ARE WESTERN FOREST PRODUCTS'

SUBDIVISION APPLICATIONS

CONTRARY TO THE PUBLIC INTEREST?

SUBMISSIONS OF
SEA-TO-SEA GREENBELT SOCIETY
TO MR. BOB WYLIE, PROVINCIAL APPROVING OFFICER

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I. INTRODUCTION

1. Sea-to-Sea Greenbelt Society ("Sea-to-Sea") is a registered non-profit society that works to promote the preservation of green space on southern Vancouver Island. Sea-to-Sea has been involved in working to protect forest lands in the Capital Regional District since 1994. As a member organization of the Sea-to-Sea Green Belt Alliance, Sea-to-Sea has been instrumental in making the Sea to Sea Green Blue Belt a reality.[1] As such, Sea-to-Sea has a real and substantial interest in the subdivisions which Western Forest Products proposes to build on forest lands between Sooke and Port Renfrew.

2. Sea-to-Sea opposes the seven subdivision applications submitted by Western Forest Products ("WFP") on the grounds that such proposed subdivisions are against the public interest for multiple reasons, which are addressed in these submissions.

3. To the best of our knowledge, the scope of these proposed subdivisions is unprecedented in the Capital Regional District ("CRD"). If allowed to proceed, these proposed subdivisions will initiate the change in landscape from forest to urban. The fragmented, dispersed and remote locations of the proposed subdivisions in the present forest landscape will ensure that the subdivisions will influence the process of urbanization well beyond their boundaries. The proposed subdivisions also contravene important land planning by-laws of the CRD enacted after considerable public consultation.

4. These submissions will address the meaning of the "public interest" which you are required to address pursuant to the *Land Title Act* ("LTA") and some of the factors which, in our respectful submission, must be considered in this specific case.

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[1] See http://www.wildernesscommittee.org/campaigns/historic/sooke/reports/Vol18No08/chronology

II. SUBMISSIONS

A. "The Public Interest"

(1) Duty to Consider the Public Interest

5. Section 85(3) of the *Land Title Act* allows an Approving Officer to reject a subdivision application if the Officer believes that the subdivisions would be "against the public interest." The section reads:

> 85(3) In considering an application for subdivision approval in respect of land, the approving officer may refuse to approve the subdivision plan if the approving officer considers that the deposit of the plan is against the public interest.

6. Although the Approving Officer's power to reject an application under section 85(3) is discretionary, the Approving Officer is obliged to give due consideration to legitimate public interest concerns. In 1989, in the case of *Hlynsky v. Approving Officer of West Vancouver*, the B.C. Court of Appeal held that, "section 85(3) casts an obligation on the approving officer to decide whether the proposed subdivision is in the public interest."[2] Indeed, the Court went on to confirm that s. 85(3) is paramount to any other considerations and an approving officer's paramount obligation under that section is to consider the public interest.[3]

(2) The Public Interest is not limited to the factors specified in ss. 86 and 87 of the *Land Title Act*.

7. The Legislature has deliberately left the definition of "public interest" open and broad so that an Approving Officer can take all relevant factors into account. This is apparent from the opening clauses of sections 86 and 87. Those provisions identify specific bases on

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[2] *Hlynsky v. Approving Officer of West Vancouver* , [1989] B.C.J. No. 575 (C.A.) at p. 6.

[3] Supra, at pp. 7-8.

which the Approving Officer may reject subdivision applications, but both expressly state that they do so "without limiting section 85(3)." The inclusion of such clauses clearly indicates that an Approving Officer may reject subdivision applications on *any other grounds* that render such applications contrary to the public interest.

(3) It is an Error in Law to Rely on an Overly "Narrow" Definition of the Public Interest?

8. In *MacFarlane v. British Columbia (Ministry of Transportation)*,[4] the B.C. Supreme Court quashed a decision of an Approving Officer and held that the he had erred in law "in his narrow definition of the public interest which caused him to incorrectly disregard public interest concerns expressed by BC Parks, the Regional District and others" (at para. 24). In *MacFarlane* the Provincial Approving Officer ignored comments from BC Parks regarding potential impacts including public park access. He also refused to consider the relevance of a bylaw that was adopted by the Skeena-Queen Charlotte Regional District *after* the subdivision application but *prior* to the PLA being issued,[5] and which would have prohibited the proposed subdivision. The Court ruled that the approach taken by the Approving Officer was contrary to law.

9. *MacFarlane* is particularly relevant to your consideration of the WFP applications for it also confirms that the CRD's new zoning bylaws are one of the public interest considerations that must be considered in this decision making process, including at the stage of deciding whether to issue a PLA or PLNA.

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[4] *MacFarlane v. British Columbia (Ministry of Transportation)*, [1994] B.C.J. No. 3213 (S.C.).

[5] Note that this is an identical situation to the present: the CRD's bylaw amendments relating to WFP lands received their third reading months before WFP submitted its subdivision applications, but only received Ministerial approval after the applications were submitted.

(4) Your Consideration of the Public Interest Should Encompass a Broad Range of Context-Specific Factors

10. There are numerous cases in which Approving Officers have rejected subdivision applications on the basis of the public interest. The courts have stated that they will generally defer to the Approving Officer's judgement on the matter, provided he or she has not acted in bad faith, or on a "specious and totally inadequate factual basis."[6] These cases reveal the broad range of factors that may be relevant to the public interest. These factors include the following:

a) Concerns of Local Governments

11. The *Land Title Act* section 87(b) states that the Approving Officer may reject subdivision applications that do not conform to all relevant "bylaws regulating the subdivision of land and zoning." The following cases show that the concerns of local governments are relevant to the public interest *even if these views are not embodied in applicable bylaws.*

12. As noted above, the court held in *MacFarlane* that bylaws that were inapplicable (having been enacted *after* the submission of the subdivision application but prior to a PLA being issued) were nevertheless relevant to the Approving Officer's consideration of the public interest.

13. In *Vancouver v. Simpson*,[7] the Supreme Court of Canada upheld an Approving Officer's rejection of a subdivision application for waterfront property that the City of Vancouver wished (but had been unable) to purchase from the applicant for development into a public park. Despite the fact that the subdivision application conformed to existing

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[6] *Vancouver v. Simpson* [1977] 1 S.C.R. 71.
[7] *Supra*

zoning and bylaws, the Approving Officer determined that in the circumstances, the application was against the public interest.

14. In *Cole v. Anderson*,[8] the proposed subdivision complied with the zoning bylaws, but the Approving Officer found that it was against the public interest because it conflicted with a recent policy in the Official Community Plan (OCP) that no subdivision or rezoning of land would be permitted due to the importance of a watershed area. The Court stated that the OCP policy was a reasonable factual basis for the approving officer's assessment of the public interest.

15. The relevance of OCP's to the consideration of whether subdivision proposals are in the public interest was confirmed in *Wyles v. Penticton (City)*[9].

