

FENCING OFF THE FORESTS

Public access versus private property: Whose wilderness is it? Forestry firms cite liability issues, while conservationists argue access enhances environmental advocacy, writes Randy Shore

If these companies want to make money from logging these lands, they have a social obligation to the people who live here.

It snakes through Vancouver Island's interior, a 700-kilometre wilderness hike stretching from Victoria up to windswept Cape Scott at the Island's northern tip.

Little more than one metre wide in some places, the Spine Trail winds through dense forest, past lakes and over rushing streams.

Volunteers cut new trails through the Island's inland forest to link parks, historic railroad beds and trestles plus trails used by pioneers and First Nations people. Small communities dot the proposed path, so hikers can resupply during a month-long trek that would be almost 10 times longer than the iconic West Coast Trail that hugs the west coast.

"There are many kinds of wilderness experience from pristine watersheds, old growth and second growth to working forests," says Gil Parker, president of the Vancouver Island Trail Association (VISTA). "The north coast section is already built from near Port Hardy to Cape Scott — though some of it runs along beaches and over hills — and it's pretty wild."

Spine Trail is envisioned as a global tourist attraction similar to Spain's famed Camino de Santiago or the Appalachian Trail that stretches up the eastern United States from Georgia to Maine.

But that vision is in peril. The route is blocked in five locations where it must pass through lands owned by a handful of forest companies, according to VISTA.

Such disputes, moreover, are becoming increasingly common across B.C.

FISHING LAKES

Public access to wilderness, hunting areas and fishing lakes has been eroded for decades by private land owners who erect fences and gates to keep the public out, according to a white paper prepared by the Environmental Law Clinic at the University of Victoria.

The Freshwater Fisheries Society of B.C. has stopped stocking 30 lakes with fish — many of them on Crown land — because anglers can no longer get access to them, says society president Ken Sawayma. Jarvis and Weekes lakes near Sooke and Timberland, Crystal and MacKay lakes near Cassidy were used regularly by anglers, until road access was gated.

When locks appeared on access roads to popular fishing lakes on the Douglas Lake Ranch in the late 1980s, it touched off a dispute that smoulders to this day. In the Christian and Peace valleys, private landowners have placed barriers across public access roads that run through private land, according to the B.C. Wildlife Federation.

Island Timberlands charges fees for access to land used by hikers to get to Mount Arrowsmith near Port Alberni, according to the white paper.

About 320 kilometres of the Spine Trail is already passable and another 235 kilometres will be finished in the next two years, with most of the route on Crown land.

“But about 24 per cent of the trail passes through lands that are owned by private commercial interests and those are a challenge,” says Parker. “It’s possible to go around them, but we would prefer to go through.”

One such detour — advocated by landholder TimberWest — would add a 50-kilometre diversion toward the West Coast of the island, says Parker.

“If these companies want to make money from logging these lands, they have a social obligation to the people who live here,” he says.

Forest companies cite liability issues and safety concerns where active logging takes place for their reluctance to grant access to their property. Private landowners often put up with vandalism, illegal dumping and irresponsible use of firearms, according to TimberWest.

“The (Spine) trail proposal to TimberWest included unlimited permission and access to the public without supervision, over unlimited and undeterminable dates, as well as unlimited access for a range of motorized vehicles — all of which represent safety concerns,” says TimberWest spokeswoman Monica Bailey.

But the authors of the white paper argue that forest companies are protected from injury lawsuits by B.C.’s Occupier’s Liability Act, which curbs the ability of citizens to sue landholders if they are hurt on privately owned land.

FORESTS CHARTER

Legal protection for public access to the land goes back to the 13th-century Charter of Forests, a companion document to the Magna Carta that guaranteed the British people the right to enter the forest, even where it was privately owned. The so-called Right to Roam is similarly enshrined in many northern European nations. In Canada, only Nova Scotia protects the right of people to cross uncultivated private land to reach fishing lakes and streams.

