." (Canadian Bar Association, B.C. Branch, 1990, p.2).

On the second point, the planners indicated that by restricting heritage zoning to existing uses and densities and by including the other items proposed, such as regulatory flexibility and design controls, drafting of the actual heritage zoning bylaw, given current practices, would be difficult.

The third general area of concern deals with the difficulties of implementing the new heritage zoning. Four of the individuals interviewed suggested that heritage zoning would be an "administrative nightmare". This was suggested to be the case especially if separate zoning bylaws would have to be developed for each site. Of course, it was indicated that zoning bylaws would be required to go through the conventional public process and that changing or amending heritage zoning bylaws would involve tremendous staff time.

The interviewees were asked to respond to a number of specific questions regarding the proposals to consolidate several of regulatory mechanisms in heritage zoning bylaws. Of fourteen planners, twelve indicated that demolition control belonged in heritage zoning. One respondent suggested that if heritage zoning was intended to replace designation that demolition control had to exist somewhere. Only two individuals suggested that demolition control should not be included in heritage zoning and they did so on the premise that although demolition control should exist, a heritage zoning bylaw was not the place

for it.

In response to the question of whether design controls should be included in heritage zoning, the interviewees were not in agreement. Of fourteen respondents nine supported the concept and five did not. Of those who disagreed with the proposal they did so on the basis that although design control is important it does not belong in a mechanism which has been traditionally used to control use and density. They also suggested that design controls could be referenced in the zoning bylaw but that they should not be included in it. Finally, four of the planners commented that development permits are currently used to effect design control and that they are the appropriate mechanism for this purpose.

Although the planners recognized that use and density regulations are appropriately placed in zoning bylaws and eleven of fourteen respondents supported the idea of new use and density control mechanisms, some strong doubts about the feasibility of this proposal were raised by three of the respondents. Those who did not support this concept suggested that under the current regulations in the Municipal Act use and density regulations may not be varied from site to site. In order to allow for this, separate bylaws would be required for individual properties. Further, it was suggested by one interviewee that restricting the allowable use and density

regulations to what is existing on the site would "discourage property owners from taking initiatives like restoration or redevelopment on the site". This respondent concluded that the rezoning process which would be required to make any changes to use or density would "act as a deterrent" to conservation initiatives.

On the topic of regulatory flexibility the planners were split with seven supporting and seven opposing the proposal. In general, those who supported the proposal did so on the grounds that regulatory flexibility is frequently needed to accommodate conservation projects and that special consideration should be given to heritage properties. Those who did not support the concept indicated that the mechanisms for regulatory flexibility already exist through mechanisms like Boards of Variance and Development Variance Permits. Further, it was commented that if appropriate heritage zoning bylaws are well drafted to begin with there would not be a need for the regulatory flexibility.

The final question regarding the heritage zoning proposals asked the interviewees to comment on the proposal to include maintenance standards in heritage zoning bylaws. Only four of the fourteen respondents supported this proposal. Of the ten who did not support the concept, four specifically commented that maintenance standards do not belong in a zoning bylaw. These same four supported the concept of having maintenance

standards but noted that they should be located elsewhere.

In large part the controversy over heritage zoning appears to focus upon what zoning has traditionally been thought of and what is permitted under the terms of the existing Municipal Act. Zoning has traditionally been used as a use and density regulation and adding other components to zoning bylaws would change its fundamental premises. The planners voiced their support for the tools proposed but were split and in some cases confused about how these tools would be implemented and how they would impact current zoning practices in the Province.

3.12 Green Door Policy

The majority of the respondents supported the concept of allowing local governments to implement a green door policy for heritage conservation projects. Of the fourteen respondents eleven indicated support although three of these expressed specific concern regarding the resources which would be needed to support this initiative. Of the eleven, two indicated that coordination of departments and approvals would alone expedite the approval process. Among those who opposed the proposal it was commented that it was either unnecessary, except perhaps in the large communities in the Province, or that concerns about inequitable treatment would arise.

3.13 Compensation for Designation

Along with heritage zoning the proposals for mandatory compensation for designation were controversial. Of the fifteen planners only two supported the concept, ten opposed the concept and 3 were undecided. The two planners who indicated support for mandatory compensation argued that it would put a price on heritage and that it would result in designation being used only as a crisis management tool. One respondent indicated that mandatory compensation would ultimately lead to better planning. His reasoning was that designation would be avoided due to the high costs and that this would force local governments to place greater emphasis on heritage planning.

Those who did not support the concept of mandatory compensation for designation offered a variety of reasons. Of those planners who did not support the proposal two argued that designation should be viewed as a land use regulation and as such compensation should not be paid. One argued that mandatory compensation would insure that no buildings would be designated in the future.

The arguments for and against compensation are complex and are detailed by Denhez in his article "What Price Heritage". In this discussion of compensation Denhez comments that,

"...in point of fact the overwhelming majority of jurisdictions in Canada and throughout the western world have indeed opted against obligatory compensation...it is unlikely that governments which

have seriously studied the question will move toward obligatory compensation. In fact, there is increasing speculation that British Columbia, which is currently one of the only two provinces in Canada with such a scheme, will scrap it in the foreseeable future"

(Denhez, 1981, p.13)

Denhez concludes in his discussion that mandatory compensation presents more problems than solutions and he recommends that alternative incentive plans such as tax relief be considered by local governments (Denhez, 1981, p.13).

The issues raised by the majority of the planners surveyed suggest that mandatory compensation will not aid in planning for heritage conservation and will not encourage the use of designation as a planning tool. In fact, the responses suggest that with the introduction of mandatory compensation, designation will become extinct. Several of the respondents' comments support the arguments of Denhez by suggesting that incentive programs would achieve the goal of conservation better than mandatory compensation.

3.14 Review Process

The opinions of the planners surveyed were divided on the proposal to institute a review process through the Inspector of Municipalities. Of the planners eight agreed that an appeal process should be available although four of these recommended that the appeal should be heard by a qualified agency. Of the seven who did not support the proposal four suggested that the

proposal needed further clarification. In general, the opponents raised concerns about the staff time required to accommodate the review and that the review process should be clearly spelled out.

It is apparent that the planners are concerned not so much with the concept of an appeal process but that the process should be administered by qualified personnel and clearly laid out. They also expressed concerns about the increased resources which would be needed to participate in the review process.

3.15 Penalties

The planners surveyed gave overwhelming support to the proposal to increase penalties for infractions; of the fifteen planners interviewed, thirteen supported the proposal and two remain undecided. In this regard the planners commented that greater enforcement will be necessary to take advantage of the institution of new penalties.

3.16 Support Programs

The responses were divided on the topic of the adequacy of support programs for heritage conservation in the Province. Of the respondents eight indicated that the current or proposed programs are insufficient while six suggested that they are adequate. The comments of those who felt the programs are insufficient are varied. Those comments which were made most

frequently suggested a number of areas which could be addressed:

- four indicated that more technical advice should be available from the Heritage Conservation Branch,
- three suggested that building and fire code compliance alternatives are needed,
- three commented that more education and training is required,
- two indicated that programs other than H.A.R.P. are needed to assist privately owned heritage buildings,
- two commented that responsibility should not be devolved without resources being allocated to implement and administer the new initiatives,
- two suggested that the Heritage Conservation Branch will have to provide support and assistance if the White Paper proposals become legislation and
- two commented that more public awareness programs are needed.

Of those who commented that the programs are sufficient only one comment was made which suggested that the incentives were well covered.