16. These cases demonstrate that it is incumbent on you as Approving Officer to take all zoning and land planning bylaws and policy statements of the CRD into account as an expression of the public interest. The specific regional planning documents which these proposed subdivisions contravene are discussed later in these submissions.

b) The Concerns of Affected Members of the Public

17. In your consideration of whether an application is contrary to the public interest, you are authorized by section 86(1)(b) of the *Land Title Act* to "hear from all persons who, in the approving officer's opinion, are affected by the subdivision." As planning law expert William Buholzer observes, Approving Officers across the Province have used public hearings to enhance their assessment of whether subdivision applications are in the public interest:

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[8] *Cole v. Anderson*, [1993] B.C.J. No. 2557 (S.C.), aff'd [[1995] B.C.J. No. 434 (C.A.).

[9] *Wyles v. Penticton (City)*, [1995] B.C.J. No. 1257 (S.C.)

> The case law indicates that approving officers may use a broad range of strategies for assessing the public interest in subdivision applications. Approving officer hearings are authorized by both the *Land Title Act*...and have been endorsed by the courts on several occasions as a means of determining the public interest.[10]

18. In *Dubuc v. Saanich (District)*,[11] the Court upheld the rejection of a subdivision proposal in which the Approving Officer held a public hearing to solicit feedback from local residents, and cited their opposition in his reasons for rejecting the proposal. The Court stated (at para. 27):

> I agree that the public interest and the private interests of the immediately adjacent property owners are not synonymous [with the public interest]. *But clearly the approving officer is entitled to take the views of and information provided by the owners of nearby properties into account* in determining, as he has, that the subdivision would be against the public interest. The public interest includes the interests of the members of the public who live in the immediate vicinity of the proposed subdivision. (emphasis added)

19. In this case, much of the proposed land sought to be subdivided borders on Crown land. Thus, the public interest includes the interests all the members of the public. As discussed later in these submissions, the impact that the proposed subdivisions would have on climate change could have effect well beyond the boundaries of the CRD.

c) The Concerns of First Nations

20. The public interest includes a number of factors, including not only those enumerated at sections 86 and 87 of the *Land Title Act*, but also Aboriginal interests. This was confirmed by the British Columbia Court of Appeal in *Haida v. British Columbia (Minister of Forests)*,[12] a case about the Crown's duty to consult with First Nations prior to making forestry decisions that have the potential to affect Aboriginal rights.

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[10] William Buholzer, *British Columbia Planning Law and Practice*. 2001. Markham, OT: Buttersworth, p. 13:56.

[11] *Dubuc v. Saanich (District)*, [1994] B.C.J. No. 1407 (S.C.).

[12] *Haida v. British Columbia (Minister of Forests)*, [2002] B.C.J. No. 1882, at paras. 14 and 16.

21. More recently, the British Columbia Supreme Court, in the context of the government's duty to consult First Nations when removing privately owned forest lands from TFL 44, reiterated that the Ministry of Forests is charged with managing forests "in accordance with the public interests" and that this includes "both [A]boriginal and non-[A]boriginal" concerns.[13]

B. What needs to be considered as part of the Public Interest in this specific case?

22. This section details some of the factors that we would respectfully request that you, as Provincial Approving Officer, further investigate and consider when making a decision on the issuance of a PLNA or PLA.

23. We submit that Western Forest Products' subdivision applications are *against* the public interest for multiple reasons.[14] The following points are based on factors listed in sections 86 and 87 of the *Land Title Act*, which give grounds upon which approval for a subdivision plan may be refused. Each of the points below is discussed in more detail in these submissions.

(1) The plans are contrary to the intent and purpose of several regional planning documents of the Capital Region District (s.87(a) and (b)):

a) Recently enacted bylaws 3474, 3495, 3497, 3498, 3499, and 3500,

b) Regional Growth Strategy,

c) Regional Green-Blue Spaces Strategy,

d) Community Energy Plan & Travel Choices Transportation Strategy, and

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[13] *Hupacasath First Nation v. British Columbia,* [2005] B.C.J. No. 2653 at para. 292.

[14] An Approving Officer should issue a PLNA if the subdivision application(s) is *against* public interest (*Noort Holdings Ltd. v. Corporation of Delta*, [1995] B.C.J. No. 11 (S.C.) and section 85(3) of the *Land Title Act:* "In considering an application for subdivision approval in respect of land, the approving officer may refuse to approve the subdivision plan if the approving officer considers that the deposit of the plan is against the public interest.")

e) 2006-2008 Strategic Plan;

(2) The plans are contrary to the Vancouver Island Land Use Plan;

(3) The plans are contrary to the Otter Point & Shirley/Jordan River Official Community Plans;

(4) The plans do not comply with the provisions of the *LTA* relating to access and the sufficiency of highway allowances shown in the plan, and with all regulations of the Lieutenant Governor in Council relating to subdivision plans (s.86(1)(c)(ii));

(5) The anticipated development of the subdivision would adversely affect the natural environment to an unacceptable level (s.86(1)(c)(vi));

(6) The anticipated development of the subdivision would adversely affect the conservation of heritage property to an unacceptable level (s.86(1)(c)(vi));

(7) The cost to the government of providing public utilities or other works or services would be excessive (s.86(1)(c)(vii)) and the cost to the municipality or regional district of providing public utilities or other works or services would be excessive (s.86(1)(c)(viii));

(8) The land is subject, or could reasonably be expected to be subject, to flooding, erosion, land slip or avalanche (s.86(1)(c)(v));

(9) The anticipated development of the subdivision would unreasonably interfere with farming operations on adjoining or reasonably adjacent properties, due to inadequate buffering or separation of the development from the farm (s.86(1)(c)(x)); and, the extent of highways shown on the plan is such that it

would unreasonably or unnecessarily increase access to land in an agricultural land reserve (s. 96(1)(c)(xi)).

(1) The plans are contrary to the intent and purpose of several regional planning documents of the Capital Region District (s.87(a) and (b))[15]

24. Over the years, the public has repeatedly made it clear that it wants the subject lands maintained as forest lands. In response, different levels of government have enacted a variety of laws and policies to protect the land from development. The Tree Farm License (TFL) deletions, undertaken without consulting the public, have seriously undermined the Regional Growth Strategy and other CRD laws and policies. These forested lands are central to the CRD's Community Energy Plan, Regional Green-Blue Spaces Strategy, green infrastructure network, and the maintenance of working forests in the region.

a) Recently enacted bylaws 3474, 3495, 3497, 3498, 3499, and 3500

25. CRD recently enacted Bylaws 3474, 3495, 3497, 3498, 3499 and 3500 generally limit lot sizes to 120 hectares. The history of the status of the lands at issue and the context in which the bylaws were enacted is, in our respectful submission, important background that informs your consideration of the public interest in this case. Accordingly, we provide the following brief chronology with respect to the zoning of these lands..

