

RECOMMENDATIONS FOR POLICY CHANGE

April 15, 2018

Grant Main
Deputy Minister
Ministry of Transportation and Infrastructure
PO Box 9850, Stn Prov Govt
Victoria, BC, V8W 9T5

Subject: Recommended changes to the Ministry of Transportation and Infrastructure’s road maintenance policy to mitigate damage to bird populations.

ISSUE

This report recommends changes to the BC Ministry of Transportation and Infrastructure’s (“The Ministry”) road maintenance policy. Current Ministry policy permits road brushing/clearing during peak bird nesting seasons. This harms vulnerable bird populations by destroying birds, eggs, and nests. Furthermore, this practice contravenes both Provincial and Federal legislation – the BC *Wildlife Act* prohibits direct harm to birds and eggs¹, and the *Migratory Birds Convention Act* prohibits the disturbance and destruction of the nest and eggs of migratory birds.²

We urge the Minister to consider immediate changes to BC’s road maintenance policy. We recommend strengthening BC’s *Environmental Best Practices for Highway Maintenance Activities* to prohibit or strictly regulate road brushing during nesting season. The recommended changes will align BC with other progressive jurisdictions in Canada and the United States, and will prevent further statutory violations.

¹ [Wildlife Act, RSBC 1996, c 488, s 34](#)

² [Migratory Birds Regulations, CRC, c 1035, s 6 \(a\)](#)

BACKGROUND

Bird populations in North America are in decline. To date, one third of North American bird species requires urgent conservation.³ Road brushing invariably damages populations by destroying habitat and killing birds (“incidental take”). Roadside mowing and brushing has been estimated to destroy over 800,000 eggs, nestlings, and adult birds each year across Canada.⁴ Brushing during nesting season not only kills offspring, it interrupts the key reproduction cycle. While road maintenance is necessary for safe transportation of vehicles, scheduling maintenance outside of nesting season can be done to mitigate impact on birds.

The new Ministry policy document *Environmental Best Practices for Highway Maintenance Activities* (“the Policy”), published January 2018, addresses the effect of brushing on bird populations. It outlines relevant legislation and *recommends* contractors either 1) schedule maintenance outside nesting seasons, or 2) take measures to ensure birds are not present and nesting before brushing.⁵ The Policy includes information and resources to help contractors determine typical nesting timeframes. For these reasons, the document it is an improvement over former road maintenance policy.

Despite this improvement over past policy, the current Policy does not adequately address the impacts of road maintenance on bird populations. It also does not highlight a key issue – the illegality of incidental take. The policy makes few definitive statements and its permissive wording ultimately allows brushing during nesting season. It also does not require contractors consult with experts to determine whether birds are present before beginning brushing.

Concerned citizens repeatedly report that Ministry contractors conduct roadside brushing during nesting season.⁶ Given the high cost of employing experts, is unlikely contractors consistently consult with experts before brushing. Without expert consultation, contractors cannot effectively determine whether birds are present.⁷ Therefore, it is likely that brushing during nesting season results in the frequent destruction of birds, eggs, and nests. Due to its permissive wording, the new 2018 Policy will not necessarily change this.

³ North American Bird Conservation Initiative, *The State of American Birds* (2016, Environment and Climate Change Canada, Ottawa, Ontario).

⁴ D Abraham, D Pickard & C Wedeles, *Avian Incidental Take due to Roadside Maintenance Operations in Canada* (June 2010), prepared for Environment Canada, unpublished manuscript, at 1, reprinted in Anna M Calvert et al., “A Synthesis of Human-related Avian Mortality in Canada” (2013) 8:2 *Avian Conservation and Ecology*, online: <<http://www.ace-eco.org/vol8/iss2/art11/>> at 20.

⁵ BC [Environmental Best Practices for Highway Maintenance Activities](#)

⁶ See *Appendix A*, pp 12-14. Note: in response to citizens’ concerns regarding bird conservation, the Bulkley/Stikine District no longer conducts roadside brushing until after August 1. See *Appendix C*.

