



Environmental Law Clinic

UNIVERSITY OF VICTORIA

Friday, October 19, 2007

Errol Price, Acting Auditor General
John Doyle, Auditor General
8 Bastion Square
Victoria, BC V8V 1X4

RE: Request for an Audit and Examination of Private Land Deletions from TFLs 6, 19 and 25

Dear Sirs:

On behalf of the Sea to Sea Greenbelt Society¹ we hereby request that you undertake an examination of:

- the Minister of Forests and Range's decision² of January 25 and 31, 2007 to delete all the private lands from three tree farm licences (TFLs) held by Western Forest Products Inc. (WFP), and
- related government management of finances and resources.

We urge you to undertake this examination pursuant to your general powers to audit and report under sections 11 and 12 of the *Auditor General Act* (the "Act"), as well as pursuant to section 13(1) of the *Act*, which empowers the Auditor General to undertake an examination respecting the government or in relation to a transfer under an agreement if the Auditor General is satisfied that undertaking such an investigation is in the public interest.³

The Minister's decision removed 28,283 hectares⁴ of private land from Crown regulation of forest management in TFLs 6, 19 and 25. The lands deleted (the "WFP deletions") include parcels around the Sooke Potholes and a substantial portion of the coastal and coastal view properties on the south coast of Vancouver Island. Portions of these lands are now being advertised for sale as "some of British Columbia's most amazing land with waterfront, views, development potential and timber value."⁵ Vast tracts of other lands were deleted on the north Island as well as two small parcels on the central B.C. coast.⁶

By making these deletions without requiring public compensation in return, government has apparently neglected its duty to manage Crown resources and finances in an economic, effective and efficient manner.⁷ In the past the Crown obtained compensation for deletions of private land from TFLs, and the failure to obtain such compensation in this case appears to be contrary to important public interests.

As a result of the WFP land deletions described above:

- The public will suffer economic loss because government failed to obtain compensation from the licence holder. Both the Provincial government and industry have previously recognized that it is appropriate for government to recover compensation for past consideration it provided to the TFL holder, and for the increased value created by deletion of private TFL lands.⁸ In this case, the deletion gives the licence holder a windfall increase in land values, without obtaining proper compensation for the public.

- The public will suffer economic loss because of government's failure to recover compensation for the decades of substantial benefits that have accrued to the TFL holder (and its corporate predecessors), and will continue to accrue.⁹
- The public's interest in environmental protection and public recreation will be compromised because the deletion removes environmental and social protections available under the *Forest and Range Practices Act* and various other laws and policies.¹⁰ For example, the *Forest and Range Practices Act* regulations that restrict logging in environmentally sensitive riparian zones will no longer apply, and public access to the lands will be reduced. Yet government failed to address the resulting loss of public recreational and environmental values. Specifically, government has failed to seek or obtain compensation in the form of:
 - parkland acquisition,
 - continued waterfront access,
 - public access to the lands for recreational purposes,
 - acquisition, or other fully equivalent protection, of ungulate winter range and community watersheds that were removed from Crown protection as a result of the deletion, and
 - other similar public benefits.
- Forest workers and forest-based communities will suffer, since the deletion will cause forest industry job losses because it will:
 - reduce the Annual Allowable Cut on the TFLs and reduce regional timber supplies,¹¹
 - allow the conversion of productive forest land to residential, non-forestry uses, and
 - ultimately remove the restriction on the export from Canada of unmanufactured forest products ("raw logs") from the lands.¹²
- First Nations interests are compromised because government failed to obtain proper compensation that could have supplemented the scarce supply of land and resources available to be used as part of the treaty process with First Nations, or to otherwise accommodate Aboriginal rights and title. Among other things, this failure to secure land and resource access may ultimately result in the Province incurring future litigation expenses.

Please note that groups representing a broad spectrum of British Columbia society, including First Nations, are simultaneously asking the Auditor General to conduct an examination: see Appendix A. These groups include:

- Communications, Energy and Paperworkers Union of Canada, Western Region
- Dogwood Initiative
- Greater Victoria Greenbelt Society
- Juan de Fuca Community Trails Society
- Kwakiutl First Nation
- Otter Point and Shirley Residents and Ratepayers Association
- Pulp, Paper, and Woodworkers of Canada
- Sierra Club of Canada – British Columbia Chapter
- Smart Growth British Columbia
- Surfrider Foundation, Victoria Chapter
- T'Souke First Nation

- Western Canada Wilderness Committee

As is demonstrated below, there is a clear and compelling need for this transaction to be examined. An examination is necessary to determine if the public interest was served by the agreement to remove the TFL lands without obtaining compensation for the public—and, if not, how the situation may be rectified.