26. For decades prior to the Minister's decision to delete the WFP lands from the TFL, the deleted lands in the Jordan River, Otter Point and Shirley areas had been designated for forestry purposes under the provincial Tree Farm License. Local governments did not anticipate that the protective TFL status would be suddenly stripped away without notice.

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[15] Section 87…the approving officer may refuse to approve a subdivision plan if the approving officer considers that the subdivision does not conform to the following:
(a) all applicable provisions of the *Local Government Act*;
(b) all applicable municipal, regional district and improvement district bylaws regulating the subdivision of land and zoning.

27. As is well documented, the CRD has long regarded the deleted TFL lands as vital to its Green/Blue Spaces System, green infrastructure network and maintenance of working forests in the region. The CRD considers proper planning and regulation of these lands vital to maintaining the natural beauty of the West Coast and preventing urban sprawl from marring the lands beyond Sooke.

28. Prior to the deletions from TFL 25, the CRD's Regional Growth Strategy had called for much of the deleted land to be maintained as forestry resource lands. The rest of the lands are covered by two Official Community Plans[16] that call for:

- The retention of both the rural and natural character of the area;
- The protection and enhancement of the natural environment, its ecosystems and biological diversity; and
- Support for planned community development in conjunction with residential, agricultural, forestry, commercial, tourism and recreational activities.

29. However, the CRD, including the Juan de Fuca Electoral Area, had not yet updated its planning and zoning bylaws, to reflect the wishes of the community and the goals of the relatively recent Regional Growth Strategy that the governments of the region have agreed to. There was no perceived need to update such bylaws, since the land appeared to be securely protected as forest land within the Tree Farm Licence.

30. As noted by the Auditor General in his July 2008 Report, *Removing Private Land from Tree Farm Licences 6, 19 &25: Protecting the Public Interest?*[17], a serious problem was created because the Minister failed to consult with the public and local governments before removing the lands from provincial TFL regulation. Although Western Forest

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[16] 3352 Official Community Plan for Shirley/Jordan River Bylaw No. 1, 2006 and 3354 Official Community Plan for Otter Point Bylaw No. 1, 2006. Available at: http://www.crd.bc.ca/bylaws/juandefucaelectorala_/index.htm

[17] Available at http://www.bcauditor.com/

Products had been informing its shareholders of government-company negotiations for more than a year before the decision,[18] the Minister failed to inform local governments and the local citizens who would be affected by the upcoming decision.

31. As a result, the deletion decision caught local government unawares, with their planning initiatives unfinished. They had not been given adequate opportunity to revise their bylaws to deal with the dissolution of TFL regulation on the land. They had not yet taken the necessary steps to amend their zoning bylaws to ensure that new developments were consistent with the new Regional Growth Strategy, the Official Community Plans and community opinion. Orderly development of the western portion of the Capital Regional District was put in serious jeopardy.

32. After the TFL deletion decision was made public, there was overwhelming public concern in the Capital Regional District. This concern led to widespread media coverage, critical editorials in the *Victoria Times Colonist*, and a public meeting of 500 concerned citizens.

33. In response, the CRD passed first reading of OCP and zoning bylaw amendments that applied to the former TFL lands. After a number of formal public hearings involving hundreds of citizens, in February 2008 CRD Directors approved third reading of those bylaw amendments, that generally called for minimum lot sizes of 120 hectares. They were designed to maintain the *status quo* for lands that have been designated for TFL forestry for decades and to preserve the integrity of the CRD's Regional Growth Strategy and Official Community Plans, in the face of the unexpected Provincial TFL deletion decision.[19] Once passed by the CRD in February 2008, the bylaws were sent on to the

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[18] WFP had been informing its shareholders in quarterly reports since November 2005 about the negotiations to delete the lands.

[19] The new bylaws were designed to allow rational and orderly development of land use bylaws to cope with the massive and unexpected addition of the TFL lands to the real estate marketplace. It is important to note that flexibility to allow for appropriate denser subdivision was available, since landowners would continue to have the right to apply for

Ministry of Community Services and Minister Ida Chong for the final signature of approval.

34. However, in April 2008, before these bylaws received formal approval by the Minister, and while the passed bylaws awaited a signature of that Minister, Western Forest Products submitted their application for subdivision, which, if approved, would thwart the CRD's attempt to preserve the status quo for the longstanding forestry lands.

35. WFP applied to create 319 subdivision lots on the lands in question, relying upon the existing 1993 zoning of the deleted TFL lands. This 1993 zoning was outmoded – it had never been made consistent with the Growth Strategy and OCP. As noted, such zoning had not yet been changed, because deletion of great expanses of TFL land was unimaginable at the time.[20]

36. Western Forest Product's spokesman now expresses confidence that its subdivision applications will be dealt with under the old zoning – and emphasizes that under their applications there will be "zero parks." An implication is that if the public wants parks in such treasured places as Jordan River that even higher subdivision densities will now have to be negotiated – including the developer's recent proposal to demand a city of 10,000 people at Jordan River, if people want parks in the area.[21]

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rezoning – and each application for rezoning would be considered on its merits.

[20] After all, the TFL lands had been reserved for forestry use for many decades, pursuant to the 1956 Royal Commission on Forestry, which had recommended the formation of TFLs in order to establish "permanent forestry on private lands." See Honourable Gordon McG. Sloan, *Report of the Commissioner Relating to the Forest Resources of British Columbia*, Vol. 1. (Victoria: Don McDiarmid, 1956) at p.93.

[21] Developer Ender Ilkay, conditional purchaser of the land from Western Forest Products, has already noted the lack of provision of parks in the subdivision applications, and offered parks – but in exchange for approval of a settlement of 10,000 people near Jordan River. Judith Lavoie, "Developer Reveals Controversial Expansion Plans for Jordan River." *Times Colonist*, April 19, 2008. http://www.canada.com/victoriatimescolonist/news/capital_van_isl/story.html?id=f62bcad3-39fd-4d02-8e92-f7f6b015db05 .

37. Thus, the secrecy and lack of consultation by the Ministry has created a situation where bylaws that have been formally approved by CRD directors are not governing the future of the lands in question. A series of events has been set in play that, in effect, disenfranchises CRD residents and CRD Directors from control over local land use.

38. After extensive public hearings, the democratically elected directors of the CRD have voted for new bylaw provisions to protect the natural beauty and character of the region – yet those bylaws are not being applied because WFP has rushed in to rely upon the old bylaws.