⁷ See *Appendix B*, p 16

The BC *Wildlife Act* prohibits direct harm to birds and eggs.⁸ The *Migratory Birds Convention Act* (“MBCA”) prohibits the disturbance and destruction of the nest and eggs of migratory birds.⁹ The *Species at Risk Act* (“SARA”) prohibits direct harm to birds listed as extirpated, endangered, or threatened.¹⁰

DISCUSSION

Given the above facts, BC’s road brushing policy needs to be strengthened to either:

- 1) prohibit roadside brushing during nesting season, or
- 2) strongly discourage brushing during nesting season and, if brushing during nesting season is unavoidable, require contractors seek expert advice to ensure birds are not present.

BC’s current Policy is deficient because it permits brushing during nesting season, without consultation with experts. This ongoing practice destroys birds, eggs, and nest. This practice violates statutory law, and leaves BC behind other jurisdictions in Canada and the United States. Included below is a discussion and examination of:

1. Relevant BC legislation
2. Model policies from other jurisdictions
3. Deficiencies in BC’s current Policy in comparison with model policies

Legislation

The disturbance and destruction of birds, eggs, and nests is prohibited under multiple statutes. These are, the *Wildlife Act*, the *Migratory Birds Convention Act*, and the *Species at Risk Act*. Each is discussed below.

1. *Wildlife Act*

The *Wildlife Act*, s. 34, prohibits direct harm to birds, eggs, and occupied nests.¹¹

⁸ [Wildlife Act, RSBC 1996, c 488, s 34](#)

⁹ [Migratory Birds Regulations, CRC, c 1035, s 6 \(a\)](#)

¹⁰ [Species at Risk Act, SC 2002, c 29, s 32 \(1\)](#)

¹¹ [Wildlife Act, RSBC 1996, c 488, s 34](#). Note, under this statute, regulatory exemptions to this general prohibition can be granted under the [Wildlife Act Designation and Exemption Regulation, BC Reg 120/2009](#) for purposes such as hunting, trapping, and protection of property.

34 A person commits an offence if the person, except as provided by regulation, posses, takes, injures, molests or destroys

- a) **a bird or its egg**
- b) the nest of an eagle, peregrine falcon, gyrfalcon, osprey, heron or burrowing owl, or
- c) **the nest of a bird** not referred to in paragraph (b) **when the nest is occupied by a bird or its egg.**

Offences under section 34 of the *Wildlife Act* carry substantial penalties:¹²

- Fine of up to \$100,000 and/or up to one year in prison for first conviction
- Fine of up to \$200,000 and/or up to one year in prison for subsequent convictions

2. *Migratory Birds Convention Act*

The *Migratory Birds Convention Act* implements the Migratory Birds Convention, a treaty between Canada and the United States. This Act protects most bird species in Canada.¹³ This Act gives the federal government authority to pass regulations to protect birds included in the Convention.¹⁴

The *Migratory Birds Regulation*, s 6, prohibits disturbance and destruction of migratory bird eggs and nests:¹⁵

6 Subject to subsection 5(9), **no person shall**

a) disturb, destroy or take a nest, egg, nest shelter, eider duck shelter or duck box of a migratory bird, or

b) have in his possession a live migratory bird, or carcass, skin, nest or egg of a migratory bird

except under authority of a permit therefore.

¹² [Wildlife Act, RSBC 1996, c 488, s 84 \(3\)](#)

¹³ [Birds Protected Under the Migratory Birds Convention Act](#)

¹⁴ [Migratory Birds Convention Act, SCC 1994, c 22, s 12](#)

¹⁵ [Migratory Birds Regulations, CRC, c 1035, s 6 \(a\)](#)

Currently, the Regulation does not provide for permits allowing for the incidental take of migratory bird nests.¹⁶

A game officer can arrest a person without a warrant if they reasonably believe that person has committed an offence under this Act.¹⁷ Offences under this Act carry substantial penalties:¹⁸

- Fine of up to \$100,000 for first offence
- Fine of up to \$200,000 for subsequent offences
- Fine of up to \$500,000 for first offence by a corporation
- Fine of up to \$1,000,000 subsequent offences by a corporation

3. *Species at Risk Act*

The *Species at Risk Act*, s 32, prohibits direct harm to birds listed as extirpated, endangered or threatened.¹⁹

32 (1) No person shall kill, harm, harass, capture or take an individual of a wildlife species that is listed as an extirpated species, an endangered species or a threatened species.