History of Tree Farm Licences

The TFL system was initially designed¹³ in the 1940s and 1950s in response to concerns about the long-term sustainability of B.C.'s forestry industry, forest workers and local communities.

Under the TFL forest management system, forestry companies contracted to combine their private timberlands with much larger areas of Crown timberlands in a single TFL—the entire area of which was subject to Crown regulation and control. In return for placing their land under the regulatory framework of a TFL, licensees gained sole access to a guaranteed supply of public timber at a non-market, administered stumpage price. This was attractive to forestry firms, because it reduced the uncertainty of the market place in acquiring timber supplies—and provided what amounted to a private supply of timber at no capital outlay and little risk, since the Crown assumed most of the risk associated with holding inventories of standing timber.

The private lands originally placed in TFLs by forestry firms as their contractual contribution to the TFL were to be managed “as if” they were public lands—and in fact have long been considered “quasi-Crown” land.¹⁴ The TFL system was specifically designed to ensure perpetual, sustainable forestry uses on both Crown and private forest lands—for both economic and environmental reasons.¹⁵ As Justice Gordon Sloan stated in the landmark 1956 Royal Commission on Forestry stated, the “basic reasons for the award of any licence [TFL]” were:

*First..., stability of employment in dependent communities; and second, **establishment of permanent forestry on private lands.** [emphasis added]¹⁶*

Although each TFL was negotiated separately and is thus unique,¹⁷ the forestry companies that placed their lands into TFLs received similar benefits. These included virtually exclusive access to vast tracts of prime Crown timber for the duration of the TFL¹⁸ at attractive stumpage fees¹⁹ and government subsidies.²⁰

However, the benefits enjoyed by TFL holders were part of a *quid pro quo* whereby all land within TFLs—including the private land—would be managed by the province to ensure long-term sustainable forestry for the benefit of the people of British Columbia.²¹

Initially granted in perpetuity, by the late 1970s the term of new TFLs was changed to 25 years.²² Both government and licensee can decide not to continue or replace TFLs under certain circumstances.²³ For example, a forest company may bring its privately held land out from under Crown control by electing not to replace the licence.

However, if it proceeded that way, the company would lose the entire TFL, including access to the valuable Crown timber within it.²⁴ That would be a very different proposition than the current situation, where the company has been allowed to remove its private land from the TFL—while retaining its privileged access to the Crown timber in the TFL.²⁵

Past TFL Deletions – The Public’s Right to Compensation

In the past, both government and industry have recognized that if the public loses the benefit of having private lands contained in a TFL while the licensee continues to harvest on the TFL’s Crown land, compensation to the Crown is appropriate. As a 2004 government briefing note (the “Briefing Note”) on the issue has noted:

The government and the landowner made a contract decades ago to manage the [TFL] land as if it were public; deletion undoes that contract. Since the initial contract involved consideration – the award by government to the landowner of timber rights on Crown land – it would seem that the landowner should be able to buy out of that contract by providing appropriate consideration in return.²⁶

Compensation is necessary because of the special nature and history of private lands within TFLs. As Commissioner David Perry stated when considering proposals to delete private land from TFLs held by MacMillan Bloedel in the late 1990s:

Because Schedule A land [which includes all the private land in a TFL] is highly regulated by the Crown, it is equivalent to Crown land. While within the Tree Farm License, MB's [MacMillan Bloedel's] land cannot be alienated to third parties, cannot be used for non-forestry purposes and can only be logged according to the prescriptions of the Forest Practices Code. Accordingly, the Schedule A land is a form of quasi Crown land rather than simply a regulated type of private land.²⁷

Negotiations with two forestry companies in the late 1990s provide instructive examples of situations that recognized the principle that the public deserves compensation when government removes private lands from TFLs.