39. Section 865 of the *Local Government Act* requires that all bylaws adopted by a regional district after the board has adopted a Regional Growth Strategy (RGS) must be consistent with that RGS. The courts have interpreted "consistent" to mean not in "direct collision" with the RGS.[22] The CRD passed new bylaws earlier this year because the previous ones were in fact in direct collision with the RGS. Previous zoning applied to lands outside of the Regional Urban Containment and Servicing Area (RUCSA) and allowed small lot rural residential development on lands designated as Renewable Resource Lands Policy Area (RRLPA). RRLPA lands are meant to include agricultural, silvicultural and forestry uses, but the previous zoning – the zoning under which WFP has submitted their subdivision applications – allows dispersed development patterns that undermine the vision and outcomes of the RGS. The large lot zoning that the CRD passed, but which does not yet apply to the WFP plans, would once again make the land use planning for this area consistent with the RGS.

40. Specifically, the large lot zoning would assist the region in achieving all RGS initiatives, in particular those that aim to:

- Keep urban settlement compact

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[22] *Rogers* v. *Saanich*, [1983] B.C.J. No. 1744(S.C.)

- Protect the integrity of rural communities
- Protect regional green and blue spaces
- Manage natural resources and environment sustainably
- Build complete communities

41. The BC Supreme Court ruling in *MacFarlane*[23] confirms that new bylaws can be relied on by approving officers in considering if the application is against the public interest.

42. In addition, *ARA Holdings Ltd. v. British Columbia (Provincial Approving Officer)* held that, in the context of the then *Bare Land Strata Regulations*:[24]

> an approving officer will usually be required to receive the input of local governmental authorities to determine …the extent to which that plan complies with applicable local by-laws, regulations or interests. To fail to do so would be to ignore public interest.[25]

43. To summarize, these lands were protected from development for decades as forest resource lands within Tree Farm Licences. After the CRD's bylaws were passed in February of this year and while they awaited formal approval of the Minister of Community Services, WFP submitted these subdivision applications – just two weeks before the bylaws received formal approval. In our respectful submission, a development of this magnitude, conceived of in such a brief window of opportunity, cannot be seen to be in the public interest. Indeed, it directly conflicts with the historical status of the lands and with the forward looking bylaws and other land planning and policy documents of the CRD. In that the subdivision applications were submitted in such a narrow "window of opportunity", it is, in our submission, incumbent on you to consider the long history of these lands being protected and the forward planning and policy documents of the CRD –

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[23] *MacFarlane, supra*, note 4

[24] B.C. Reg. 75/78, passed pursuant to the *Condominium Act*, R.S.B.C. 1996, c. 64.

[25] *ARA Holdings Ltd. v. British Columbia (Provincial Approving Officer)*, [2001] B.C.J. No. 1170 (C.A.), at paras. 28-29.

policies that "are aimed at ensuring the long term protection of Rural Resource Lands with policies that support farming, forestry and silviculture."[26].

44. The context in which these subdivision applications were submitted and the land use planning of the CRD, clearly, in our submission, demonstrate that the proposed subdivisions are against the public interest, and a PLNA should be issued.

b) Regional Growth Strategy

45. The purpose of the Regional Growth Strategy, as stated in section 849 of the *Local Government Act* is to "promote human settlement that is socially, economically and environmentally healthy and that makes efficient use of public facilities, land and other resources."[27] The overarching purpose of the RGS is to give regional districts and municipalities long-term planning direction.[28]

46. The CRD's Regional Growth Strategy calls for much of the deleted TFL land to be maintained as forestry resource The RGS does not call for the Island's wild coast to be opened up for undesired and inefficient urban sprawl, which is what the WFP applications purport to do.

47. The RGS needs to be honoured because it represents a consensus on how the citizens of the CRD would like to see the region develop and the kind of communities they would like to live, work, study and play in. The effort that citizens, staff, and elected officials have put into regional planning exercises – including the effort they continue to invest in

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[26] Affidavit of Robert Lapham, General Manager, Planning and Protective Services, CRD, filed in BCSC, Victoria Registry, Actions #08-2201, *Western Forest Products Inc. v. Capital Regional District*; and #08 1644, *Association of British Columbia Landowners et al v. Capital Regional District et al.*

[27] *Local Government Act* [RSBC 1996] Chapter 323, s.849 (1).

[28] A Decade of Experience with RGSs in BC: Summary of Interview Findings. http://www.scrd.ca/files/File/Planning/RGS/MCS-%20RGS%20Final%20%20Summary%20Report.pdf

monitoring and the upcoming five year review of the RGS – should not be discounted. It is the principles and actions in the RGS that can and are helping grow comprehensively planned, sustainable communities.

48. Green Communities legislation introduced in 2008 requires local governments to include greenhouse gas (GHG) reduction targets and strategies in their regional growth strategies by 2010/2011. The BC Climate Action Team recommends that, "government should provide additional flexibility and tools to local governments to enable them to set and meet more aggressive GHG reduction targets."[29] If these subdivision applications are allowed, the very large size of the subdivided area and the type of development that will engulf it will substantially limit the CRD's ability to set and meet GHG reduction targets in its regional growth strategy.

49. The RGS deals with private lands in the CRD. Crown controlled lands, such as those covered by the Vancouver Island Land Use Plan, are outside of its purview; however, the status of these lands were part of the backdrop on which the RGS was created. While they were inside TFL 25, the lands at issue here were forest lands. They were not for residential use, they were not for development. They were working forests managed under a regime intended to ensure long term sustainable forestry. They had been this way for almost fifty years.

c) Regional Green-Blue Spaces Strategy

50. The CRD considers the deleted TFL lands vital to its Regional Green-Blue Spaces System, green infrastructure network, and the maintenance of working forests in the region. Planning for protected areas like the Sea to Sea Greenbelt and Sooke Potholes was contingent on the status of these lands as working forests.

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[29] B.C. Climate Action Team. July 28, 2008. *Meeting British Columbia's Targets: A Report from the B.C. Climate Action Team,* pg.32. Available at: http://www.climateactionsecretariat.gov.bc.ca/cat/report.html

d) Community Energy Plan & Travel Choices Transportation Strategy

51. The CRD and its member municipalities have committed to maximizing energy efficiency and reducing greenhouse gas emissions, the primary cause of climate change.[30] The Community Energy Plan is a major regional initiative.[31] The primary deliverable will be a comprehensive and practical plan. A central theme of the plan will be to focus on reducing fossil fuel use and greenhouse gas emissions per capita.

52. The Travel Choices Transportation Strategy is another document that speaks to the public interest in how the region develops. Currently, transportation accounts for 52% of CRD greenhouse gas emissions.[32]

53. The effectiveness of the Community Energy Plan and Travel Choices will be significantly and irreversibly compromised if the subdivision applications are approved. The proposed developments will create traffic congestion and exacerbate climate change by facilitating the creation of commuter residences – and likely eventual commuter communities as proposed by developer Ender Ilkay -- outside of Victoria

e) 2006-2008 Strategic Plan

54. The CRD's 2006-2008 Strategic Plan sets out goals and strategies to improve the services and operations of the CRD.[33] Four of six of the Plan's key priorities will be directly compromised if these subdivision applications are approved.