3.17 Covenants and Easements

The majority of the planners, eleven of fifteen, supported the use of covenants and easements for heritage conservation purposes. Generally, the comments regarding support for the use of these were related to being able to use them as an alternative to designation or simply as another mechanism that may be used in appropriate circumstances. Some of the concerns about using them suggested that legal advice will be required and that they will have to be monitored and maintained.

Of those who did not favour the use of covenants and easements, it was generally suggested that other tools including designation are available to achieve the same ends.

In response to the question regarding the proposal to have the British Columbia Heritage Trust become more active in the purchase of heritage covenants and easements, the respondents were divided: six supported the proposal, six opposed it and three were undecided. Those who supported the proposal commented that the technical expertise and the resources of the Trust would be useful in implementing the use of covenants and easements. Of the six who opposed the proposal three expressed concern about the ability of the Trust to undertake the initiative. The planners who indicated that they were uncertain about the proposal included two who felt that this would be an interference by a senior agency.

3.18 Expropriation

There was little disagreement about the proposal to include heritage conservation as a purpose for expropriation. Of the 14 planners who responded eleven supported the proposal. Generally, the comments suggested that expropriation should be used as a last resort and that heritage conservation as a planning purpose is consistent with the other rationales for expropriation. The two planners who opposed the use of expropriation for heritage purposes and the two who were

uncertain suggested that it was too extreme a measure and that it would likely not be used.

3.19 Transition Period

The question regarding the length of the proposed transition period drew interesting results. Not only did the respondents not answer the question as asked but they responded with near consensus on the concept of a transition period in general. Of the fifteen respondents thirteen clearly stated that the concept of a transition period which required redesignation of heritage sites was unacceptable.

Some of the frequently heard comments included: "will lead to dedesignation of existing sites", "insane", "will require a tremendous amount of work" and "new compensation agreement(s) will be required and may duplicate previous agreements". The responses suggested that one of the principal concerns of the planners focused upon the proposal which would implement mandatory compensation for injurious affect caused by designation of a site. It was suggested that not only would the issue of funding for the compensation be a concern but also the staff time required to process redesignation was a concern.

As outlined in Chapter 2 there are precedents for holding over designations of previous conservation acts in the Province when new acts are introduced. In 1972 the new Archaeological and

Historic Sites Protection Act heldover the designations of the previous Archaeological and Historic Sites Protection Act (1960) and in 1977 the Heritage Conservation Act did not repeal the designations made under the Archaeological and Historic Sites Protection Act of 1972. The planners who opposed the repeal of the designations after the proposed five year transition period strongly recommended that this proposal be abandoned.

The two planners who supported the proposal indicated that a process of redesignation would reaffirm the identification of community resources and they did not express concern regarding the potential for payment of mandatory compensation.

3.20 Heritage Planning

As one of the major objectives of the White Paper proposals is to integrate heritage planning into the routine planning practices of local governments, the planners interviewed were asked their opinion regarding whether heritage planning should be integrated. The fifteen respondents indicated unanimous support for this proposal. Though the support for the concept was clear, the planners made several comments expressing concern about the likelihood of this becoming a reality.

When asked for a general comment on whether the policies proposed would result in an "integrated and comprehensive approach to heritage planning" the responses were mixed. Of the

respondents eight agreed and three disagreed. Though this is no doubt in part a result of the general nature of the question, the comments that accompanied the short answers are telling. Four of the planners suggested that implementation of the proposed policies was a concern. Further, two respondents suggested that more support was needed from the Heritage Conservation Branch and two suggested that more trained personnel was needed.

These comments suggest that in general the policy proposals are supported by the heritage planning community but that there is significant concern about how the policies are implemented and where the resources will come from to insure that they are implemented.

CHAPTER 4 CONCLUSIONS

The primary goal of this thesis as described in the introduction is to examine, from a planning perspective, the policies for legislation proposed in Toward Heritage Legislation. More specifically, three objectives are outlined:

i) To illustrate by examining the history of heritage conservation legislation in other jurisdictions that there is a common pattern to the evolution of conservation legislation. Given the examples of other jurisdictions it is argued that the policies outlined in Toward Heritage Legislation are the logical next step in the development of conservation legislation in British Columbia.

ii) To examine the views of professional heritage planners regarding the community planning policies included in Toward Heritage Legislation.

iii) To argue that the policies contained in Toward Heritage Legislation demonstrate both strengths and weaknesses and specifically, to argue that a strong framework for implementation is required if the policies are to be implemented effectively.

Chapter 1 reviewed the development of heritage conservation legislation in Great Britain and the United States and concluded that there exists a pattern in the development of heritage legislation and that the current legislation of these jurisdictions possess at least three significant common characteristics. These characteristics include first, recognition of more than individual sites and monuments. That is to say, that initially conservation legislation may only recognize individual sites and monuments, but over time the legislation is modified to recognize the context of individual sites, groupings of individual sites and conservation districts.

Second, the legislation provides for the incorporation of heritage planning into the day to day planning practices of jurisdictions. Thirdly, the legislation encourages devolution of responsibility for heritage conservation from senior governments to local governments.

One of the significant questions of this thesis is whether the proposals included in Toward Heritage Legislation will produce legislation which will reflect these characteristics. With respect to recognition of more than individual sites, there is evidence to suggest that indeed the policies of Toward Heritage Legislation will promote the recognition of conservation areas and districts. During the last decade, local governments throughout the Province have been taking steps to recognize heritage areas through the informal use of development permits and in a few isolated cases, through the use of designation. Heritage zoning, as proposed in Toward Heritage Legislation, will provide an additional tool to enable local government to protect heritage areas. Clearly, the creation of heritage zoning is a response to the needs of communities to protect not only individual sites but also areas and districts of historic significance.

With respect to the second characteristic, the integration of heritage conservation planning into the day to day planning activities of local governments, there can be no doubt. Toward

Heritage Legislation is clear on this matter as it has as one of its key principles "Community heritage planning must be better integrated into normal local government planning processes so that last-minute crisis response management is less necessary and less prevalent" (Ministry of Municipal Affairs, Recreation and Culture, 1990, p.6). Specifically, the integration of heritage regulations into the Municipal Act signifies a major shift of policy which recognizes the relationship between local government planning in general and heritage planning.

Finally, there is the question of devolution of responsibility for heritage conservation to local government. Local governments in British Columbia have played a key role in heritage conservation for some time and the proposals in Toward Heritage Legislation will enhance this role. Evidence to support this proposition includes the proposal to integrate heritage regulations into the Municipal Act, to provide additional local government planning tools such as heritage zoning and to require inclusion of heritage policies in Official Community Plans.

From the analysis of the development of legislation in other jurisdictions we may conclude with some certainty that the policy proposals of Toward Heritage Legislation will move heritage planning legislation in British Columbia in the direction of other jurisdictions. Also important is the

conclusion that the proposed policies are not radical in nature and that they are in many ways consistent with those currently used in practice in other jurisdictions.