- In 1998, the Province, seeking to create a number of parks, struck an agreement with TimberWest that included the release of private lands from TFLs 46 and 47 as part of a land exchange with the Province. Both parties agreed on a value of \$9,508,000 as appropriate compensation to the Crown for the deletion of approximately 60,000 ha of private land from the two TFLs. This deal was completed in early 1999.²⁸
- In 1999, the Province signed an agreement with MacMillan Bloedel to settle a legal action launched by the forestry company for timber-cutting rights it had lost in areas where parks had recently been established.²⁹ The Province agreed to pay MacMillan Bloedel \$83.75 million. During the negotiation process, MacMillan Bloedel identified certain privately held lands in TFLs 39 and 44³⁰ that the company wanted removed from Crown control. The Province refused to consider deleting some of the proposed lands because of environmental concerns, but considered the rest.³¹ Government and the company jointly commissioned an independent appraisal that set the value of deleting the remaining package of private TFL lands at \$18 million – to be credited to Government.³²

In the end, no lands were deleted, because a public consultation revealed massive public opposition to releasing private TFL lands and Crown lands. Instead, the government chose to simply pay the company in cash.³³ Significantly, however, both the government and the company recognized the principle that the public should be compensated when the Crown agrees to delete private lands from a TFL.

An Additional Civil Service Recognition of the Compensation Principle

In 2004 the Minister of Forests and Range decided to delete *all* the privately held lands from TFLs 39 and 44, then held by MacMillan Bloedel's successor, Weyerhaeuser. Prior to making this decision, civil servants provided Government with a Briefing Note recommending against deleting the land at that time. The Briefing Note assumes that compensation would be payable:

Since the initial contract involved consideration—the award by government to the landowner of timber rights on Crown land—it would seem that the landowner should be able to buy out of the contract by providing appropriate consideration in return...

Consideration for Deletion

...it should be possible for private land owners to buy out of the arrangement. However, there is no legislation, present or planned that would govern the consideration for this type of transaction. In the absence of such legislation, the following types of "good government" principles could be applied:

- *Equitable treatment...*

- *Fair market valuations on both sides of the transaction, the deletion itself and the consideration (if not cash)*
- *Transparency – formal appraisals or independent fairness opinions (of negotiated settlements).*³⁴

This deletion included largely the same lands at issue in the 1999 settlement negotiations with MacMillan Bloedel—whose value of deletion had been assessed at \$18 million³⁵—plus other lands, apparently including many of those lands that the Government had deemed too environmentally sensitive to consider deleting in 1999.³⁶ Despite the 1999 valuation, the public received no compensation from the company.³⁷ One journalist estimates that the transaction was worth approximately \$200 million to Weyerhaeuser.³⁸

Attempts have been made to obtain the briefing notes that preceded the January 31, 2007 decision, to see if they are consistent with the Briefing Note cited above, in recognizing the reasons why the Crown should be compensated for deleting private lands from TFLs. On April 18 Opposition MLA C. Trevena asked the Minister in the Legislature to make those briefing notes public, and the Minister declined. Instead, he suggested that the Member file a Freedom of Information request for the notes.³⁹

The Opposition reports that it filed a Freedom of Information request for this briefing note on May 3, 2007, and just received that Note this week. However, the Note released by government appears to have most of the substantive text deleted. We urge you to secure access to the entire briefing note and other relevant documents as part of your investigation.

The WFP Deletions from TFLs 6, 19 & 25

At the request of WFP, on January 25 and 31 the Minister of Forests and Range deleted the lands in question—28,283 hectares of privately held lands from TFLs 6, 19 and 25.⁴⁰ The Crown was not compensated for these deletions. A number of concerns arise from this decision, including the failure to obtain compensation; the apparent failure to secure protection for the public values that were lost or compromised by the decision; and the lack of public consultation.

Failure to Obtain Compensation – The Value of Deleting the Lands

It is clear that the removal of private lands from TFLs is generally of value to forestry companies. Once removed from a provincial TFL, private lands:

- can become available for valuable residential developments,
- are freed from Crown regulatory processes and cut controls that apply to land within TFLs,⁴¹
- provide a higher degree of operational flexibility⁴², and
- do not have the same kind of raw log export restrictions as lands within TFLs. In this case, a moratorium has been placed on raw log exports for the deleted lands, but only for the first 3 years after deletion.

Numerous factors must be taken into account in order to determine the precise dollar value of deleting TFL lands. In addition to calculating the savings that a licence holder gets from the reduction in regulations when private lands are removed from a TFL—including increased profits attainable through the export of raw logs and the benefit of an increased harvesting rate—a fair valuation might also consider:

- the extensive benefits realized by the TFL holder over the years; and
- the access to valuable Crown timber within the TFL that continues, as a result of deleting the private land while simultaneously perpetuating the TFL.

