



## Whistler Recreational Trails Strategy

### RTS Topic: Unsanctioned Trails

This topic covers how we reduce unsanctioned trail building, address existing unsanctioned trails, and harness trail-building energy towards authorized development.

#### Initial Directions

*These 'initial directions' are being considered for implementation as next steps after the development of the RTS. They were developed based on the force field analysis and the background information below in this document, and with input from staff and these RMOW committees: the Trails Planning Working Group, the Whistler Bear Advisory Committee, the Forests and Wildlands Advisory Committee, and the Recreation and Leisure Advisory Committee.*

1. Communicate through a regular education/ media campaign the potential impacts of unsanctioned trail construction on First Nations, environment, private property and long-term trail development planning.
2. Identify in a trails master plan the areas that are suitable for trail construction, and direct trail builders to sanctioned opportunities that immediately engage them.
3. Understand the motivations behind unsanctioned trail building and aim to address them within trail master planning.
4. Coordinate with the Province regarding upcoming changes to provincial authorization process to understand the implications of authorization and ongoing maintenance of unsanctioned trails.
5. Work with the Province to authorize unsanctioned trails that meet provincial standards and municipal guidelines and based on adequate resources to maintain the additional inventory.
6. Investigate reports of unsanctioned trail construction quickly to limit negative impacts.

#### Force Field Analysis

##### Helping Forces

*Helping forces are the positive internal and external factors affecting this topic area, including internal strengths/assets and external opportunities/levers.*

1. Whistler's overall trail network originated from and is still to this day partially comprised of unsanctioned trails which offer value to the network.
2. The high quality of some unsanctioned trail construction has resulted in a trail network that is generally well built and maintained, offering uniqueness and character adding to Whistler's reputation.
3. Trail groups are willing to take on responsibility for many historic unsanctioned trails that are well built, valuable and popular with the public.



4. Whistler has not encountered problems with unsanctioned trail building within BC Parks boundaries compared to other locations in the Sea to Sky corridor.
5. The Whistler Bike Park has likely provided for much of the demand in jumps and technical trail features in a controlled environment, while many of the unsanctioned trails in the valley are more natural in nature and generally do not contain large jumps or manmade features.
6. Unsanctioned trails remain a source of grassroots culture for mountain biking.
7. Unsanctioned trails developed adjacent to neighbourhoods provide access for residents to hike, dog walk, run, or mountain bike without having to travel.
8. Changes being considered by RTSBC for the sanctioning, development and maintenance of current unsanctioned trails could streamline the trail approval process.

### **Hindering Forces**

*Hindering forces are the negative internal and external factors affecting this topic area, including internal weaknesses/gaps and external threats.*

1. Potential impacts on environmental, cultural and historical values, especially as related to First Nations Rights and Title on their unceded traditional territories
2. Prolonged Provincial approval process affects ability of trail groups to provide new trails in a timely manner and can inadvertently lead to unsanctioned trail construction. Trail builders that act independently from clubs and associations often build unauthorized trails in frustration with what they perceive to be the complicated and drawn-out Section 57 trail authorization process
3. Some unsanctioned trails have been built without thought or regard to appropriate trail design and accepted trail standards, lack appropriate or regular maintenance, and can have negative impacts on the environment and present safety issues to users
4. Demand for new trails not necessarily being met by authorized development, contributing to unsanctioned trail construction
5. Enforcement of regulations by land managers (e.g. FLNRORD, RMOW) rarely occurs and as such the threat of trail decommissioning and/or charges and fines have generally not been a deterrent to unsanctioned building
6. Unsanctioned building taking place in areas planned for authorized trail development causing duplication and undesired density
7. Unsanctioned building on Crown land can impact adjacent private property owners and creating conflict
8. Individuals frustrated with unsanctioned building sabotaging trails and potentially creating safety hazards
9. Unsanctioned building on private property or CRA can cause conflicts with the landowners and/or managers and could jeopardize the status of the sanctioned trails and strain relationships with trail groups

### **Unsanctioned Trails – Background Information**

*This background information has informed the Force Field and Initial Directions. It has been reviewed by staff and the four RMOW committees (listed above) and refined based on their input.*

Many trails in the Province are a legacy of individual and unsanctioned efforts. In the absence of a simple, streamlined method for permitting, and given the abundance of Crown land in the Province; trail

users such as hikers, mountain bikers, trials riders and others have built and maintained trails for decades, and this activity continues to be common and happens regularly in the Whistler valley.

If unsanctioned trails are built without thought or regard to appropriate trail design and accepted trail standards, they could have a negative impact on the environmental features of the landscape. Conversely, just because the trail is unsanctioned does not necessarily mean it is built with lack of regard to the environment or other features on the landscape and could even exceed trail standards.

While potential environmental impacts are a significant concern of unsanctioned trail development, another consideration can be potential impacts on cultural and historical interests, especially as related to First Nations Rights and Title on their unceded traditional territories. Additionally, unsanctioned trails or features constructed on private property or in areas where trail associations may have agreements with landowners for authorized trails, can lead to conflicts with the landowners or managers and could jeopardize the status of the sanctioned trails and strain relationships.

The legal implications of building unsanctioned trails within BC are outlined below.