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[30] http://www.onedaycapitalregion.bc.ca/thecommitment.htm
[31] http://www.onedaycapitalregion.bc.ca/theplan.htm
[32] 2004 CRD Community GHG Emissions by source. SENES Consultants Limited, 2004. "Greenhouse Gas and Energy Use Inventory for the Capital Region, 2004," page xi.
[33] Available at: http://www.crd.bc.ca/about/strategicplan.htm

- "Increasing regional commuting options and relieving traffic congestion" will be thwarted by increasing commuter traffic from the low density, car-dependent development planned for the WFP lands.
- "Becoming leaders in environmental stewardship through protection, sustainable development and climate change initiatives" will be frustrated by the subdivisions' destruction of sensitive ecosystems, disruption of local watersheds, setting aside of fundamental principles of sustainable development, and contribution to greenhouse gas emissions through destruction of forests and proliferation of car-dependent development.
- "Developing an effective emergency and disaster response infrastructure throughout the CRD" will be made more difficult if sprawl is permitted to continue on the western side of the region.
- "Strengthening and promoting the Regional Growth Strategy" will be systematically undermined, as detailed above.

55. The TFL deletions have undermined local control over land use through zoning bylaws, and the ability of the public to make effective submissions to decision makers. The subdivision of the former TFL lands will even further undermine the Regional Growth Strategy and other Regional District laws and policies.

56. Other vision statements from the Strategic Plan (pg.3) that speak of a public interest and commitment to the 'triple bottom line' and that will clearly be severely compromised by the subdivision applications include maintaining:

- relative ease of travel through a balanced regional transportation system that provides residents with reasonable and affordable transportation choices, enhances quality of life, and reduces automobile dependency – the 'walking and cycling capital' of Canada;

- preservation of the region's heritage landscapes, architecture and urban form;
- a regional green/blue space strategy that protects and maintains the full range and diversity of the natural environment that surrounds us, including significant green spaces, the marine environment, wetlands, fish and wildlife habitat, and unique ecosystems;
- a belt of protected green space runs sea to sea from Saanich Inlet south to Juan de Fuca Strait – a key element in an integrated parks, green space, greenways and trail system providing outdoor recreation, protecting important natural areas, and linking town to country;
- the majority of our population housed in defined urban areas – respecting and maintaining the green, rural character of much of the region;
- a region driven by a love for the natural world, where …development is environmentally friendly, watersheds and aquifers are protected;
- protection of our strong agricultural and resource base

(2) The plans are contrary to the Vancouver Island Land Use Plan

57. The TFL deletion removed the land from regulation under the Vancouver Island Land Use Plan (VILUP) of 2000. This is a land zoning plan created following the Commission on Resources and Environment (CORE), the most extensive public consultation in Canada to that date. The VILUP was also the product of years of work by a technical team comprised of representatives from government, the forestry industry and independent consultants. The VILUP had stipulated that these lands were to be retained for forestry – and that changes to the objectives to the land would not be made without public consultation.[34]

[34] See the October 19, 2007 letter from Sandborn, Skeels and Dempster of the Environmental Law Clinic to the Auditor-General, found at www.elc.uvic.ca

(3) The plans are contrary to the Otter Point & Shirley/Jordan River Official Community Plans

58. These Official Community Plans[35] call for:

- The retention of both the rural and natural character of the area;
- The protection and enhancement of the natural environment, its ecosystems and biological diversity; and
- Support for planned community development in conjunction with residential, agricultural, forestry, commercial, tourism and recreational activities

59. The various ways in which the subdivision applications will be against these publicly expressed and enshrined into government policy interests are explained throughout this document.

(4) The plans do not comply with the provisions of the *Land Title Act* relating to access and the sufficiency of highway allowances shown in the plan (s.86(1)(c)(ii))

60. It is unclear how the subdivision plans provide for beachfront access in accordance with section 75(1)(c) of the *Land Title Act*. The current applications do not show how WFP is meeting the minimum requirements to provide public access to the ocean. Denying the public's statutory right of access to Crown-owned beaches and ocean would clearly be against the public interest.

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[35] Otter Point & Shirley/Jordan River Official Community Plans available at http://www.crd.bc.ca/jdf/landuse/otterpoint_ocp.htm and http://www.crd.bc.ca/jdf/landuse/shirley_jordanriver_OCP.htm

(5) The anticipated development of the subdivision would adversely affect the natural environment to an unacceptable level (s.86(1)(c)(vi))

61. This section stipulates that an application is against the public interest if, "after due consideration of all available environmental impact and planning studies, the anticipated development of the subdivision would adversely affect the natural environment or the conservation of heritage property to an unacceptable level."

62. First, there is a large and serious concern that "due consideration of all available environmental impact and planning studies" is not being undertaken. The area that WFP purports to subdivide is not a well studied or mapped one. An approving officer and the public at large deserve to know more about what is at stake before irreversible decisions are made that will affect this land and the entire region. Precaution should be taken when making decisions that will convert potentially ecologically and heritage rich resource lands in to paved suburbs. Indeed, the government-authored subdivision guide itself asks applicants if there are sensitive or exceptional environmental values, especially riparian areas that may be affected.[36]

63. Second, according to our estimates, the total site area of the proposed subdivisions is approximately 15 square kilometres. The conversion of forested lands to suburban development gives rise to immediate and long term environmental, public health and safety impacts. These include potential harm to wildlife, riparian areas, water safety, and recreational uses. Furthermore, these forest lands function to contain urban sprawl and act as "carbon sinks" to combat climate change; the subdivision of these lands will undermine these important and widely-supported environmental objectives.

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[36] http://wlapwww.gov.bc.ca/wld/documents/bmp/urban_ebmp/urban_ebmp.html

a) Wildlife

64. Based on information we have been made aware of, there are potential impacts to wildlife and to endangered species. If this is the case – and it is incumbent upon WFP to prove that wildlife and endangered species are not at risk by way of an expert report on environmental impacts – then the subdivision applicant should be referred to the Ministry of Environment.

65. The BC Conservation Data Centre[37] has confirmed that, within the vicinity of the subdivision area, the following species at risk are present:

- Red legged frog

  This species is *blue listed* provincially,[38] and listed federally under COSEWIC[39] as of *special concern.*

- Dromedary jumping slug

  This species is *red listed* provincially and listed federally under COSEWIC as of threatened.

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[37] http://www.env.gov.bc.ca/cdc/ . TFL 25 Block 1 approximate subdivision area mapped by CDC staff member May 26, 2008. Each CDC record includes scientific name, status on the provincial Red or Blue List, herbarium, collector name, collection date, collector number, locality, UTM (Universal Transverse Mercator grid reference, NAD 83 or NAD 27), latitude/longitude, elevation (m), elevation (ft), habitat information and additional notes.