The second and third objectives of this thesis focus upon the detail of the proposed policies with a view to identifying their strengths and weaknesses. In Chapter 3 the views of the 15 heritage planners in British Columbia are detailed and analyzed. These views illustrate that although there is general support for the proposed policies there are a number of areas of significant concern shared by many of the planners. In the majority of cases the concerns of the planners focus on their ability as local government bureaucrats and consulting planners to implement the proposed policies. The major areas of concern outlined by the planners include the following:

- i) The proposal to formalize inclusion of detailed heritage regulations such as identification and assessment standards and design guidelines in Official Community Plans.
- ii) The proposal to require local governments to complete heritage resource inventories prior to initiating other regulatory activities.
- iii) The proposal to enable requests for heritage impact assessment studies. Specifically, the planners expressed concern regarding their general nature and purpose, the study process, training for study personnel and identification of the parties responsible for undertaking the studies.
- iv) The proposal to create a new regulatory mechanism called heritage zoning. The planners questioned the basic concept of heritage zoning and the proposal to include design controls, regulatory flexibility and maintenance standards in zoning.

v) The proposal to require mandatory compensation for loss resulting from heritage designation.

vi) The proposed review process and specifically the nature and responsibility for this process.

vii) The proposal to use easements and covenants for heritage purposes and for the British Columbia Heritage Trust to become involved in the purchase of such agreements.

viii) The proposal to implement a transition period which will require redesignation of all existing designated sites within a five year period.

Three levels of criticism are evident in the comments of the planners. First, in some cases, such as the proposal to include detailed regulations in Official Community Plans, mandatory compensation and the transition period, the planners opposed the proposals and recommended review of the proposed policies. The second level of criticism apparent in the responses is that a number of the proposals require clarification and more detailed explanations. This is true in the cases of the proposals for heritage impact assessment, the review process and the use of covenants and easements. The planners requested that these proposals be detailed more specifically so that it is clear how they will fit into existing local government practices and procedures.

Finally, the planners indicated that support from the Province would be necessary for the implementation of the proposed policies. That is to say, that the planners indicated they were by and large in support of the notion of devolution of

responsibility for heritage conservation to local government but that resources should be forthcoming from the Province to enable local governments to undertake the initiatives required by new legislation.

The responses of the planners suggest that if the proposed policies are successfully translated into legislation there must be a plan for the implementation of the legislation. Specifically, that there should be a framework for the implementation phase. It is suggested that this framework should include clarification of the policies, extensive training for personnel involved in the implementation and that resources for implementation be made available to local governments.

This thesis has focused on several specific questions regarding the development of conservation legislation and on the proposals included in Toward Heritage Legislation. There are however, a number of related issues which arise out of this work. At this juncture it is perhaps valuable to ask the question, 'what does this research mean in the greater context of heritage planning in British Columbia?'

The advancement of the policy proposals outlined in the White Paper suggests that planning for heritage conservation in B.C. is entering a new phase of development; one which for the most part could be viewed as progressive and of benefit to the

citizens of British Columbia. If the concepts of the White Paper are carried through to the legislation phase, heritage planning in B.C. will be dramatically transformed. The most significant change will come about as a result of the integration of heritage planning into the routine planning practices of local governments.

In the past, heritage planning has existed as an isolated function distinct from the provisions for planning outlined in the Municipal Act. The existence of the Heritage Conservation Act has ensured that the relationship between heritage planning and conventional community and land use planning has been extremely limited. Most local governments view heritage planning as something special and outside their normal planning responsibilities. Integration of the policies into the Municipal Act is likely to alter this perception and the reality profoundly.

It is suggested that over time heritage planning will be viewed as a resource management issue similar to many other resource issues managed by planners. With this no doubt will come the recognition that conserving the Province's heritage resources is a legitimate activity of local governments and not just the obsession of small special interest groups. If heritage resources are to be conserved in this province integration of the regulations is essential.

The White Paper placed special emphasis on the notion of balancing public and private property rights. This emphasis will encourage local governments to seriously consider their conservation policies and it will no doubt encourage private property owners to become aware of their responsibilities with respect to their heritage properties.

Both the existence and form of conservation legislation is key to successful implementation of heritage conservation efforts in British Columbia. Although legislation on its own cannot effect conservation, it is a necessary part of the process. Admittedly it must be accompanied by incentives and political will, however, conservation programs require tools for implementation and legislation is often the source of these tools.

Two current examples highlight the difficulties which result from weaknesses in legislation. First, development permits as provided for in the Municipal Act and the Heritage Conservation Act, may not be used effectively in residential areas because of the lack of clarity and specificity in the legal drafting. Development permits could be tremendously useful if they were available for residential areas. Without them the potential for district conservation in residential areas is extremely limited.

A second example comes from Sec. 292 of the Municipal Act. This section prohibits councils from providing financial aid to

private property owners. The result is the inability of local governments to provide incentives to property owners for conservation of their property.

These examples illustrate that legislation may allow or prohibit either regulatory controls or incentives. A framework of legislation is necessary to provide the necessary "tools" for conservation to communities. Without the appropriate tools the potential for conservation is seriously limited.

An additional area of note arising from this research is the education and training of planners in the area of heritage resource management. In the course of conducting the consultations it became apparent that the majority of heritage planners in the Province are self-conscious about their abilities to plan for heritage conservation. The majority of the planners consulted indicated that their training in the heritage field was limited and that they did not consider themselves experts in the field. The reality however, is that they **are** the experts in the province.

Unfortunately in British Columbia and indeed Canada, training for heritage conservation planning is limited and thus the majority of heritage planners learn on the job without the benefit of formal training or mentorship. If new legislation is passed in the Province the weak link in the chain will not be

the lack of heritage conservation legislation but rather the lack of trained personnel to implement the legislation.

By their own admission many of the planners indicated that they did not fully understand the existing tools available to them let alone the new tools proposed in the White Paper. In some cases this is evident in the consultation results where individuals could not respond to questions because they did not understand the existing mechanisms. If new legislation is to be fully exploited by local governments this weakness must be resolved.

It is suggested that at least three areas should be addressed in any training program for local government heritage planners. First, an effort should be made to increase planners' understanding of conservation practices in other jurisdictions. The consultations revealed that few of the planners have a good understanding of how other jurisdictions manage their heritage resources. It was also apparent that even within the Province there is limited interaction among heritage planners and therefore only limited cross fertilization of ideas and practices. In order that planners avoid 'reinventing the wheel' every time they are faced with a new problem, they need to understand the experience of other jurisdictions.

Second, training in the use of existing mechanisms would be of

great benefit to heritage planners. There are some good tools available at the present time, such as development permits and covenants, which are under utilized because of a lack of training in there potential applications. Information and training regarding existing tools would no doubt encourage their use and thus improve the ability of local governments to better conserve their heritage resources.

Finally, it is apparent that training will be necessary if the proposed mechanisms are to be used effectively. If the White Paper proposals are translated into legislation they will no doubt be extensive and comprehensive in form and substance. The implications of such changes will be dramatic and will only be realized if planners across the Province understand how to use the new legislation.

As the consultation results suggested, implementation is the key to the success of new legislation. It is important that the Province address the concerns expressed by the planners and that they also address the concerns expressed above regarding training planners to use the legislation.

In closing, it is promising to see that the Province of British Columbia has proposed such comprehensive legislation and that they undertook such an extensive review process through both the Project Pride Task Force and the White Paper Review. It is

hoped that these efforts will be followed by both revisions to the policy proposals to reflect the concerns of planners and adequate training which will ensure the implementation of the legislation.