## **Land Manager Policies and Practices**

### **FLNRORD/Crown Land**

Natural resource officers from the Ministry Forests, Lands, Natural Resource Operations and Rural Development patrol Crown land and enforce provincial regulations, often acting on tips from the public. Failure to comply with legislation related to trail construction could result in a penalty of up to \$10,000, a remediation order to return the area to its original condition, and/or a jail term of up to six months.

Natural Resource Officers are authorized to enforce unauthorized trail construction on Crown land under the *Land Act* and the *Forest Range and Practices Act*.

#### ***Land Act***

A Natural Resource Officer can issue a notice of trespass on Crown land as per Part 6 Section 59 of the *Land Act*. In relation to the unauthorized trail building if a person uses Crown land without lawful authority and constructs a trail the person is seen to commit an offense under the *Land Act* As per Section 60 (a). The Natural Resource Officer under the trespass notice of Crown Land can require the person committing the trespass to restore the land to its original condition and collect payment for that restoration.

#### ***Forest Range and Practices Act***

Section 57 of the FRPA details unauthorized trails. It states that a person must not construct a trail without authorization. Section 57 (4) details that if the minister determines under Section 71 (administrative penalties) that a person has constructed a trail without authorization they may have to remove the trail and restore the land to its original condition.

The FRPA enforcement and penalties are more likely written for organizations that already have a Section 57 authorization and have contravened the conditions of their authorization rather than individual trail builders who are building unauthorized trails in the local trail network.

### **BC Parks**

The Whistler trail network had not encountered problems with unauthorized trail building in BC Parks boundaries compared to other locations in the Sea to Sky corridor. The BC Provincial Parks within the study area tend to provide suitable trails for the activities, and the increased presence of rangers, lack of



easy access to the BC Park boundaries and lack of desirable terrain likely limits this as a problem in Whistler.

BC Parks and protected areas are protected under the *Park Act* and *Park, Conservancy and Recreation Regulation*. BC Park rangers protect BC Park spaces and have the right to enforce protection under these acts. As per Section 28 of the *Park Act* any offenses under these legislations are liable to be subject to fines.

## **Private property/Occupiers Liability Act**

### **Trespass Act**

The *Trespass Act* relates to unauthorized trails on private land and titled land (including municipally held land). Under the *Trespass Act* it is an offense if a person enters private property and engages in activity after the person has had notice from an occupier of the premises or an authorized person that the activity is prohibited. The activity, in this case, could be unauthorized trail building. The *Trespass Act* also lists methods of giving notice of a prohibited activity including visible signage at the property entrance.

### **Occupiers Liability Act**

The *Occupiers Liability Act* (OLA) was designed to protect an occupier or land owner by clarifying that there is no duty of care to a person in respect to risks willingly assumed by that person other than a duty not to (a) create a danger with intent to do harm to the person or damage to the person's property, or (b) act with reckless disregard to the safety of the person or the integrity of the person's property.

The OLA was amended in 1998 primarily to give comfort that routing the Trans Canada Trail through private property would not expose landowners to potential lawsuits from trail users. The OLA amendments established a standard so that landowners and land managers have exceptionally limited exposure to liability from trail users. Unsanctioned trails fall into a grey zone of recreation standards; however, it could be understood under the OLA that if a trail user were to be injured on an unsanctioned trail as a recreation user the land owner whether it be private, or public land manager (e.g. municipal or Crown) would not be liable to the trail user. Only if the landowner acted in points (a) and (b) would the landowner be potentially liable to that trail user.

### **Gaps in Policy**

Trail builders that act independently from clubs and associations often build unauthorized trails in frustration with what they perceive to be the complicated Section 57 trail authorization process with RSTBC. These applications often require research into land use designations, environmental impacts and consultation with First Nations which are usually beyond the time and effort required of an independent builder proposing a trail. It is also true that some unsanctioned builders simply do not care about the above listed issues and simply believe that they are not causing harm compared to other land uses, or that their impact is insignificant.

Enforcement against the building of unsanctioned trails, under the above discussed legislation, rarely occurs in the Whistler valley network. Due to the sheer size of the Crown land base, and potential trail building areas, Natural Resource Officers are generally unlikely to observe unsanctioned trail builders being “caught in the act”. Once unauthorized trails have been completed, they usually remain under the radar or are found by word of mouth well after the act has concluded. Decommissioning of unauthorized trails as a form of enforcement rarely occurs within the Whistler trail network

### **Unsanctioned trails in Whistler**

Historically unsanctioned trails in Whistler started as a part of all user groups responding to a lack of trails suitable for their activities or volume of users. This need for new trails has evolved in the Whistler Valley to people building trails to access new areas for trail recreation, in addition to harder and steeper trails that aren't necessarily being provided by land managers or clubs, or the types of trails clubs are unable to



provide. These include the building of more advanced trails with drops and steeper chutes and trail sections to challenge and progress their recreation activity. Additionally unsanctioned skills areas such as pump tracks and dirt jumps have been constructed in several areas across the Municipality on Municipal and private property, in addition to on Crown land. Anecdotally speaking, the existence of the Whistler Bike Park has likely provided for much of the demand in jumps and technical trail features in a controlled environment, while many of the unsanctioned trails in the valley are more natural in nature and generally do not contain large stunts, jumps, or other TTF's that many other jurisdictions without a comprehensive bike park might find.

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