WFP clearly recognized that deletions would be of significant value to the company. In their first quarterly report of 2007, WFP stated:

During the quarter, the Company received approval from the BC Minister of Forests and Range to remove approximately 28,000 hectares of its private land from its Tree Farm Licenses 6, 19, and 25. The removal affords the Company both the opportunity to sell the approximately 4,000 hectares of higher and better use component of the lands, and greater flexibility in operating the remaining 24,000 hectares of private timberlands.⁴³

As this statement suggests, one of the greatest benefits to WFP is that they are now able to sell the deleted lands, particularly for development. Already, WFP and Colliers International are marketing approximately 6,300 acres of the deleted lands in the Sooke-Port Renfrew area.

The real estate marketing brochure claims that this deleted land includes “some of British Columbia’s most amazing land.” For example, one portion of the land is a stretch of waterfront property in Jordan River, described in the brochure as:

most of the privately owned land (almost all of the waterfront) within the Jordan River area ... one of the single greatest opportunities on Vancouver Island to acquire a prominent stretch of predominantly undeveloped coastline that offers development potential, significant timber value and over 4.1 kilometres of waterfront.⁴⁴ [See brochure at Appendix B-38]

A Victoria realtor describes the coastal wilderness involved, which is attracting buyers from Victoria, Vancouver, Alberta, the United States and even Russia, as the next Tofino-Ucluelet corridor. “This is uncharted territory. It’s a hidden jewel from the rest of the world,” he says.⁴⁵

The Colliers brochure does not include prices for the 6 blocks of land that are being offered for sale. However, for the sake of comparison, recent MLS listings include a one-hectare waterfront lot near Jordan River priced at \$900,000 and a mobile home on 4 hectares near Shirley with a \$449,000 asking price.⁴⁶ A search of other area real estate listings provides other useful points of comparison. For example, ten waterfront lots in Jordan River are presently on the market. These range in size from .95 to 1.54 hectares and range in price from \$799,900 to \$999,900.⁴⁷

The Minister had the opportunity to obtain significant public benefit in exchange for the lands that were deleted, as was done in the 1998 TimberWest deal. For example, he could have obtained:

- parkland;
- waterfront access;
- protection of existing recreation and other public uses;
- environmental protection to replace the ungulate winter ranges and community watershed protections lost as a result of the deletion; and/or
- land to be used as part of the treaty process with First Nations or to otherwise accommodate Aboriginal rights.

Instead, vast tracts of land—including a significant stretch of South Vancouver Island’s near-urban coast line—has been released from its “quasi-Crown” status, without any compensation to the public. Furthermore, a wide variety of public interests such as public access, recreational use, environmental protection, wildlife habitat, ungulate winter range, timber and community watersheds have been left with reduced protection – again, without proper compensation.

Note that many of these lost land values could potentially cost future governments substantial amounts to reacquire in the future. For example, the deletion removes community watershed status and protection on the private lands. And watershed protection can have enormous economic consequences for government—the Capital Regional District recently had to pay \$58.9 million to purchase 8791 hectares of the Leech River watershed.⁴⁸

Apparent Failure to Secure Protection for Lost Public Values

Government has claimed that although the Crown did not receive direct compensation for the land deletion, it has secured certain public values in other ways. However, our preliminary investigation indicates that public values may not have been adequately secured.

The Minister has reportedly said that protection of winter ranges for elk and deer, raw log export limitations and protections for access by recreational users are written into the land titles.⁴⁹ However, a recent land title search of several of the affected land parcels does not show any such protections registered on the affected land titles.⁵⁰

The government press release announcing the removal of the lands from Crown control lists a number of conditions that apply to the Minister's approval.⁵¹ However, while the Minister listed these conditions in his January 25, 2007 letter advising WFP that he had approved their request, *none of the conditions appear to be included in the instruments effecting the deletions.*⁵²

The Minister claimed that protection of the public interest is provided because conditions have been imposed to deal with:

- First Nations Access
- Log Exports
- Wildlife Habitat
- Certification
- Community Watersheds
- Research
- Recreation

Yet the only document that we can find that provides those conditions is the Minister's letter, which clearly states:

*...WFP has agreed to the following conditions regarding this decision, **which would apply for as long as WFP owns the applicable land, unless otherwise specified...** [emphasis added]*⁵³

In other words, ***those conditions will apparently expire once WFP sells the lands.*** Presumably, those protections will fall as soon as the currently listed lands are sold by WFP. There is only one condition that will apply to subsequent purchasers, and it is time limited—the three-year moratorium on exporting raw logs.