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INTERVIEWS

Steve Barber, Heritage Planner, City of Victoria
John Bastaja, Planner (responsible for heritage), Municipality
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Marta Farevaag, Heritage Planning Consultant
Robert Hobson, Heritage Planning Consultant
Gary Penway, Planner (responsible for heritage), City of North
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APPENDIX "A" **SUMMARY OF CANADIAN PROVINCIAL AND LOCAL HERITAGE LEGISLATION** **SOURCE: WARD, 1986**

TABLE 1
 PROVINCIAL AND TERRITORIAL HERITAGE LEGISLATION (July, 1985)

	Recommended by UNESCO	Newfoundland	Prince Edward Island	Nova Scotia	New Brunswick	Quebec	Ontario	Manitoba	Saskatchewan	Alberta	British Columbia	Northwest Territories	Yukon
Are clear criteria given for the definition of Heritage Property?	Not discussed	No	No	No	No	No	No	No	Yes	No	No	No	No
Must notice be given of impending demolition of unregistered Heritage Property?	Not discussed	No	No	No	No	No	No	No	No	No	No	No	No
Is Government under any obligation to attempt to protect unregistered Heritage Property?	Yes	No	No	No	No	No	Archaeo- logical sites only	No	Archaeo- logical sites only	Archaeo- logical sites only	Indian Archaeo- logical sites only	No	No
Can demolition of an unclassified building be delayed pending study?	Yes	No	No	Yes	No	Yes	Yes	Yes ³	Yes	Yes	Yes	Yes	No
Can definitive protection against demolition be given to a building (short of expropriation)?	Yes	Yes	Yes	Yes	Yes	Yes	Archaeo- logical sites only	No Not perm. protection	Yes	Yes	Yes	Yes	Prob- ably
Is radius around monument protected?	Yes	No	No	No	No	Yes	No	No	No	No	No ¹	No	No
Can government decisions on designation be appealed to higher authority by statute?	Yes	No	No	No	No	No	No	No	No	No	No	No	No
Is the definitive preservation of districts specifically foreseen?	Yes	Yes	Yes "Areas"	No	Yes ¹	Yes	No	Yes ¹	Yes	Yes ¹	Yes ¹	Unclear	Prob- ably
Can maintenance of Heritage Property be enforced?	Yes	No	Yes	No	No	Yes	No	Yes At gov't expense	Yes	Yes	No	No	No
Can Heritage Sites be inspected?	Yes	Yes ²	No	No	No	Yes	Yes	Yes ⁴	Yes	Yes	Yes	No	No
Does government have right of first refusal on sale of Heritage Buildings?	Not discussed	No	No	No	No	Yes	No	No	Yes	Yes	No	No	No
Can Heritage Properties be exempted from building codes?	Yes	No	No	No	No	No	No	No	No	Yes	Yes	No	No
Can illegally altered Heritage Buildings be restored at owner's expense?	Yes	Yes	No	Yes	No	Yes	Yes	Gov't subsidized buildings only	Yes	Yes	Yes	No	Yes
What is the maximum penalty for offences?	Not specified	\$1000 plus 3 months	\$1000	\$10000 indiv. plus up to 1 year or both \$100000 corps.	\$100 plus 30 days	\$25000	\$10000 plus 1 year (indiv.) \$50000 for corps.	\$100 ³	\$5000 plus 6 months indiv. \$250000 corps.	\$50000 plus 1 year plus damages	\$2000 plus 6 months	\$200 under Area Devel. Ordin. Max. fine \$500 plus up to 6 months	\$200

¹ The law empowers protection of "sites", which can be as large as a district.

² Provision for Regulations established but not Regulations themselves.

³ Under Planning Act, max. fine of \$1000 for indiv. and \$5000 for corps. plus possibly up to 6 mos. imprisonment.

⁴ During authorized alterations.

Source: Update of Protecting
the Built
Environment (1982)

TABLE 2
MUNICIPAL HERITAGE LEGISLATION (July, 1985)

	Newfoundland		Prince Edward Island		Nova Scotia	New Brunswick	Quebec	Ontario	Manitoba		Saskatchewan	Alberta	British Columbia	Northwest Territories	Yukon
	St. John's	Elsewhere	Charlottetown						Winnipeg	Elsewhere					
Is heritage conservation an obligatory part of municipal planning?	No	No	No	No	No	No	No But may be compelled	No	No	Yes	Yes	No	No	No	No
Is municipality obliged to file environmental impact assessment on demolition of heritage?	No	No	No	No	No	No	No	Probably	No	No	Yes	Yes	No	No	No
Can municipality give permanent protection to buildings?	Yes	Yes	Yes	No	No	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	No
Can municipality give temporary protection to buildings?	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Can municipality regulate															
Bulk and Height	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Design	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes*	Yes**	No	Yes	No ¹	Yes	Yes
Use	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Set-back	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Signs?	Yes	Yes	Unclear	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Can municipality accept or reject applications for construction on heritage sites on a discretionary basis?	Yes	Yes	Probably	No	No	Yes	No	Yes	Yes	Yes	Yes	No	Yes	Probably	No
Can municipality enforce maintenance															
of dwelling interiors	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No ¹	Yes	Yes
of dwelling exteriors	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No ¹	Yes	Yes
of non-residential interiors	Yes	Yes	Unclear	Yes	Yes	Probably	Yes ¹	Yes	No	No	Yes	Yes	No ¹	Yes	Yes
of non-residential exteriors?	No	Yes	Yes	Yes	Yes	Probably	Yes ¹	Yes	No	No	Yes	Yes	No ¹	Yes	Yes
Can municipality compel protection of trees landscaping?	Yes	Yes	Unclear	Unclear	Yes	Yes	Yes ²	Yes	Yes	Yes	Yes	Yes	No ¹	No	No
	No	No	No	No	Yes	Yes	Yes	No ¹	No	No	No	No	No ¹	No	No
Can illegally altered buildings be restored at owner's expense?	Yes	Yes	No	No	Yes	Yes	No	Yes	Yes	Yes	Yes	No	Yes	Yes	No
Usual maximum penalty for offences.	\$100	\$100 - 200	\$90 + 90 days \$1000 for subsequent offences	\$500 + 90 days	\$100	\$100 per day + imprisonment on default of payment	Depends on city	\$10000 for indiv. and \$50000 for corps. under Heritage Act plus 1 year \$1000 Planning and Municipal Acts.	\$1000 + 6 mos. for indiv. \$5000 for corps.	\$1000 + 6 mos. for indiv. \$5000 for corps.	\$1000 + 6 mos.	\$500	\$2000 + 6 mos.	\$500 + additional fine of \$100/day for continuing offences	\$500 + 6 mos.

¹ Except in municipalities regulated by the Cities and Towns Act.

* Non-residential buildings and apt. blocks Source: Update of Protecting the

² Except under development control schemes.

** Unclear

Built Environment (1982)

³ Except in Montreal, Quebec and rural municipalities.

⁴ Except for health, safety or "public nuisance" violations.

APPENDIX "B"
SELECTED RECOMMENDATIONS OF THE PROJECT PRIDE TASK FORCE

RECOMMENDED CHANGES AND NEW PROVISIONS FOR THE HERITAGE CONSERVATION ACT

1.0 CHANGES - GENERAL

- 1.1 Allow for the selective protection of natural heritage in the *Heritage Conservation Act*.
- 1.2 Extend the definition of heritage site by including cultural landscapes and contexts within which heritage resources are found that are important to the value of the resource.
- 1.3 Clarify the term "significance" as used in the current definitions of the *Act*, or delete use of the term.
- 1.4 Ensure that ignorance of any of the provisions of the legislation is not protection to the contravenor.
- 1.5 There are numerous other definitions that could be incorporated into the *Act*, for example;
 - archaeological artifact, archaeological site, conservation, economic value, heritage property, interpretation, land, and minister.
- 1.6 Incorporate into the *Act* a definition for the word "alter" to mean any form of alteration to a heritage site, including to destroy, desecrate, deface, move, excavate, dig.

2.0 CHANGES - BRITISH COLUMBIA HERITAGE TRUST

- 2.1 Insert a provision expanding the objects of the British Columbia Heritage Trust by including the role of interpretation of heritage property in the province.