The *Species at Risk Act*, s 33, also prohibits direct harm to the *nests* of birds listed as endangered, threatened, or extirpated, in some circumstances.²⁰

33 No person shall damage or destroy the residence of one or more individuals of a wildlife species that is listed as an endangered species or a threatened species, or that is listed as an extirpated species...

Offences under the Act carry substantial penalties:²¹

- Fine of up to \$250,000 and/or imprisonment of up to five years
- Fine of up to \$1,000,000 for a corporation
- Fine of up to \$250,000 for a non-profit corporation

¹⁶ [Migratory Birds Regulation, CRC, c 1035, s 26.2](#) authorizes the Minister to issue permits for the removal, transportation, and release of migratory bird nests and eggs to avoid injury to agricultural interests, public safety, or the use of land. Section 26.1, of the Regulation authorizes the Minister to issue permits for the collection and destruction of migratory bird eggs as necessary to reduce damage or danger to health, safety, agricultural or other interests. However, the Regulation does not allow permits for incidental take of migratory bird eggs. It also does not allow for the destruction of migratory bird nests, except for scientific or educational purposes (s 19).

¹⁷ [Migratory Birds Convention Act, SC 1994, c 22, s 6 \(6\)](#)

¹⁸ [Ibid s 13.01](#)

¹⁹ [Species at Risk Act, SC 2002, c 29, s 32 \(1\)](#)

²⁰ [Ibid s 33](#)

²¹ [Ibid s 97](#)

Model Jurisdictions

Other jurisdictions protect vulnerable bird populations by prohibiting or strictly regulating road brushing during nesting season. Jurisdictions with strong policies include: Alberta, Ontario, Minnesota, Iowa, and Oregon. These jurisdictions are considered below.

1. Alberta

Alberta's general policy on environmental management is set out in the *Environmental Management System Manual (v. 14)*. This document emphasizes legislation around the protection of migratory and endangered birds, highlighting offences and penalties for non-compliance.²²

This document provides a comprehensive account of the *MBCA* and its associated penalties, and it outlines the powers of game officers to issue compliance orders.²³ It also includes a comprehensive explanation of the *SARA* including its purpose, application and associated penalties.²⁴

Specific policy regarding road maintenance is contained in the *Contract Administration Manual 2018*, s 1.5.²⁵ This manual does not appear to be publicly available at this time.²⁶

2. Ontario

Ontario takes a strong approach to mitigating the effects of roadside maintenance on birds. Ontario's comprehensive policy emphasizes the protection of birds and other wildlife. Ontario policy strictly prohibits the destruction of migratory birds, their nests, and their eggs.²⁷ The policy is contained in two companion documents:

1. *The Environmental Protection Requirements for Transportation Planning and Highway Design, Construction, Operation and Maintenance*²⁸
 - Provides clear synthesis of legislative/policy requirements regarding protection of migratory birds

²² [Environmental Management System Manual](#), pp 31-32

²³ [Ibid pp 30-32](#)

²⁴ [Ibid pp 35-37](#)

²⁵ [Ibid p 75](#)

²⁶ The [Alberta Ministry of Transportation website](#) still hosts the 2013 *Contract Administration Manual*, which does not address bird protection. Presumably the 2018 manual will be released soon.

²⁷ Ontario's [Environmental Protection Requirements](#) reference the *MBCA* and strictly prohibit incidental take of migratory birds, as well as the destruction of migratory bird nests and eggs. See page 25.

²⁸ [The Environmental Protection Requirements for Transportation Planning and Highway Design, Construction, Operation and Maintenance](#)

- Strictly prohibits destruction of migratory birds, nests, and eggs
- “Transportation projects and activities **shall** be carried out to prevent the destruction of migratory birds, their eggs or their nests...”