Further, even those conditions that apply while WFP retains ownership of the lands are vague and ineffectual. For example, according to the Minister's letter, First Nations access is subject to a number of restrictions, including the roads being used incompatibly by other parties. The only protection for watersheds is that WFP is to "continue to use forest practices that are *intended* to protect human drinking water on the private land included in community watersheds" [emphasis added]. Such language is too vague to be enforceable in any meaningful way.

Similarly, according to the Minister's letter, recreational opportunities on the land are "subject to available funding and potential reclassification of such land for other uses." Presumably, if zoning changes, WFP may no longer be required to provide recreational opportunity. Perhaps most important, this obligation, as with others, apparently disappears as soon as WFP sells the land.⁵⁴

Similar concerns arise about whether the public has been adequately compensated for the fact that the deletions terminate protection of "Ungulate Winter Range" (UWR) on the deleted land. The Minister's letter sets a condition that WFP submit a UWR package to the Minister of the Environment. This package, which has not yet been approved, purports to compensate for the loss of the designated UWRs from the deleted private lands by establishing UWR areas on Crown land in the TFL.⁵⁵

However, since the Minister of the Environment was previously empowered to establish ungulate winter ranges on public land, it is difficult to see how this package actually *compensates* the public for the Ranges that have been removed from the deleted private lands.⁵⁶ Furthermore, it appears that the new Crown ranges will be some distance from the deleted Ranges and serve other ecosystems, since

there is no TFL 25 Crown land within 10 km of the lost UWR. A senior Ministry biologist has reportedly expressed “a lot of trepidation” about the package, and its implications for Roosevelt elk and black-tailed deer.⁵⁷

Protection of Public Interests and Values – Troubling Results from Previous TFL Deletions

Recent press reports concerning the lands deleted for TimberWest in 1999 heighten the concern about the current failure to acquire public benefits. It has been alleged that in the lands deleted in 1999, public access has been severely restricted, environmentally sensitive lands are going on the real estate market, and watersheds and high-elevation old-growth forest are being logged.⁵⁸

Thus, British Columbians are left to wonder what WFP will do with its newly privatized lands – lands that span the precious South Coast of Vancouver Island and elsewhere. Will they gate the access roads? What will happen to forest recreation sites? What environmental protections will be put in place?

Lack of Consultation

There was no public consultation prior to the WFP deletions and compensation was not paid to government.⁵⁹ An Audit should examine whether government failed to effectively and efficiently steward Crown finances and resources precisely because of its failure to consult with the public.

Beginning in November 2005, WFP announced in each of its quarterly reports to shareholders that it was seeking to have government delete these lands. In contrast, government apparently made no similar public announcements until after the transaction had been completed. Before making the announcement, the Minister did not consult with local elected officials, communities or the interest groups that have worked to protect natural values in the affected areas.

Thus, while WFP kept its shareholders up to date, government was not doing the same with its citizen shareholders. There are several points to note about this lack of consultation:

- When the Perry Commission did hold public consultation hearings about the proposal to remove private lands from TFLs as part of the 1999 MacMillan Bloedel (MB) settlement, massive public opposition ensued. In his report to government, Perry stated:

Based on the public consultations I have carried out, there is overwhelming opposition to the use of land or resource rights for the purpose of compensating MB. The reaction against use of Crown land was particularly strong but I noted very little distinction in the public mind between deregulation of the Schedule A land [privately-owned TFL land] held by MB and privatizing Crown land...

At public hearings, opposition to use of land or resource rights as compensation ranged from as low as 60% to as high as 95% at some hearings, while the written submissions are virtually unanimous in opposition to this option.⁶⁰

It is significant to note the public overwhelmingly rejected the idea of deleting private TFL lands at all. There was overwhelming opposition, even though that proposal—unlike the current transaction— proposed to compensate the government with new park land.