- 2.2 Insert a provision expanding the powers of the British Columbia Heritage Trust by allowing it to improve, as well as acquire and dispose of property.

- 2.3 Clarify the taxation status of sites owned by the British Columbia Heritage Trust regarding the provision of grants in lieu of taxes.

3.0 CHANGES - MUNICIPAL

- 3.1 Insert a provision defining a municipal heritage object as being a heritage object designated under the *Act* by a municipality and provide the necessary operational clauses allowing for municipal designation of heritage objects.
- 3.2 Delete any provision for compensation being paid to owners of heritage sites and objects designated under the municipal provisions of the legislation.
- 3.3 Clarify the start and finish point in the 90-day total temporary delay of work period.
- 3.4 Expand the scope of municipal heritage advisory committees with regard to areas for their deliberations as referred to them by council.

4.0 CHANGES - PROVINCIAL

- 4.1 Insert a provision defining a Provincial Heritage Object as being a heritage object designated under the *Act* by the Province.
- 4.2 Clarify that the Lieutenant Governor in Council may designate personal property as a Provincial Heritage Object.
- 4.3 Ensure that the Minister may issue a Permit for the excavation or alteration of any protected heritage site, not just designated sites.

- 4.4 Ensure that all pre-contact North American Indian heritage sites are protected from alteration unless authorized by a Permit issued by the Minister.
- 4.5 Increase and stratify penalties for violation of the legislation to levels appropriate to the contraventions. Provide significantly higher penalties for corporate infractions compared to those perpetrated by individuals.
- 4.6 Expand the powers of the Minister by allowing any potential "protected heritage site" to be posted in accordance with the legislation.
- 4.7 Ensure that the provisions for site investigations and surveys are clarified pertaining to:
 - Minister's authority on private land, regarding orders, access, response to natural causes, removal of heritage objects.
 - Extension of authority to ranges of investigation broader than field work.
 - Minister's authority to order mitigation measures in response to site surveys and site investigations.
 - Minister's authority to make an order in the absence of evidence of the existence of a site.
 - Clarify the "owner pays" and "owner preserves" policy.
 - Provide "due process" measures for the protection of the land-owner.
 - Provide right of access for the Minister or delegate to properties having the potential to be designated.
- 4.8 Include a statement clarifying the need for a resource to have heritage significance before it can be designated.

5.0 NEW PROVISIONS - GENERAL

The following provisions are recommended for incorporation into heritage legislation that is assumed to include the

provisions of the *Heritage Conservation Act* as amended in conjunction with Appendix 7.12, Sections 1.0 - 4.8.

- 5.1 Incorporate a mechanism by which notice of all protected heritage resources, whether land, structures or objects, is registered on land titles or other documents, whether land or objects.
- 5.2 Incorporate into the provincial and municipal designation processes and the issuance of Ministerial Orders, provisions for the protection of heritage property owners' rights through avenues of notification and appeal.
- 5.3 Incorporate at the municipal and provincial levels, provisions allowing for the review of heritage designation accompanied with a system of due process.
- 5.4 Clarify the continuity of heritage designations under previous legislation with existing and future legislation.
- 5.5 Incorporate provisions for the protection of designated heritage sites and objects from willful neglect by owners.
- 5.6 Establish a right of access for the Minister or council to protected heritage sites for inspection purposes.
- 5.7 Include a provision for the establishment of a Heritage Arbitration Board to hear appeals of local and provincial government use of heritage authority.

6.0 NEW PROVISIONS - MUNICIPAL

- 6.1 Incorporate a provision allowing regional districts to have the equivalent of municipal powers relating to heritage conservation, including the provision of site and object designation in unincorporated areas.

6.2 Enable municipalities to protect the interiors, exteriors and landscape features of heritage properties.

6.3 Enable municipalities to provide subsidies and other incentives for retention, development and protection of private heritage property.

6.4 Include provisions in heritage legislation and in conjunction with other legislation, that allow municipalities to offer incentives for the conservation of heritage property, for example: direct financial assistance, tax relief, transfer of development rights, mortgage guarantees, relaxation of building, fire and zoning codes and legislation, and others.

7.0 NEW PROVISIONS - PROVINCIAL

7.1 Ensure that the provisions of heritage legislation are binding on the Crown.

7.2 Incorporate a provision making it illegal to be in the possession of artifacts or other materials or remains illegally removed from a protected heritage site.

7.3 Incorporate a provision making it illegal to remove artifacts or other materials or remains that have been legally or illegally removed from a protected heritage site, from the Province, unless expressly permitted to do so by the Minister.

7.4 Clarify the process for the undertaking of site investigations and site surveys; include provisions for post investigation/survey review periods, and apply this to heritage objects and to historic sites.

7.5 Expand the powers of the Minister by allowing the issuance of stop work orders or to suspend, for appropriate periods of time, any approval issued by a council or Minister of the Crown that may have a

deleterious effect on a heritage site or object.

7.6 Incorporate criteria for the payment by landowners of site surveys and investigations.

7.7 Incorporate a mandate for the Heritage Conservation Branch in the legislation by creating the agency and providing objects and powers.

7.8 Include a provision assigning ownership of all pre-contact archaeological artifacts discovered after passage of the new legislation to the Crown in trust.

7.9 Incorporate a form of status in the legislation that serves commemorative or honorary purposes as opposed to designation.

7.10 Enable the erection of commemorative plaques and interpretive signage on or near heritage resources.

7.11 Incorporate regulations into the legislation pertaining to the establishment of provincial heritage management guidelines.

7.12 Incorporate regulations into the legislation pertaining to the establishment of heritage resources impact assessments.

7.13 A category of designation referred to as "Provincial Heritage Trail" should be included in the *Heritage Conservation Act*.



APPENDIX "C"
CONSULTATION FORMAT

Background

- 1) Name:
- 2) Position:
- 3) How long have you been involved in historic preservation?
- 4) What is the focus of your current work?

Project Pride Task Force

- 5) Are you aware of the Project Pride Task Force which investigated heritage conservation issues across the Province in 1987?
- 6) Were you involved in the Task Force review?
- 7) One of the recommendations of the Task Force Report was that the Heritage Conservation Act should be revised. Does the Act require revision?

Heritage Conservation Act

- 8) What are the significant weaknesses of the existing heritage legislation?
ie. designation
 compensation
 development permit area restrictions
 OCP policies
 conservation not defined as a planning purpose
 zoning limitations
 ad hoc approach
 other

9) What do you perceive to be the significant strengths of the Act?

10) Are you aware of other jurisdictions which have legislation which you believe to be superior to the Heritage Conservation Act?

Toward Heritage Conservation

11) Are you familiar with the White Paper Toward Heritage Legislation?

12) Could you comment on the following policy areas proposed in Toward Heritage Legislation? Specifically, could you comment on the implementation implications.

Inclusion of conservation regulations in the Municipal Act

13) Should conservation regulations be included in the Municipal Act?

14) implementation implications?

Official Community Plan Policies

15) Do you agree that local government should include detailed conservation policies in their OCP's?

16) What do you think should be included in the OCP policies?

ie. rationale for heritage conservation
general heritage planning policies
identification and assessment standards
design guidelines
heritage conservation development
permit areas

other

17) implementation implications?

Heritage Inventories

18) Do you support the concept of requiring local governments to conduct heritage inventories before taking other initiatives?

19) implementation implications?

Heritage Registries

20) Will heritage registries as proposed be beneficial?

21) implementation implications?

Heritage Impact Assessment

22) Describe what you see as the purpose of heritage impact assessment?