2. *Environmental Guide for Mitigating Road Impacts to Wildlife, 2017*²⁹

- Provides guidance on conducting road maintenance in a manner consistent with *Environmental Protection Requirements* (above)
- **Prohibits** removal and destruction of active nests of migratory birds
- Contractors are to consult with Environment Canada and the Ministry of Natural Resources and Forestry to identify nesting periods.
- Contractors are to schedule maintenance outside of migratory bird nesting periods, unless specific prior measures have been taken to deter nesting.³⁰

3. Minnesota

The Minnesota Department of Natural Resources addresses the protection of birds through state law and its *Roadsides for Wildlife* initiative.³¹ Minnesota roadside mowing law incorporates the protection bird populations in following ways:³²

- Prohibits the mowing of an entire right-of-way until after July 31
- Prohibits mowing of a right-of-way below a height of 12 inches, between August 31 and July 31 of the following year.
- Encourages authorities to utilize low-maintenance, native vegetation that reduces the need to mow and provides wildlife habitat

4. Iowa

Iowa’s Department of Transportation recognizes the damaging effect of roadside mowing during bird nesting season.³³ State law prohibits mowing on interstate, primary and secondary roads until after July 15, subject to certain exceptions.³⁴

²⁹ Policy applicable to mitigating effects on bird populations can be found on page 79 of the [Environmental Guide for Mitigating Road Impacts to Wildlife, 2017](#).

³⁰ Prior measures include placing tarping or netting along the roadside to proactively prevent nesting,

³¹ Minnesota’s [Roadsides for Wildlife](#) initiative highlights the importance of roadside environments for birds and other wildlife. It encourages residents to avoid mowing below a height of 12 inches, and to delay roadside mowing until after August 1st.

³² [Minnesota Statute 160.232 Mowing Ditches Outside Cities](#)

³³ [Iowa Mowing Laws Designed to Protect Roadside Habitats](#)

³⁴ [Administrative Provision for Highways, 314.17](#)

5. Oregon

Oregon's *Highway Directive on the Migratory Bird Treaty Act* is comprehensive and demonstrates a commitment to the protection of migratory birds. Vegetation management is to be conducted outside nesting season unless safety, fire, weed control incident response, or state or local laws dictate otherwise.³⁵

The Directive includes comprehensive direction on migratory bird protection.³⁶ It directs Department of Transportation staff to incorporate bird conservation principles and practices into projects, contracts, and maintenance activities, through collaboration with federal, state, and non-governmental groups.³⁷ It requires consideration of migratory bird protection at all stages of policy implementation, and employees have an ongoing responsibility to ensure conservation principles are followed.³⁸

The Directive assigns specific duties to different Department teams to incorporate migratory bird protection strategies into contracts and projects. For example, it directs Project Team Leaders to work with biologists and regional environmental coordinators to resolve any compliance issues that arise.³⁹

The Department's Natural Resources Unit is directed to continuously revise guidelines and strategies around migratory bird protection, and is directed to provide training and updates on new guidelines and strategies.⁴⁰

BC'S POLICY – ANALYSIS AND COMPARISON

BC's regulation of roadside maintenance falls short in comparison with these model policies. We identify the following deficiencies in BC's current roadside maintenance Policy:

1. The Policy's wording ultimately allows road brushing during nesting season, inevitably resulting in incidental take of birds.⁴¹

³⁵ [Highway Division Directive on the Migratory Bird Treaty Act](#), pp 10-11

³⁶ Migratory bird protection in Oregon is required under the *Migratory Bird Treaty Act* ("MBTA"). This Act is the United States equivalent of Canada's *MBCA*. These companion acts give force to the Canada-US Migratory Bird Convention, 1916.

³⁷ [Highway Division Directive on the Migratory Bird Treaty Act](#), pp 4-5

³⁸ [Ibid pp 2-4](#)

³⁹ [Ibid p 3](#)

⁴⁰ [Ibid p 3](#)

⁴¹ Despite the illegality of incidental take, which inevitable results from road brushing during nesting season, the [Policy](#) is worded permissively, which allows brushing during nesting season as a last resort (p 19).

2. The Policy does not require consultation with experts before allowing brushing during nesting season.⁴²
3. The Policy fails to highlight relevant legislation and the illegality of incidental take.⁴³

These deficiencies likely result in road brushing during nesting season.⁴⁴ This inevitably results in incidental take of birds, eggs, and nests. The Policy therefore allows ongoing statutory violation as well as damage to vulnerable bird populations.