- In the present case, we submit that Government was obliged to consult the public because of the history of the forest zoning that existed on the deleted lands. The deletion of the lands effectively eliminates existing Crown forest zoning on the lands in question – zoning that had been established by the Vancouver Island Land Use Plan (“VILUP”), after one of the most extensive public consultations in Canada’s history.⁶¹

The VILUP was legislated by the Provincial government in 2000, in an Order that zoned much of Vancouver Island’s Crown lands and Crown-controlled TFL lands.⁶² These zones included several “Enhanced Forestry Zones”—areas managed to produce higher volumes and values of timber—and “Special Resource Management Zones”—areas whose management

priorities must incorporate identified environmental, recreational and cultural/heritage values.⁶³ Each of these zones was governed by specific, legislated objectives.⁶⁴ The *Land Act* and associated regulations require government to provide opportunities for public review and comment before amending these objectives.⁶⁵

The deleted lands contained a number of zones established by the Order.⁶⁶ When government deleted the private lands from TFLs, it removed this zoning. It effectively amended the zoning objectives in the most extreme way possible—by completely removing both the zones and objectives. Yet this was done without public consultation. In light of the legislation, and the history of extensive consultation in establishing the zones and objectives, the public had a legitimate expectation that it would be consulted before this decision was made. It was not. It is submitted that if this matter had gone to public consultation, at the very least compensation would have been required for the land deletion.⁶⁷

- Affected First Nations had a constitutionally guaranteed right to meaningful consultation before the lands in question were deleted. In 2005, the BC Supreme Court concluded that the provincial Crown violated its duty to consult the Hupacasath First Nation when it approved the 2004 deletion of Weyerhaeuser's private TFL lands.⁶⁸ In this case, some of the affected First Nations have objected that the deletions similarly violate their constitutional rights to consultation and accommodation. They will speak for themselves about this issue and its implications for management of public finances and resources.

The Minister's failure to engage in meaningful consultation with affected First Nations or in any public consultation whatsoever seems to have opened government to litigation, and to other significant potential expense.

Conclusion

The recent WFP deletions created an apparent windfall for the company while depriving the people of British Columbia of the opportunity to secure economic, social and environmental benefits due to them. Government's apparent failure to obtain compensation from WFP and to adequately protect public interests threatened by the deletions suggests that there has been uneconomic, inefficient and ineffective management of public resources.

It appears that the Minister's decision to delete these lands from the TFLs without compensation was inconsistent with efficient, effective and optimal management of public finances and resources. An examination of these matters is necessary to maintain public confidence that government is managing government finances and resources in the public interest.

Sincerely,

Calvin Sandborn, Barrister and Solicitor

Melinda Skeels, Articled Student at Law

Dana Dempster

Notes

¹ The Sea to Sea Greenbelt Society is a registered non-profit society that works to promote the preservation of green space on southern Vancouver Island.

² This decision is reflected in the Minister of Forests and Range's January 25, 2007 letter to Western Forest Products' Chief Forester Kerry McGourlick and in the three Instruments executed January 31, 2007 that effect the deletions from TFLs 6, 19, and 25. See Appendix B.

³ and will not interfere with the discharge of the responsibilities of the Auditor General.

⁴ See, for example, Ministry of Forests and Range, Information Bulletin, 2007FOR0005-000074, "Private Land Removed from Tree Farm Licences" (31 January 2007) [Government Information Bulletin] at Appendix B 12. The complete TFLs and associated instruments are available online at: <<http://www.for.gov.bc.ca/dmswww/tfl/>>.

⁵ See Western Forest Products/Collier's International brochure at Appendix B 24.

⁶ See Appendices B 3-7 for maps of the deleted lands.

⁷ This widespread public perception is reflected the attached *Victoria Times-Colonist* editorial entitled "Forest-land deal shortchanges BC: Decision to pull property from tree farm licence great for company, bad for residents". See Appendix B 47.

⁸ See *Analysis of Additional Value Associated with Removing Private Land from TFLs 39 and 44*, prepared for the Province of British Columbia by Olympic Resource Management, Ernst & Young Corporate Finance Inc., and R & S Rogers Consulting Inc, June 30, 1999 at Appendix C 14.

Also, see the discussion below for examples of where (a) government recovered increased value associated with deletions, and (b) the appropriateness of such recovery has been acknowledged by government and industry.

Note that recovery of public benefits is commonplace when local governments upzone lands—this is routinely done by local governments that change zoning of lands.

⁹ For example, the provision of access to Crown timber and reduced stumpage fees. Even after the deletion, the licence holder continues to have virtually exclusive access to the Crown lands that remain in the TFL.