Conservationists worry that locking people out of the backcountry will accelerate the decline of conservation and environmental advocacy.

“People who know the wilderness will learn to love the wilderness and those are the people who will act to protect the wilderness,” says Calvin Sandborn, the paper’s supervising author and a law professor at the University of Victoria.

British Columbia’s legislators flirted with the idea of legislated access rights in the early 1960s, but abandoned the plan when forest companies agreed to grant broader access to private land.

It worked — for a while. But B.C.’s “legislative vacuum” has allowed companies to gate hundreds of kilometres of roads that were once accessible to the public over the past 20 years, according to Sandborn.

“The landscape for public access is changing, and not in a good way,” says Jesse Zeman, spokesman for the Wildlife Federation, which launched a campaign last year to press landowners and government to restore public access to the wilderness.

“(Our) members and the public are finding private gates on public roads, and experiencing reduced access to public resources, including fish and wildlife,” says BCWF president George Wilson.

The federation says allowing more people into the backcountry will help protect it from vandals and poachers, but it has had limited success in negotiating access to the backcountry where private companies have restricted it.

Gates and fences aren’t the only hurdles companies can throw up in front of citizens. The white paper cites the experience of Frank Gibbins, a fly fisherman who was asked to secure single-day fire insurance in the amount of \$1 million. The problem? No insurer sells such a product, says Sandborn.

“I’m fairly resigned that my kids will never enjoy the activities that I did as a youth: camping on Echo Lake, fishing Tadjiss Lake, Wild Deer and Pete’s Pond,” says Gibbins.

Green party MLA Andrew Weaver plans to propose legislation to enhance backcountry access in the next session of the provincial legislature as a private member’s bill.

“I heard about this problem from people all over B.C., particularly resident hunters,” says the member for Oak Bay- Gordon Head.

NDP MLA Katrine Conroy has proposed a sustainable wildlife roundtable to bring together landholders, hunters, anglers, conservationists, First Nations and trail proponents to work through the issues.

“But there is no concrete legislation in B.C. that would ensure that people have access to public lands, so that may be something we **have to consider**,” she says.

RANCH WRANGLE

B.C.’s most infamous access case arose when the owner of the sprawling Douglas Lake Ranch locked local anglers out of some of Merritt’s best fishing lakes. More than a century old, the access road to Minnie and Stoney lakes was gated in order to develop a trophyfishing resort for tourists.

Nicola Valley Fish and Game Club member Rick McGowan has been fighting for access to local lakes for the past 10 years, collecting evidence for a case against Douglas Lake Ranch and the provincial government due in B.C. Supreme Court in January.

McGowan used to visit his family’s fishing resort on Paradise Lake almost daily before road access was locked in the late 1980s, ending decades of tradition.

“There are 30 lakes in this area behind locked gates that were accessible in the ’70s,” he says. “We’ve lost three generations of people’s right to fish in public lakes.”

The future of the Spine Trail remains murky and the provincial government has not shown any appetite to intervene, despite a commitment to develop and enhance the province's 30,000-kilometre network of managed trails set out in the government's Trails Strategy for British Columbia.

The strategy document notes that trail systems provide significant health, educational and economic benefits from increased tourism. It also notes the co-operation of private landholders is essential to the growth of the network.

While the ministry of forests, land and natural resource operations has been supportive of the development of the portions of the Spine Trail that are on Crown land, it has not intervened in discussions between landowners and trail proponents, citing the need to balance the rights of citizens against the impact on private landowner rights.

But even without the explicit support of government, there are encouraging signs that forest companies and outdoor enthusiasts may yet find common ground.

TimberWest recently signed an agreement with the Village of Cumberland and a local mountain biking club to allow riders to access and maintain trails on private lands. The Victoria Fish and Game Club manages access to TimberWest lands during hunting season.



The success of these access agreements offers some hope that Spine Trail could soon be open to all.