[38] BLUE LIST: Includes any ecological community, and indigenous species and subspecies considered to be of special concern (formerly vulnerable) in British Columbia. Elements are of special concern because of characteristics that make them particularly sensitive to human activities or natural events. Blue-listed elements are at risk, but are not Extirpated, Endangered or Threatened.
RED LIST: Includes any ecological community, and indigenous species and subspecies that is extirpated, endangered, or threatened in BC. Extirpated elements no longer exist in the wild in BC, but do occur elsewhere. Endangered elements are facing imminent extirpation or extinction. Threatened elements are likely to become endangered if limiting factors are not reversed. Red-listed species and sub-species may be legally designated as, or may be considered candidates for legal designation as Extirpated, Endangered or Threatened under the *Wildlife Act* (see http://www.env.gov.bc.ca/wld/faq.htm#2). Placing taxa on these lists flags them as being at risk and requiring investigation.

[39] Committee on the Status of Endangered Wildlife in Canada (COSEWIC) is a committee of experts that assesses and designates which wild species are in some danger of disappearing from Canada. See http://www.cosewic.gc.ca/

- Warty jumping slug

  This species is *blue listed* provincially and listed federally under COSEWIC as of *special concern.*

- Nodding Semaphoregrass

  This species is *blue listed* provincially.

- White glacier lily, *blue listed*

  This species is *blue listed* provincially.

- Smith`s fairybells, *blue listed*

  This species is *blue listed* provincially.

Additional information on the locations and habitat requirements of these species is available from the CDC.

66. Habitat values for a number of other vulnerable, threatened and endangered species have been identified in the subdivision areas based on mapping on the Species At Risk Act website:[40]

- Barn owl
- Marbled murrelet
- Northern goshawk laingi subspecies
- Short tailed albatross
- Western screech owl kennicottii subspecies
- Western toad
- Monarch
- Banded cord moss
- Streambank lupine

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[40] Environment Canada, Canadian Wildlife Service. All Endangered, Threatened, and Special Concern Species with a Map. Plotted July 2008. http://www.sis.ec.gc.ca/ec_species/ec_species_e.phtml

b) Ungulate Winter Range impacts

67. When the province allowed WFP to remove 28,283 hectares of private land from three tree farm licences on Vancouver Island in January 2007, it put conditions on the deal, including a three-year ban on log exports from the lands, First Nations access, protection of community watersheds and protection of Roosevelt elk and black-tail deer winter ranges ("ungulate winter range"). However, those conditions only apply if the land is owned by WFP. If ungulate winter range areas are removed from TFLs, there is no legal mechanism or other obligation for them to be maintained by landowners as regulations for private forest lands do not require maintenance of these habitats. For example, winter range areas on private lands were logged shortly after their removal from TFL 47. Therefore, there is significant concern about the status of those conditions once WFP sells its lands. In addition, there is concern about the terms of the conditions that relate to the ungulate winter range.

68. A freedom of information request[41] for records relating to the ungulate winter range 'within TFL land swap' between WFP and the Ministry of Environment has revealed, among other things, that:

- Ministry of Environment staff had, throughout the process, concerns about the management and stewardship of the lands designated as ungulate winter range;
- There is a net loss in hectares of range;[42]
- There is a decrease in the ecological quality of the range.[43]

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[41] Released February 12, 2008. "All records related to protection of ungulate habitat and the removal of private lands from management under TFL 25." File 292-30\MOE07.175

[42] Order UWR #U-1-012, March 13 2007. TFL 25 has 129 hectare net loss in UWR (240 removed, 78 replaced).

[43] For example, "Rationale for UWR Amendments in TFLs 6, 19 and 25" February 27 2007 states that, "These areas would not necessarily be considered a like for like compensation of the lands removed."

This type of 'land swap' is one that MOE staff were not familiar with. They expressed concerns regarding "WFP's Management Commitment for Wildlife Habitat." Staff also note that documents relating to the TFL deletion decision "takes out references to SAR [species at risk] species and WHAs…." One employee in the Ministry of Forests and Range observed that, at one point, "most, if not all, of the areas are important to the existing population of elk and deer and that elimination of the habitat will have a negative effect on those populations."

69. May 2006 correspondence among Ministry staff released in the FOI request confirms that there is identified **Marbled Murrelet** habitat in the area.

70. Additional information relating to this FOI request and the resulting records is available from the Environmental Law Centre.

c) Riparian Areas and Watersheds

71. The Riparian Areas Regulation[44] requires that proposed development activities near riparian areas are subject to a science based assessment conducted by a qualified environmental professional. It would be against the public interest to approve a subdivision application without conducting a thorough study of the area's riparian areas in conjunction with a study of generally hydrology, geology, stormwater run off, well pumping sites and residential septic fields.

72. WFP's Private Land Withdrawal proposal of July 14, 2005 lists (in Appendix 3) active water licences associated with watersheds. Four Community Watersheds in TFL 25 Block 1 are listed: Charters, Mary Vine, Goudi, Leech. These watersheds are, according to local

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[44] *B.C.Reg.376/2004, enacted under Section 12 of the Fish Protection Act* in July 2004

environmental and health groups, not well mapped or surveyed. There is a concern among a number of residents and community groups about water quality, both for drinking and for fish bearing streams. Many residents rely on well water, which has been adversely impacted in the past by upstream logging and development that has changed surface hydrology and erosion.

73. Current residents of the area have called for "temporary moratorium on further development in the Goudie Creek Watershed until adequate drinking water protection guidelines and by-laws can be put in place to protect the quality and quantity of the drinking water within our watershed." At least one of WFP's current subdivision applications affects the Goudie Creek watershed.

74. In 2006, the Vancouver Island Health Authority stated that they were "working with a number of government ministries and local government planning departments to set up Watershed Protection Committees. These committees will be charged with the task of dealing with concerns regarding development proposals, which might impact water quality." In considering the public interest, it is incumbent upon the approving officer to be informed by VIHA as to the status of these committees.

d) Climate Change & Forest Health

75. The impact this subdivision could have on climate change is twofold.

76. First is the impact of permanently removing the working forest land from the carbon sink of southern Vancouver Island.[45] BC's Climate Action Team has recognized that the

[45] This impact can be quantified based on the cubic volume of lumber that would be permanently removed from the area, plus the value of soils and naturally functioning ecosystems. This impact is significant, as verified by staff at the government-established Future Forest Ecosystems Initiative and with Dr. Werner Kurz, Senior Research Scientists, Canadian Forest Service.

province's forests "are a large, long-term store of carbon."[46] The Team's 2008 report states that,

> Permanent conversion of forested land to other uses (deforestation) releases carbon dioxide to the atmosphere and reduces the area of forest available to remove carbon in the future. The Government of B.C. has already announced a policy of zero-net deforestation, which will require new forests to be planted to compensate for unavoidable losses.[47]

77. It would be contrary to the public interest to unnecessarily remove large tracts of working forest lands from our province's store of carbon, especially when these 'greenfield' lands would be traded for paved-over suburban sprawl. In addition, Draft Relocated Old Growth Management Areas (OGMA) were proposed by WFP for TFL 25, Block 1 in 2005.[48] The size and quality of these relocated OGMAs is a matter of public interest as it goes to the carbon sink value of the area, the green space retained as well as habitat values for many of the above-noted species of concern in the area.