Using the above policies as examples, BC can strengthen its road brushing policy to protect bird populations and prevent further statutory violations. BC could incorporate the following strengths from each jurisdiction listed above:

1. Alberta

BC's Policy could be improved by incorporating a comprehensive analysis of legislation concerning the protection of migratory birds. BC's policy would benefit from a thorough discussion of how legislation protects birds from incidental take, and associated penalties. This would encourage adherence to the statutory requirements.

2. Ontario

BC's policy could be improved by incorporating Ontario's outright ban on the destruction of migratory birds and bird nest. Unlike BC, Ontario's policy uses unequivocal wording to prohibit incidental take.

BC's Policy *suggests* brushing be conducted outside nesting season. It does not definitively state whether incidental take is permitted following the exhaustion of all other options. In contrast, Ontario policy focuses on the result of road maintenance, strictly prohibiting incidental take. With this approach, Ontario leaves no opportunity for statutory violation.

BC's Policy would also benefit from incorporating the requirement that contractors consult with appropriate government departments to determine nesting periods in the

⁴² The [Policy](#), at page 19, merely *suggests* contractors *consider* consulting with an expert before undertaking road brushing during nesting season. Consultation should be required, to provide the most effective protection possible in all cases. See *Appendix B*, at page 16.

⁴³ While the [Policy](#) references applicable legislation generally at page 2, it fails to highlight how this legislation applies to road brushing. For instance, section 4.4 Roadside Maintenance, at pages 17-20, is worded in a way that permits brushing during nesting season as a last resort, which likely results in incidental take of birds and/or migratory birds. However, this section does not mention the fact that incidental take is a statutory offence.

⁴⁴ See *Appendix A*

particular region. BC's current Policy directs users to online resources for determining nesting periods.⁴⁵ This approach is not as effective as consulting with experts.

BC's policy could also be improved by incorporating the requirement that, if brushing during nesting season is unavoidable, contractors take specific measures to proactively prevent nesting.

3. Minnesota & Iowa

These states clearly prohibit roadside mowing before a determined date. BC's Policy could be improved by similarly prohibiting road brushing before a certain date.

Due to BC's diverse geography and climate, bird nesting season varies by region. Expert consultation would be required to determine when nesting season ends in each area, and road brushing could be prohibited before this date.

4. Oregon

Overall, BC's policy would benefit from mirroring Oregon's comprehensive approach to migratory bird conservation. The Oregon Department of Transportation has released a 13-page directive that exclusively addresses migratory bird conservation in the context of highway development and maintenance.⁴⁶

BC's Policy could be improved by mirroring Oregon's emphasis on Ministry accountability. Oregon policy requires Department staff incorporate bird conservation into all elements of the management process. It also states employees have an ongoing responsibility to ensure conservation principles are followed. BC's Policy is stark in comparison. BC's policy merely *recommends* contractors consider bird conservation, and makes no reference to Ministry accountability to ensure conservation is incorporated into projects, contracts, and maintenance processes.

BC's Policy could also be improved by incorporating a mechanism for addressing and resolving compliance issues. BC's policy does not appear to include a mechanism for addressing compliance issues.

⁴⁵ BC [Policy](#) recommends contractors conduct brushing outside of "environmental timing windows". These timing windows are defined in the Policy's glossary as "the period that the natural or human environment is likely less susceptible to adverse impacts" (p 31). The [Policy](#) directs users to ascertain applicable timing windows by using two available resources, the Ministry of Environment & Climate Change Canada Strategy: [Regional Terms & Conditions & Timing Windows](#) and, Environment and Climate Change Canada: [General Nesting Periods of Migratory Birds](#).

⁴⁶ [Highway Division Directive on the Migratory Bird Treaty Act](#)

BC's roadside maintenance regulation scheme could also improve by designating an entity to continuously revise guidelines and strategies around bird conservation. This entity could also provide training and education on policy regarding roadside maintenance and bird conservation.