23) What do you think should be considered in the heritage impact assessment studies?

24) implementation implications?

Temporary Protection

25) Are the temporary protection periods proposed inadequate, adequate or too long?

26) implementation implications?

Heritage Zoning

27) Do you support the concept of heritage zoning?

28) Should the following be included in the proposed zoning provisions?

heritage protection similar to
designation
design control
use and density controls (existing)
flexibility similar to DVP and BOV
maintenance standards

29) implementation implications?

Green Door Policy

30) Is the green door policy for conservation projects needed?

31) implementation implications?

Designation

32) Would mandatory compensation for injurious affect incurred as a result of compensation have a positive or negative affect on heritage conservation?

33) implementation implications?

Review Process

34) Is the proposed review process for property owners affected by heritage zoning, designation, temporary protection, impact assessment, general regulations or support programs needed?

35) implementation implications?

Penalties

36) Are the proposed penalties inadequate, adequate or too high?

37) implementation implications?

Support Programs

38) Are the proposed support programs insufficient, sufficient or too generous?

Non-financial
regulatory flexibility
green door policies
fire and building code compliance
alternatives

Financial
waiving of application fees
authority to provide financial
assistance
ability to provide tax relief
B.C. Heritage Trust Programs

39) implementation implications?

Covenants and Easements

40) Do you support the use of covenants and easements?

41) Should the B.C. Heritage Trust initiate a program to purchase conservation easements?

42) implementation implications?

Expropriation for Conservation

43) Do you support the concept of expropriation for conservation purposes?

44) implementation implications

Transition

45) Is the 5 year transition period inadequate, adequate or too long?

46) implementation implications?

Heritage Planning

47) Do you think that heritage conservation policies should be integrated into the routine planning practices of local governments?

48) Do you think that the policies of Toward Heritage Legislation will provide for an integrated and comprehensive approach to heritage planning?

APPENDIX "D"

CONSULTATION RESULTS

The following appendix outlines the research results and includes an examination of both the short answers given by the interviewees and their comments on individual policies. This section is organized to follow both the Consultation Format (Appendix B) and the order of the policies in Toward Heritage Legislation.

2.2.1 Background

A number of background questions were asked in order to generate a general sense of the experience of the interviewees and to determine if conservation planning was a focus of their current work.

Years of experience in the heritage field?

1-5 years	6
6-10 years	6
10-15 years	3

Focus of current work?

All of the interviewees confirmed that conservation planning was a part of their current work and all confirmed that they had some experience in local government conservation planning.

2.2.2 Project Pride Task Force

Because of the direct link between the recommendations of the Project Pride Task Force and the policies in Toward Heritage Legislation the interviewees were asked if they were aware of the Task Force Review and if they had participated in the review process.

Aware of the review process?

yes - 12

no - 3

Participated in the review process?

yes - 10

no - 5

The interviewees were asked if they agreed with the conclusion of the Task Force review which suggested that the current legislation required revision.

Current conservation legislation requires revision?

agree - 15

disagree - 0

2.2.3 Heritage Conservation Act

The interviewees were asked to comment on the strengths and weaknesses of existing heritage legislation. The following summarizes the comments and where a comment was made by a number of interviewees it is noted in parentheses:

Weaknesses?

designation (10)
compensation (12)
development permit areas (6)
lack of awareness of the HCA (4)
no planning tools (2)
is not integrated into the planning process (5)
limited in scope (3)
no controls for building interiors (4)
limited to designation (2)
no controls for landscape features

Strengths?

the existence of the HCA (3)
the HCA established the B.C. Heritage Trust
the HCA brought numerous functions together
temporary protection measures of the HCA (2)
the HCA does not require compensation
local government powers
designation under HCA (5)
flexibility
open ended process
demonstrates provincial leadership
brevity and simplicity of HCA (2)
limitations of the HCA force planners to be creative

When asked if they knew of other jurisdictions which possessed "model legislation" the following comments were made:

Other jurisdictions with model legislation?

England and Scotland because of the strong planning and Trust roles.
Manitoba and specifically the powers given to Winnipeg.
Ontario (2)
Northwest Territories
Quebec (2)
Ontario because of the integration of conservation and planning powers.
Alberta
Galveston, Texas
Brisbane, Australia
California
Seattle

2.2.4 Toward Heritage Legislation

All interviewees were asked if they were familiar with Toward Heritage Legislation and all responded with the affirmative.

The interviewees were asked to respond to a variety of questions which dealt with specific policies proposed in the White Paper. The following summarizes the responses:

Municipal Act Heritage Policies

Support the concept of including conservation regulations in the Municipal Act?

agree - (14)

comments and implementation implications:

- will broaden both political and planning support for heritage conservation
- will help to integrate heritage planning and will make it more visible
- legitimizes heritage as a planning purpose
- must be careful that conservation does not get lost in the MA
- the HCA should remain to designate individual sites and districts
- more convenient and will relate conservation to land use
- heritage conservation is a planning activity (2)
- inclusion in the MA will ensure a public review process

disagree - (1)

comments and implementation implications:

- crazy but an interesting approach. It may cause more problems than it is worth and it is difficult to determine how changes to the MA will affect other existing regulations. Caution is recommended.

Official Community Plan Heritage Policies

Include heritage conservation policies in Official Community Plans?

agree - (15)

comments and implementation implications:

- will increase the affect of the policies
- if heritage conservation planning is going to be effective it must start with the most basic planning document
- this is a necessity - heritage must be regarded as a part of the resource inventory (2)
- Official Community Plans are where conservation policies belong and it won't exactly commit council but the council can't contradict the policies either - it will give continuity
- this will provide for a long term framework for heritage conservation
- policies should be explicit
- this is the only way to go
- OCP's should be regarded as evolving documents
- any changes to the Official Community Plan will require a public hearing (2)
- what real affect would this action have?
- there must be a logical progression of policy that can be followed by the uninitiated reader
- implementation mechanism is key

disagree - (0)

comments and implementation implications:

The interviewees were asked to comment on what policies should be included in Official Community Plans

Rationale for heritage conservation?

agree - (15)

comments and implementation implications:

- statement of values and policies only

disagree - (0)

comments and implementation implications:

General heritage planning policies?

agree - (15)

comments and implementation implications:

disagree -
comments and implementation implications:

Identification and assessment standards?

agree - (3)

comments and implementation implications:

disagree - (11)

comments and implementation implications:

- standards should form an appendix to the OCP (2)
- these should be a provincial responsibility as local governments lack the technical expertise
- placing these in an OCP will make it difficult to revise them (2)
- different areas in one municipality or regional district will require different standards
- these should be referenced in the OCP (2)
- may be cumbersome
- including detailed policies in the OCP will change the level of specificity of the document and would be better placed in a heritage management plan

Design guidelines?

agree - (7)

comments and implementation implications:

- unlikely to be a political reality
- these should be included for development permit areas
- general design guidelines should be included
- design guidelines should be area specific (2)

disagree - (7)

comments and implementation implications:

- design guidelines should be referenced but should be a separate policy document (4)
- if these were enshrined in the OCP it would require a bylaw to amend them - if they were in a separate policy document it would only require a resolution of council to amend them
- this would make the design guidelines rigid

Identification of heritage conservation development permit areas?

agree - (12)

comments and implementation implications:

- provides another rationale for the use of development permit areas under the MA

disagree - (1)

comments and implementation implications:

- would be better placed in a heritage management plan

Other policies ?

comments and implementation implications:

- public awareness policies
- inventory should be referred to

Heritage Inventories

Support the concept of requiring local governments to conduct inventories prior to undertaking other conservation initiatives?