78. Second, sprawling patterns of development unnecessarily destroy green space and farmland and force dependency on vehicles, which in turn contribute to pollution and global climate change. As David Suzuki stated: "The more cities sprawl outward, the more we damage the environment and our health."[49] Sprawling patterns of development are not only environmentally harmful but also undermine the natural beauty of the West Coast.

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[46] B.C. Climate Action Team. July 28, 2008. *Meeting British Columbia's Targets: A Report from the B.C. Climate Action Team,* pg.36. Available at: http://www.climateactionsecretariat.gov.bc.ca/cat/report.html

[47] B.C. Climate Action Team. July 28, 2008. *Meeting British Columbia's Targets: A Report from the B.C. Climate Action Team,* pg.37. Available at: http://www.climateactionsecretariat.gov.bc.ca/cat/report.html

[48] "Private Land Withdrawal: The Removal of all Private Lands from TFL 6, 19 and 25." WFP draft proposal, July 14, 2005, page 8.

[49] Suzuki, David. October 15, 2003. "Provinces need to prevent urban sprawl: report." CBC News.

79. There is a certain increase in greenhouse gas emissions that will result from the transport of many new people living on lands at a considerable distance from the main population centres of the CRD. The construction of roads and houses will also result in a net loss of carbon from the forest and its soil, contributing further to an increase in BC's greenhouse gas emissions.[50] In the context of climate action, the BC Climate Action Team states that "communities play a key role in issues related to land use, density and urban form, and also in areas related to values, attitudes and behaviour change....Changes in land use, density and urban form that help reduce emissions are essential to any strategy that will change the development path."[51] The BC government has legislated a mandatory 33% reduction in our 2007 emissions by 2020; building sprawling, commuter suburbs well outside of the region's prescribed urban containment and servicing boundary will only make that goal more difficult to achieve and would therefore be against the public interest of all British Columbians.

80. Faced with significant and imminent concerns about climate change, it behooves you to interpret "the public interest" so as to include the interests of multiple generations, and of not just regional ecosystems but also those that exist provincially and bioregionally. As a precedent, we refer you to this government's *Utilities Commission Amendments Act 2008:*[52]

> (2.5) In considering the public interest under subsection (2.4), the Commission must consider: (a) the government's energy objectives"

These objectives are defined in section 1(a) of the same Act:

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[50] Dauncey, Guy. June 13, 2008. BC Sustainable Energy Association letter to Bob Wylie, Re: WFP Subdivision Application

[51] B.C. Climate Action Team. July 28, 2008. *Meeting British Columbia's Targets: A Report from the B.C. Climate Action Team,* pgs.30-31. Available at: http://www.climateactionsecretariat.gov.bc.ca/cat/report.html

[52] Chapter 14, Section 71 (2) at: www.leg.bc.ca/38th4th/1st_read/gov15-1.htm

"government's energy objectives" means that the government will "encourage public utilities to reduce greenhouse gas emissions."

81. This is an example of how, in BC specifically, the public interest includes the reduction of greenhouse gas emissions, in pursuit of the BC Government's objectives. Indeed, in a July 7, 2008 news release, Ric Slaco, Chair of the BC Forestry Climate Change Working Group, said: "The potential for British Columbians and our forest industry is immense. One of the most significant carbon reservoirs on the planet exists within our forests, and by keeping them healthy and growing… we can have a significant positive impact."[53] Finally, a January 2008 BC-based report "clearly demonstrated" that conserving land with healthy natural ecosystems is a cost effective and important strategy to both mitigate and adapt to climate change.[54]

82. Approval of these subdivisions at such a distance from the CRD's main centres of population, work, and recreation, in a forested area, will cause a definite increase in transport- and forestry-related greenhouse gas emissions, and therefore is against the public interest.

(6) The anticipated development of the subdivision would adversely affect the conservation of heritage property to an unacceptable level (s.86(1)(c)(vi))

83. It is our understanding that the presence and value of archaeological and other heritage values on the proposed subdivision lands have yet to be determined. T'Sou-ke and Beecher Bay First Nations and other groups who have knowledge of the area and its

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[53] July 7, 2008. "Industry Promotes Climate Benefits of Forest Products." BC Forestry Climate Change Working Group, Office of the Premier. Release #2008OTP0173-001034

[54] Wilson, Sara and Richard Hebda. 2008. *Mitigating and Adapting to Climate Change Through the Conservation of Nature.* Published by the Land Trust Alliance of BC.

history should be involved in this determination and any mitigating or compensatory actions that may be necessary.

(7) The cost to the government of providing public utilities or other works or services would be excessive (s.86(1)(c)(vii)) and the cost to the municipality or regional district of providing public utilities or other works or services would be excessive (s.86(1)(c)(viii))

84. An additional affront to responsible government land use planning will result if these subdivisions are approved and public monies are required to finance related infrastructure. If the subdivision applications are permitted to proceed, the cost to the government of providing public utilities or other works or services would be excessive and the cost to the municipality or regional district of providing public utilities or other works or services would be excessive. These effects would be directly contrary to sections 86(1)(c)(vii) and (viii) of the *Land Title Act.*

85. Compact urban settlements are efficient use of public facilities, services, lands and other resources, while sprawling patterns of development are more costly for local governments and taxpayers. The BC Climate Action team agrees that denser urban developments, for example, require less energy to heat and cool, and require less transportation energy to move people around.[55] The Natural Resources Defense Council has documented the economic disadvantages of low density sprawl. This study demonstrated that servicing costs increase significantly as the density of development decreases.[56] The study's findings show the financial burdens that are placed on local governments and taxpayers as sprawl occurs.

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[55] B.C. Climate Action Team. July 28, 2008. *Meeting British Columbia's Targets: A Report from the B.C. Climate Action Team,* pg.31. Available at: http://www.climateactionsecretariat.gov.bc.ca/cat/report.html

[56] Another Cost of Sprawl: The effects of Land Use on Wastewater Utility Costs. 1998. Natural Resources Defense Council. http://www.nrdc.org/cities/smartGrowth/cost/costinx.asp

86. Low density communities experience increasing private and public costs, including: road construction and maintenance, school construction, public transportation expansion, and sewer, water and other infrastructure construction and maintenance. High density compact settlements reduce servicing costs for communities and allow local governments to increase the level of services, thus improving the quality of life for the greater public.

87. The CRD's 2005/2006 Regional Growth Strategy Monitoring Report[57] has specific goals that will be contravened by the current subdivision applications. These include limiting the land that needs to be serviced with new water and sewer infrastructure, strengthening of the local food supply, increasing the proportion of areas serviced by high frequency transit, and limited development activity on forest lands.