RECOMMENDATIONS

Given the adverse effect of road brushing on bird populations, and the illegality of incidental take, we urge the Minister consider the following changes to road maintenance regulation in British Columbia:

- 1. Strengthen BC's *Environmental Best Practices for Highway Maintenance Activities* to strictly prohibit roadside brushing during bird nesting periods.⁴⁷**

If recommendation 1 is rejected, we recommend the following changes:

2. Strengthen BC's *Environmental Best Practices for Highway Maintenance* to strongly discourage roadside brushing during bird nesting periods.
3. Strengthen BC's *Environmental Best Practices for Highway Maintenance Activities* to require consultation with experts before brushing during nesting periods.
4. Require road maintenance contractors take specific measures to deter nesting before brushing during nesting periods.⁴⁸
5. Amend BC's *Environmental Best Practices for Highway Maintenance Activities* to highlight the illegality of incidental take.⁴⁹
6. Assign an internal unit to develop, upgrade, and provide education on bird conservation policy.⁵⁰
7. Create an internal procedure for addressing and resolving compliance issues.⁵¹

⁴⁷ Iowa and Minnesota strictly prohibit road brushing during nesting periods. Ontario strictly prohibits incidental take of migratory birds. BC's policy should blend these two approaches to completely prohibit brushing during nesting periods and prohibit incidental take. BC should follow the example of Ontario and Oregon and determine nesting periods through consultation with experts.

⁴⁸ If roadside brushing during nesting periods is unavoidable, Ontario policy dictates tarping/netting be used in advance to deter nesting.

⁴⁹ Alberta, Ontario, and Oregon policies highlight applicable legislation and emphasize the illegality of incidental take resulting from road brushing during nesting periods.

⁵⁰ Oregon's Natural Resources Unit continuously updates and revises guidelines around bird conservation as it relates to roadside maintenance.

⁵¹ Oregon assigns specific Department staff to internally address and resolve compliance issues. We make this recommendation on the premise that the BC Ministry has no such procedure.

APPENDIX A

Roadside Brushing during Breeding Bird Season: Specific past Infringements observed in the Bulkley/Stikine Area⁵² (and neighbouring area).

Prepared for Quinn Macdonald by Rosamund Pojar, March, 2018

1. Glacier Gulch Road, Smithers – Date unknown, but approximately 9-10 years ago, during the spring.

Roadside brushing/clearing of roadsides was done to widen the road and improve sight lines on the gravelled portion of Glacier Gulch Road which provides access to Twin Falls at the base of Hudson's Bay Mountain. This is a popular area with both locals and tourists using it for a short hike to the base of the falls coming off the glacier on Hudson's Bay Mountain.

I contacted the BC Government's Transportation Ministry in Smithers and expressed my concern about this and pointed out that it should not be done during Breeding Bird Season and why. There is no written record of my phone call. I was listened to, but the work continued.

2. Road to Huckleberry Mine, south of Houston - June, 2011

While travelling this road I observed roadside brushing taking place alongside the road. Upon my return to Smithers, I called the local Fish and Wildlife Branch of the BC Ministry of Environment to report this. A Wildlife technician employed by Fish and Wildlife contacted the Ministry of Mines as well as the Mine Manager of the Huckleberry Mine and advised them to stop. The work was being carried out by the mine to clear sight lines for their mine trucks. The work was immediately stopped.

3. Driftwood Creek Road, Smithers - June 2015

Driftwood Creek Road provides access to Babine Mountain Provincial Park. The road was originally an old mining access road and was quite narrow. The area is very popular and people can drive to the public parking area where there is a gate. From there people hike into the backcountry of the Park. Brushing was being carried out along this road during June when hiking friends found the machine working. They report that there were "100's" of birds singing at the time. One of the hikers was working for the Canadian Wildlife Service (still is) and was extremely upset that this was being done during Breeding Bird Season, so they stopped and talked to the machine operator, who was upset to learn this was possibly illegal and admitted to have knowingly destroyed a hummingbird's nest. The hikers also contacted their neighbour who was working for Highways (Ministry of Transportation) and had an informal talk with him about how this was not acceptable. I was advised about this and wrote a letter addressed to the then Operations Manager, Brian Crosby.