¹⁰ See *Hupacasath First Nation v. B.C.*, 2005 BCSC 1712 (LII) [*Hupacasath*] at para. 203-206 for a discussion of how deletion of private TFL lands moves from the environmental protections of the *Forest Act*, *Forest and Range Practices Act*, and *Forest Practices Act* to a regime which offers significantly reduced protections that can be easily avoided due to the voluntary nature of the *Private Managed Forest Land Act*.

¹¹ See *Hupacasath*, *ibid.* at para. 55-56 for an explanation of how the deletion of the private lands in a TFL results in a reduction of the Annual Allowable Cut.

¹² A moratorium on log exports from these lands has been announced, but the protection against such exports lapses after three years. See Appendix B 10.

¹³ Originally called "Forest Management Licences"

¹⁴ See Ministry of Forests Forest Service Briefing Note, File 280-20/19700-25/TFL 39/44 (2004), at Appendix C 3, and *MacMillan Bloedel Parks Settlement Agreement Decision*, by David Perry (August 6, 1999), online: <<http://www.for.gov.bc.ca/hfd/library/documents/mbparks/decision/index.htm>> ["Perry Report"] at 22.

¹⁵ See Honourable Gordon McG. Sloan, *Report of the Commissioner Relating to the Forest Resources of British Columbia*, Vol. 1. (Victoria: Don McDiarmid, 1956) at 40 & 42. Excerpts reproduced at Appendix C 8. See also: Task Force on Crown Timber Disposal, *Forest Tenures in British Columbia* (Victoria: Royal Commission on Forest Resources, 1974) ["Forest Tenures in BC"] at 80.

¹⁶ *Ibid.* at 93.

¹⁷ Peter H. Pearse, *Timber Rights and Forest Policy in British Columbia*, Vol. 1. (Victoria: Report of the Royal Commission on Forest Resources, 1976) at 87.

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Notes

¹⁸ Ken Drushka, Bob Nixon and Ray Travers, ed., *Touch Wood: BC Forests at the Crossroads* (Vancouver: Harbour Publishing Co. Ltd., 1993) ["Touch Wood"] at 6.

¹⁹ *Ibid.* at 31 & 93.

²⁰ See, for example, *Touch Wood*, above note 18, at 15.

²¹ Forest Tenures in BC, above note 15, at 91.

²² Terms were first reduced to 21 years in 1958 (see Forest Tenures in BC, above note 15, at 90), and then increased to 25 years, following the 1976 Pearse Royal Commission. See David Haley and Martin K. Luckert, *Forest Tenures in Canada: A Framework for Policy Analysis* (Ottawa: Minister of Supply and Services Canada, 1990) at 32.

²³ The Minister is required to offer to replace a TFL at certain times during its term, provided the licensee satisfies certain conditions. The licensee may then choose whether or not it wishes to replace the licence. See *Forest Act*, R.S.B.C. 1996, c. 157, s.36.

²⁴ *Ibid.*

²⁵ The nature of the contractual agreement is demonstrated by the fact that the *Forest Act* sets out procedures to be followed to compensate licensees if the Crown substantially reduces the Crown land area and AAC of TFLs. See s. 60.6 of the *Forest Act*.

²⁶ See Ministry of Forests Forest Service Briefing Note, File 280-20/19700-25/TFL 39/44, ["Briefing Note"]. See Appendix C 3.

²⁷ Perry Report, above note 14, at 22.

²⁸ See the land exchange agreement and instruments executing the exchanges online at <<http://www.for.gov.bc.ca/dmswww/tfl/>>.

²⁹ Perry Report, above note 14, at 2.

³⁰ *Ibid.* at 3.

³¹ *Ibid.* at 9.

³² Briefing Note, above note 26, at C 3.

³³ *Ibid.*

³⁴ See Briefing Note, *ibid.* in which staff assume that compensation would flow from the forestry company to the public in the transaction and still recommend against it, for a variety of reasons.

³⁵ *Ibid.* at C 4.

³⁶ Perry Report, above note 14, at 9.

³⁷ British Columbia, Legislative Assembly, *Official Report of Debates (Hansard)*, V. 18, No. 3 (18 April 2007) ["Hansard"] at 6856 (B. Simpson). See excerpt at Appendix B 19.

³⁸ Paul Willcocks, "Real-estate giveaway pays off big for timber firm" *Times-Colonist* (25 September 2007) A10. See Appendix B 59.

³⁹ Hansard, above note 37 at 6847 (C. Travena, Hon. R. Coleman).