agree - (5)

comments and implementation implications:

- should know what you have got (4)
- fine but may need an interim step
- the difficulty with using inventories in this way is defining what constitutes an inventory as they could vary from a list to an evaluated inventory

disagree - (10)

comments and implementation implications:

- should not be obligatory - some cases do not require an inventory (4)
- the task must be easily achieved
- may bog down community energy (2)
- bureaucratic
- should be done on an as needed basis
- depends on the community
- too narrow
- inventories are not always the first step - mapping out a heritage program should come first (2)
- inventories are the most valuable research resource a community can have but they are rarely analyzed and they are often done in isolation from anything else
- may be appropriate to tackle a small area first (2)
- inventories are not an end in themselves

Heritage Registries

Support the concept of heritage registries?

agree - (13)

comments and implementation implications:

- will help to monitor alterations and demolitions (3)
- will help to raise awareness of significant buildings (5)
- will help to establish ground rules
- use as a base to assess costs and benefits of initiatives
- will help to know what is left
- will become a public process

disagree - (2)

comments and implementation implications:

- may not include heritage districts and areas
- useful but will require an inventory
- why are they needed? (2)
- will stretch the resources of communities
- may confuse the public on the difference between designated and listed buildings
- the danger with registries is that they often tend to exclude support or contextual buildings

Heritage Impact Assessment

Support concept of Heritage Impact Assessment?

agree - (4)

comments and implementation implications

- should be an independent study paid for by developer but supervised by local government

disagree - (4)

comments and implementation implications

- unrealistic as formulated
- assumes that a project will go ahead and the only decision to be made is mitigation measures (3)
- development permits already deal with mitigation (2)
- protracts the approval process
- creates uncertainty
- biases may exist if developer hires the consultant (3)
- becomes another game that developers play better than government
- design guidelines should provide guidance on mitigation (2)
- should not be one time only
- process must be clear and detailed criteria for study is needed (2)
- time consuming and expensive (2)
- where does it fit into the process
- cumbersome process
- environmental impacts are measurable but cultural impacts are not

maybe - (7)

- needs clarification (7)

Purpose of Heritage Impact Assessments?

- may help people to come to terms with the issues
- to mitigate impact
- makes developers answerable
- allows for input (2)
- should assess community values
- economic analysis (2)
- delay tactic
- draws attention to the issues

What should be considered in heritage impact assessment studies?

- scale
- feeling
- voids and solids
- setbacks
- rhythm
- landscaping
- impact on surrounding land uses (4)
- impact of increased densities
- economic impact (3)
- significance of details both interior and exterior
- costs of conservation and community cost of losing the building
- re-use options
- building condition (3)
- form and character
- mitigation measures
- interpretation
- impact of moving buildings
- historic significance of building (2)
- building integrity
- historic and social value

Temporary Protection

Support longer temporary protection periods?

adequate - (10)

comments and implementation implications:

- currently there is not enough time for information gathering, negotiation and arranging something like a transfer of development rights
- these are useful in eleventh hour situations
- serves a purpose in identifying the value of the resource
- a definite period is good as developers have a reasonable right to get a decision

inadequate - (5)

comments and implementation implications:

- not enough time to get an application through council (4)
- 120 days is insufficient for a rezoning

too long -

comments and implementation implications:

Heritage Zoning

Support the concept of heritage zoning?

agree - (9)

comments and implementation implications:

- should allow both vertical and horizontal zoning
- generally agree but it needs clarification (5)
- will put the ball in councils court
- the more tools planners have the better

disagree - (6)

comments and implementation implications:

- zoning bylaws will be difficult to develop
- heritage zoning is over doing it
- defining permitted uses need clarification as it could restrict uses to less than what is allowed under existing zoning (2)
- other zoning is useful for conservation purposes ie. comprehensive development districts
- not single building oriented (2)
- will heritage zoning do the same things as development permits?
- will be an administrative nightmare (4)
- would prefer an overlay zoning
- will this affect the expectations of conventional zoning
- conventional zoning bylaws as they exist may be used to support conservation planning
- this is proposed as a one step process but how will it be implemented (2)
- although this is called zoning it is not
- the tools already exist to do all the things proposed
- this needs to be thought through
- politically this will be a disaster
- zoning is suppose to control use and density
- zoning bylaws are cumbersome to change

Support inclusion of "heritage protection similar to designation (demolition control) in heritage zoning?

agree - (12)

comments and implementation implications:

- if this is a substitute for designation then it must exist in the zoning
- demolition control should be readily available

disagree - (2)

comments and implementation implications:

- demolition controls should be available but not in a zoning

bylaw - perhaps in the Municipal Act

Support the inclusion of design control in heritage zoning?

agree - (9)

comments and implementation implications:

- these need to be area specific

disagree - (5)

comments and implementation implications:

- development permits already allow this (2)
- design controls should be in development permits (2)
- design should be reference in the zoning bylaw
- must deal with on a site by site basis

Support the inclusion of use and density controls (existing) in heritage zoning?

agree - (11)

comments and implementation implications:

- these should be available for designated buildings

disagree - (3)

comments and implementation implications:

- not as proposed in the white paper
- cannot vary from site to site (2)
- needs further consideration as "existing use and density" regulations may discourage property owners from taking initiatives like restoration or development on site. The rezoning process will act as a deterrent.

Support the inclusion of "flexibility similar to Development Variance permits and Board of Variance" in heritage zoning?

agree - (7)

comments and implementation implications?

- will allow more flexibility
- special consideration should be given to heritage properties

disagree - (7)

comments and implementation implications:

- these do not belong in a zoning bylaw
- putting these in zoning bylaws is redundant
- although this is a good idea appropriate zoning regulations should reduce the need for this

Support the inclusion of maintenance standards in heritage zoning?

agree - (4)

comments and implementation implications:

disagree - (10)

comments and implementation implications:

- interesting concept but should not necessarily be included in a zoning bylaw (2)
- this is a vague and weak concept
- maintenance standards do not belong in a zoning bylaw but should exist elsewhere (2)
- perhaps unsightly premises bylaws could be used to achieve the same end
- these should be in a overlay zone
- the municipality should be able to do repair work and charge property owners through their taxes

Green Door Policy

Support the concept of a Green Door Policy?

agree - (11)

comments and implementation implications:

- where will the resources come to support this (3)
- there may be a problem with inequitable treatment of applications
- anything that will make the application process easier is a good thing but coordination of approvals would really make a difference (2)
- approval process should be clearly outlined

disagree - (4)

comments and implementation implications:

- this may be justified in the large cities in the Province but it is not necessary in smaller cities
- all applications should be treated equally
- this is pie in the sky - all applications should be expedited

Compensation for Designation

Support the concept of mandatory compensation for designation?

agree - (2)

comments and implementation implications:

- will put a price on heritage
- may be necessary to achieve consensus
- if designation is used only as a crisis management tool then compensation is appropriate and it will lead to better planning in order to avoid the crises

disagree - (10)

comments and implementation implications:

- if it is viewed as a land use control there should not be compensation (2)
- compensation should not be mandatory (3)
- other incentives should be offered
- this will ensure that no buildings are designated except for the rare voluntary designation
- although this would clarify the ambiguity of the existing situation ideally there should be no compensation

undecided (3)

- carrots should be used rather than sticks

Review Process

Support the concept of a review process?

agree - (8)

comments and implementation implications:

- some appeal process is needed (2)
- should be done through a qualified agency (4)
- may add to the atmosphere of fairness

disagree - (7)

comments and implementation implications:

- needs clarification (4)
- who would be responsible for the review
- should be separate from the Minister similar to the ALR review
- political and complex
- will generate a lot of staff time (2)
- review process should be binding
- could delay the process
- heritage should not be singled out
- if decisions on zoning are not appealable then why should heritage decisions be
- legislation should be clear about what may be reviewed

Penalties

Are the proposed penalties too high, adequate or too low?

too high -

comments and implementation implications:

adequate - (13)

comments and implementation implications:

- money may not be enough of a deterrent
- the penalties will give the legislation some teeth (2)
- better enforcement is needed

too low -

comments and implementation implications:

unsure - (2)

Support Programs

Are the proposed support programs insufficient, sufficient or too generous?

insufficient - (8)

comments:

- without support from the Federal Government little will change
- missing income tax incentives
- building and fire compliance codes needed (3)
- B.C. Heritage Trust Programs (except HARP) do not help privately owned buildings (2)
- B.C. Heritage Trust programs do not provide money to cover landscaping costs
- responsibility should not be devolved without support money being provided (2)
- more education and training is needed (3)
- the Heritage Conservation Branch will need to provide added support to communities if the White Paper becomes legislation (2)
- while costs have risen, grants from the B.C. Heritage Trust have declined
- programs are not wide ranging enough
- more public awareness programs are needed (2)
- a program for design assistance is needed
- more technical advice could be offered by the Heritage Conservation Branch (4)
- establishment of foundations and societies should be encouraged through appropriate programs
- model bylaws and procedures should be made available
- although the programs are comprehensive the difficulty in the past has been weak delivery to local governments
- planning tools other than financial incentives should be developed
- municipal approval systems favour new development over rehabilitation this should change

sufficient - (6)

comments:

- good job in covering incentives

too generous - (0)

comments:

Covenants and Easements

Support the use of covenants and easements?

agree - (11)

comments and implementation implications:

- these can be used as an alternative to designation (2)
- local governments will need legal advice in order to use these
- if these are used someone will have to monitor and maintain them
- these may be used instead of development permits for design control
- these should be registered on the land title
- could be useful if used like a comprehensive development agreement

disagree - (4)

comments and implementation implications:

- there are better tools currently available
- heritage conservation should be done out of pride not out of a bargain
- designation already looks after this

Support the B.C. Heritage Trust to purchase heritage conservation easements?

agree - (6)

comments and implementation implications:

- this makes sense particularly where technical expertise is required
- the Trust could act as an advocate
- this may be a good transition tool
- if they have the resources to take it on

disagree - (6)

comments and implementation implications:

- will the Trust have the manpower to do the job and to take the responsibility seriously (3)
- local governments are better managers of these (2)

uncertain - (3)

comments and implementation implications:

- perhaps the government should as is the case with flood plain regulations
- this might lead to senior government interference at the same time as they are trying to devolve responsibility (2)
- needs clarification

Expropriation

Support the concept of expropriation for heritage conservation purposes?

agree - (11)

comments and implementation implications

- should be used only with great caution
- as long as it is use consistent with the Expropriation Act
- in some cases this could be a useful tool
- may not be used
- consistent with other expropriation purposes

disagree - (2)

comments and implementation implications:

- you would only get away with using this once
- this suggestion flies in the face of the basic philosophy of expropriation which suggests that it be used for unforeseen circumstances
- could lead to an ad hoc approach

uncertain - (2)

- this is a powerful and draconian tool
- would scare people off
- not opposed but probably would not use it

Transition Period

Is the proposed transition period of five years inadequate, adequate or too long?

inadequate - ()

comments and implementation implications:

adequate - (2)

comments and implementation implications:

- fair and will reaffirm community resources
- adequacy will depend on the individual municipality

too long -

comments and implementation implications:

opposed to requirement to redesignate sites - (13)

comments and implementation implications:

- may lead to de-designation of existing sites (2)
- will diffuse conservation efforts
- requirement to redesignate properties is insane and will rekindle old disputes (3)
- will require a tremendous amount of work (3)
- what will happen to properties which were designated previously and have been bought and sold knowingly, a new compensation agreement will be required and may duplicate previous agreements (3)
- emphasises designation
- redesignating existing sites is like driving forward while looking in the review mirror
- this will result in an administrative nightmare
- does not consider the fairness of redesignating and compensating sites which were designated 20 years ago
- will erode the trust which has developed in communities
- this will lead to real problems and couldn't be worse
- the appeal process should be beefed up and redesignation should be abandoned

2.2.5 Heritage Planning

Should heritage conservation policies be integrated into the routine planning practices of local governments?

agree - (15)

comments and implementation implications:

- if they are not integrated less will be accomplished
- this will help but conservation can not be achieved exclusively through legislation
- heritage conservation would then be based upon community values
- may lead to difficulties in small communities where there is little expertise
- planning schools need to do more training in conservation planning
- objective laudable but not certain if it can be achieved

disagree -

comments and implementation implications:

Will the policies in Toward Heritage Legislation lead to an integrated and comprehensive approach to heritage planning?

Yes - (8)

comments:

- more positive than negative (4)
- they will if they can be implemented (2)
- integration of policies into the Municipal Act will help to achieve this
- it will provide the tools
- relationship of the Municipal Act and the Heritage Conservation Act needs clarification

No - (3)

comments:

- implementation is a big concern (2)
- the support infrastructure is weak and the Heritage Conservation Branch will need to provide support to local governments so they can use the new legislation (2)
- more trained personnel is required (2)
- will need political will, money and leadership
- needs refinement
- heritage will become a dirty word with these policies
- need new assistance programs

Other Comments on the White Paper

- more dialogue is required
- not sure that municipalities will use the heritage zoning
- this could set heritage conservation back
- needs clarification
- many existing tools are overlooked
- available tools should be refined which would provide for a smoother transition
- implementation is the key
- a range of incentives should exist
- historical archaeology at the local government level should be encouraged
- devolution of responsibility is a concern - there should be strong leadership from the Province and they should adopt conservation standards and there should be a strong Provincial conservation act. Provincial powers should exist for local governments to fall back on.
- have not addressed the issue of designation of objects
- more integration of archaeology is needed
- protection of natural sites and views is not addressed in the White Paper (landscape conservation should be addressed)

GLOSSARY

(Excerpted From Oberlander, 1984, p.46)

Architectural Conservation: Refers to the physical intervention in a building to counteract deterioration or to ensure its structural stability. Treatments often used in this process include the cleaning of wallpaper, reattachment of loose plaster, masonry repointing and consolidation of an existing foundation.

Heritage Area: A synonym for a designated historic district or conservation area which denotes a neighbourhood unified by a similar use, architectural style or historical development.

Preservation: A generic term for the broad range of processes associated with the restoration, rehabilitation and adaptive re-use of historic structures. Other activities including the identification, evaluation, interpretation, maintenance and administration of historic resources form an integral part of the movement to retain elements from the past.

Rehabilitation: Is often used interchangeably with renovation to describe the modification of an existing building. This process extends the structure's useful life through alterations and repairs while preserving its important architectural, historical and cultural attributes.

Renovation: Is a generic term used to describe various levels of intervention including remodelling, recycling and rehabilitation. It refers to the improvement of existing buildings or neighbourhoods.

Restoration: The process of returning a building or site to a particular period in time. The degree of intervention and the removal or replacement of parts may be determined by an historical event associated with the building or by aesthetic integrity.

Revitalization: Describes the process of economic, social and cultural redevelopment of an area or street. Often the buildings in these areas are of heritage merit despite their state of neglect prior to revitalization.