4. Viewmount Road and Telkwa High Road, Smithers – June 2016

⁵² See Appendix C, p 17

Many people expressed concern about Highways brushing along Telkwa High Road in June 2016 (I heard by word of mouth). Most of them were upset because of all the Saskatoon berry bushes that were being cut down, but some people also knew that the brushing should not be done as it was in the midst of Breeding Bird Season. This is the same year that I was alerted to the contractors brushing along my own road (Viewmount Road). I called the BC Conservation Officer Service to tell them that this was happening and I wanted it stopped. There was no one in their office, so I called the RCMP and told them that I was going to go out and stand in front of the machine to stop further brushing. I ran out and found the machine operator was actually parking his machine for the day as it was the end of his work day. The Conservation Officers got my message and came out and together the CO's and myself talked to the machine Operator (Billabong) and informed him that this activity was in contravention of the federal Migratory Bird Act. He was unaware of this. He did say that they had been instructed to walk the area before brushing, but it sounded like they did the walk through themselves. I later was told that the Ministry of Transportation had hired a biologist to do the walk through to check for signs of nests. The brushing was stopped and no further brushing was done along my road.

This event is what prompted me to write the original Resolution and letter which I sent November 1, 2016 to the then BC Minister of Transportation (Todd Stone) and copies went to many levels of Government (Federal, Provincial, municipal, Regional District). The same Resolution was modified slightly to meet the format used by BC Nature and was presented and passed at their Annual General Meeting held in Spring, 2017. I am sending you a copy of Todd Stones belated letter which arrived just before the Liberal government was replaced by the NDP

As follow up to the letter, I was invited to a meeting with the current District Manager of BC's Ministry of Transportation and Infrastructure in Smithers (see copy of letter inviting me to meet). The current Operations Manager was also in attendance. We had a comprehensive discussion and I got the sense that they were hearing my concerns, but they presented several arguments against cessation of brushing during Breeding Bird Season including problems with maximising effectiveness of slowing down regeneration of the vegetation.

I have learned that they also had a meeting with the Wildlife Technician that had intervened before (see item #2 above) and she informed me today of their (MOT) concerns regarding contracts.

Additional Incidents that I was not directly involved in

1. Kispiox to Kitwanga Backroad, near Kispiox, BC – in the past 8 years (date not written down)

Fellow birders report that they were doing their annual Breeding Bird Survey along this road when they encountered a machine brushing the roadsides. The Breeding Bird Surveys are set up all over North America and are annually monitored by volunteer birders. They consist of 50 stops spread out at intervals along a stretch of road. At each stop the birders record all birds heard and/or seen during a short time interval. This data is then sent to a central location where it is used for a variety of research purposes e.g. to monitor trends in numbers. This is

very valuable data that has been used to alert the birding world to severe declines in bird populations. Obviously it requires that the volunteers are able to hear the birds without disturbance. On this particular occasion, the birders had to ask the machine operator to please turn off the machine which was brushing right at his monitoring spot, so that he could hear the birds!!! (Ironic, eh?). The machine operator was very upset as she was not aware that this was potentially an illegal activity.

2. McKendrick Pass, Smithers to Babine Lake Road, Roadside Brushing. Done over the course of the past 9 years.

I talked to the current Operations Manager for BC Min. Transportation today, who admitted that most of this work had been done during Breeding Bird Season over the past 9 years BUT NOT in the past year (2107).

APPENDIX B

RESOLUTION CONCERNING ROADSIDE VEGETATION MANAGEMENT IN BRITISH COLUMBIA AND CONTRAVENTION OF THE CANADIAN MIGRATORY BIRDS CONVENTION ACT OF 1994 AND THE BRITISH COLUMBIA WILDLIFE ACT OF 1996

Submitted by Rosamund Pojar and Janine Lemire on behalf of the Bulkley Valley Naturalists, Smithers, BC, and concerned birders in the Bulkley Valley, BC

WHEREAS THE PURPOSE OF THE CANADIAN MIGRATORY BIRD CONVENTION ACT (MBCA) OF 1994 IS TO:

Implement the International Convention between Canada and the United States of America by “protecting and conserving migratory birds – as populations and individual birds – and their nests.” (Statutes of Canada c.22)

And the Act states:

“no person shall: Disturb, destroy, or take a nest, egg, nest shelter, eider duck box or duck box of a migratory bird” (MBCA Regulations, General Prohibitions, Section 6, Section 5 (9))

WHEREAS THIS ACT (MCBA) APPLIES TO ALL Provinces and parts of Provinces of Canada

WHEREAS THE BRITISH COLUMBIA WILDLIFE ACT STATES:

“A person commits an offence if the person, except as provided by regulation, possesses, takes, injures, molests or destroys

- (a) A bird or its eggs
- (b) The nest of an eagle peregrine falcon, gyrfalcon, osprey, heron or burrowing owl, or
- (c) The nest of a bird not referred to in paragraph (b) when the nest is occupied by a bird or its egg” (Section 34, BC Wildlife Act)

WHEREAS THE SPECIES AT RISK ACT (SARA) STATES:

“ No person shall damage or destroy the residence of one or more individuals of a wildlife species that is listed as an endangered species or a threatened species, or that is listed as an extirpated species if a recovery strategy has recommended the reintroduction of the species into the wild in Canada” (Section 33)

and

WHEREAS IT HAS BEEN WELL DOCUMENTED THAT MIGRATORY BIRDS ARE DECLINING IN NUMBERS (see background document)

and

WHEREAS THE BRITISH COLUMBIA’S MINISTRY OF TRANSPORTATION AND INFRASTRUCTURE’S ENVIRONMENTAL BEST MANAGEMENT PRACTICES FOR HIGHWAY MAINTENANCE STATES:

“Potential Environmental Impacts” from “Brushing” and “Mowing” “....may disturb birds and their nests” They then present a table showing the required “Performance Standards and Legal Requirements” to prevent disturbance to birds and their nests.

and

WHEREAS THE BRITISH COLUMBIA GOVERNMENT IS CURRENTLY IN CONTRAVENTION OF THE ABOVE MENTIONED ACTS DESPITE REPEATED REQUESTS AND OPPORTUNITIES TO SIMPLY ADJUST ROADSIDE BRUSHING TIMELINES

THEREFORE BE IT RESOLVED that BC Nature request that British Columbia’s Ministry of Transportation and Infrastructure, The Honourable Todd Stone:

1. Follow the mandatory law that no highway brushing be carried out during the peak breeding bird season in British Columbia in order to comply with the Migratory Birds Convention Act of 1994 and the British Columbia Wildlife Act of 1996.
2. Assess the peak breeding bird season in geographically explicit regions across British Columbia following Environment and Climate Change Canada’s Regional Nesting Period Tables (see <https://www.ec.gc.ca/paom-itmb/default.asp?lang=En&n=4F39A78F-1>) with accompanying maps for each region.
3. Only allow mowing of weeds only when it does not impact woody shrubs, trees and aquatic vegetation in ditches during breeding bird season.

BE IT FURTHER RESOLVED THAT that BC Nature request that, if for any reason the brushing must be carried out, we strongly urge the Ministry to hire a professional ornithologist to assess the area prior to brushing to determine the presence or absence of birds and their nests. In the event that the ornithologist determines there is no risk to breeding birds, the brushing must be carried out within 7 days of the ornithologist’s recommended approval for brushing. If brushing is not carried out within this time period, an ornithologist must be hired again to do an additional assessment (see Environment and Climate Change Canada – Nature –Reducing Risk to Migratory Birds, <https://www.ec.gc.ca>)

APPENDIX C

Recent Changes to Road Maintenance Practice in the Bulkley/Stikine Area

The Operations Manager for Bulkley/Stikine has verbally communicated that, as of spring/summer 2017, no roadside brushing will be conducted before August 1. It is unclear whether this directive includes the Burns Lake and Dease Lake portions of the Bulkley/Stikine District. These areas are operated independently, through district sub-offices.

We commend the Operations Manager for this adjustment, and hope the Ministry will consider implementing a similar policy throughout the Province.

FINAL NOTE:

For Ev

This law and policy reform project was carried out in memory of Ev Person. Ev, a long-time member of the Bulkley Valley Naturalists, was an avid birder. It is our hope that reform of road brushing and clearing policies will increase bird songs across British Columbia.