⁴⁰ Government Information Bulletin, above note 4. See also Western Forest Products, Media Release, "Western Forest Products Receives Approval to Remove Private Lands From Its Tree Farm Licences" (31 January 2007) at Appendix B 44.

⁴¹ The *Private Managed Forest Land Act*, S.B.C. 2003, c. 80, applies, but is much less restrictive.

⁴² TimberWest, *Annual Report* (1998) at 11. See excerpt at Appendix C 26.

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Notes

- ⁴³ Western Forest Products, First Quarter Report (2007) at 3. See excerpt at Appendix B 46.
- ⁴⁴ Western Forest Products/Collier's International brochure. See Appendix B 24.
- ⁴⁵ Shannon Moneo, "Forest refuge or future suburb?" *The Globe and Mail* (5 March 2007) S1. See Appendix B 52.
- ⁴⁶ Shannon Moneo, "Pending sale of pristine waterfront property upsets Islanders" *The Globe and Mail* (18 September 2007) S1. See Appendix B 55.
- ⁴⁷ See Appendix B 74.
- ⁴⁸ The Capital Regional District, the Land Conservancy and TimberWest, Joint Press Release "9,700-hectare land purchase protects future drinking water supply for CRD residents, and adds to regional park system" (8 August 2007). See Appendix C 27.
- ⁴⁹ Gordon Hamilton, "Government releases Island land from forest regulations" *The Vancouver Sun*. (1 February 2007) C1. See Appendix B 49.
- ⁵⁰ See Appendix B 61.
- ⁵¹ Government Information Bulletin, above note 4.
- ⁵² See Appendices B 13-18.
- ⁵³ See Appendix B 9.
- ⁵⁴ *Ibid.*
- ⁵⁵ Andrew MacLeod, "Elk and deer habitat unprotected" *Monday Magazine* (3 October 2007) 5. See Appendix B 51.
- ⁵⁶ *Forests and Range Practices Act*, S.B.C. 2000, c. 69. *Government Actions Regulation* s. 12. B.C. Reg. 582/2004.
- ⁵⁷ Elk and deer habitat unprotected, above note 55.
- ⁵⁸ Gary Schaan, "Removing private land has major effects" *Times-Colonist* (4 February 2007) D3.
- ⁵⁹ Hansard, above note 37 at 6852 (Hon R. Coleman) and 6856 (B. Simpson).
- ⁶⁰ *Perry Report*, above note 14, at 7.
- ⁶¹ Including the Commission on Resources and Environment (CORE) process and others. The final Plan was the culmination of years of work by a technical team comprised of representatives from government and the forestry industry as well as independent consultants.
- ⁶² Vancouver Island Land Use Plan Higher Level Plan Order, 2000.
- ⁶³ *Ibid.*
- ⁶⁴ *Ibid.*
- ⁶⁵ *Land Act*, R.S.B.C. 1996, c. 245, s. 93.6, and *Land Use Objective Regulation*, B.C. Reg. 357/2005, s. 2-3.
- ⁶⁶ Compare the maps at Appendices B 3-7 with the VILUP HPL Resource Management Zone map at B 8.
- ⁶⁷ In reference to public consultation, it should be noted that the removal of land from TFL 25 and the recent marketing of its potential for rural residential development are also contrary to the regional consensus on land development.

The Capital Regional District's Regional Growth Strategy (RGS) is an agreement between the regional district and the thirteen member municipalities as to how growth and development will occur in the region. (See Capital Regional District, *Regional Growth Strategy Bylaw No. 2952*, 2003.) The lands taken out of the TFL are mapped as forest land in the RGS and expected to be a backbone of the green infrastructure and working forest economy of the region. This agreement also includes a commitment that almost all new development occur within the

(continued)

Notes

Regional Urban Containment and Servicing Area, the boundaries of which do not include the lands at issue here. Thus, the deletion undermines a regional agreement about orderly, efficient and economically efficient growth in the Capital Region without consultation or consideration of regional priorities for land use planning. The financial cost to governments of urban sprawl is considerable. For example, studies have demonstrated that a future development patterns of sprawl cost governments billions more to service than compact development. (See, for example, Duncan, James and Associates. *The Search for Efficient Urban Growth Patterns: A Study of the Fiscal Impacts of Development in Florida*, presented to the Governor's Task Force on Urban Growth Patterns and the Florida Department of Community Affairs, July 1989.)

⁶⁸ *Hupacasath*, above note 10, at para. 333.