88. he Urban Land Institute's 2008 report, Growing Cooler: Evidence on Urban Development and Climate Change,[58] is based on an exhaustive review of existing research on the relationship among urban development, travel, and the carbon dioxide emitted by motor vehicles. It provides evidence on and insights into how much carbon dioxide savings can be expected with compact development. It also draws well-supported conclusions on the relationship between compact development and reduction in driving, the negligible impact of fuel efficiency standards in cars, and the association between compact communities and physical health. When viewed in total, the evidence on land use and driving shows that compact development will reduce the need to drive between 20 and 40 percent, as compared with development at the outer suburban edge with isolated homes, workplaces, and other destinations.[59]

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[57] 2005/2006 Regional Growth Strategy Monitoring Report, pages 16-17. http://www.crd.bc.ca/regionalplanning/reports/index.htm

[58] Urban Land Institute. 2008. "Growing Cooler: Evidence on Urban Development and Climate Change." http://www.uli.org/AM/Template.cfm?Section=Policy_Papers1&Template=/TaggedPage/TaggedPageDisplay.cfm&TPLID=100&ContentID=11038

[59] ULI, 2008, page 5.

89. Furthermore, in order to determine the public interest, you should also take into account the additional economic losses that the public will incur because of the conversion of the natural landscape. A recent study from Simon Fraser University found that the conversion of natural landscapes is often inefficient from an economic viewpoint:

> *By destroying natural capital, we must find substitutes for the services this capital provides, services in the form of water purification, waste assimilation, cleansing of the atmosphere, mitigation of greenhouse gas emissions, flood prevention, soil retention, fertility enhancement, alternative recreational services and much more.*[60]

90. That same study, for example, showed that conservation of natural capital in the Lower Fraser Valley could be valued, per hectare per year, at over $50,000 Canadian 2003 dollars.[61] Clearly, to make an informed decision about impacts on the public interest, you must consider the value of natural capital services that will be lost in the subdivision process.

(8) The land is subject, or could reasonably be expected to be subject, to flooding,erosion, land slip or avalanche (s.86(1)(c)(v))

91. If there is a possibility of flood, erosion, or other natural hazard, the approving officer can require the applicant to submit a report certified by a professional engineer or geoscientist experienced in geotechnical engineering that the land may be used safely for the use

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[60] Olewiler, Nancy. 2004. *The Value of Natural Capital in Settled Areas of Canada*. Department of Economics & Public Policy Program, Simon Fraser University. Published by Ducks Unlimited Canada and the Nature Conservancy of Canada, page 1.. http://www.sfu.ca/mpp/04research/pdfs/natural_capital.pdf See also Costanza, R.et al.1997.The Value of the World's Ecosystem Services and Natural Capital, *Nature*: 387: 253-260.

[61] Olewiler, 2004. Table 6 - The Current Value (per hectare per year) of Conserving Natural Capital in the Lower Fraser Valley, page 15.

intended, or that the applicant enter into one or more covenants under section 219 in respect of any of the parcels that are being created by the subdivision.

92. There already exists some evidence of natural hazard risk in the area. A May 29, 2006 email among Ministry of Environment employees noted "some additional considerations … terrain stability challenges and … information on pending harvest that might affect a decision on these areas." Also, local residents have concerns that, based on past experiences with flooding and erosion from other, smaller subdivisions in the area, their properties, water supply and safety could be at risk. A public hearing would allow further information about these concerns to come to light.

(9) The anticipated development of the subdivision would unreasonably interfere with farming operations on adjoining or reasonably adjacent properties, due to inadequate buffering or separation of the development from the farm (s.86(1)(c)(x)). The extent of highways shown on the plan is such that it would unreasonably or unnecessarily increase access to land in an agricultural land reserve (s.86(1)(c)(xi))

93. WFP's Muir Creek subdivision application contains land in and/or directly bordering the Agricultural Land Reserve. The public has an interest in maintaining working agricultural landscapes and fostering local food production. The public has yet to be made aware of WFP's plans for managing this proximity or if it intends to apply to the Agricultural Land Commission to have the lands removed from the ALR.

IV. CONCLUSION

Are Western Forest Products' Subdivision Applications Contrary to the Public Interest?

94. The flawed TFL deletion has led directly to subdivision applications that are contrary to the public interest. The review of case law in Part I and the specific factors outlined in Part II provide several important implications for your consideration of whether WFP's proposed subdivisions are in the public interest.

95. First, the overarching message of the case law is that as an Approving Officer, you have broad discretion to consider the various facts that may be relevant to the public interest, regardless of whether such factors are enumerated in the *Land Title Act*.

96. Second, *MacFarlane* makes it clear that the CRD bylaws pertaining to the in question (though not directly applicable by virtue of section 943 of the *Local Government Act*), are a relevant factor in the consideration of this issue. Clearly, a refusal to consider their import on the public interest may be an error in law.

97. Furthermore, cases like *Vancouver v. Simpson* illustrate that the CRD, and other local governments affected by the applications, should be consulted, and their views taken into consideration, regardless of whether these local governments have enacted valid bylaws prohibiting the proposed subdivision. Their views are relevant because as democratically elected public bodies, they represent the interests of the public.

98. The views of the public should also be considered. Although you need not keep a running "tally" of opinions for or against an application, the views expressed by affected members of the public can form part of the factual basis upon which you make your evaluation of the public interest. In most subdivision applications, there are a relatively small number of affected persons and views to consider. However, due to the size, the fragmented nature, distance covered and the amount of Crown land bordering WFP's proposed subdivisions, and the massive ramifications for Vancouver Island residents of today and tomorrow, the views expressed by residents of Vancouver Island should be taken into account in your consideration of the public interest.

99. To date, citizens of Vancouver Island have expressed overwhelming opposition to WFP's proposed subdivisions. And they have done so through a number of venues: in editorials, letters to the editor, op-eds, public meetings, public rallies, and through written and oral submissions sent directly to you. [See, for example, the *Times Colonist* editorials attached.]These objections are based the unique facts pertaining to this subdivision proposal—facts which you are authorized to take into consideration of the public interest.

100. Finally, my client understands that the T'Sou-ke and Beecher Bay First Nations have expressed a number of concerns regarding the potential effects of WFP's proposed subdivisions on their Aboriginal rights. The interests of these First Nations are directly relevant to your consideration of the public interest.

101. As the BC Climate Action Team has recently reported:

> It is vital to recognize the community values related to forestry. Quite aside from their role in storing carbon and supporting emission reductions, healthy diverse forests play a key role in the quality of life of many BC communities, providing

> aesthetic, recreational, tourism and educational opportunities, as well as contributing to healthy air- and watersheds....The importance of British Columbia's forests in society's migration toward a low-carbon global economy is pivotal.[62]

102. For all of the above reasons, we urge you to reject WFP's subdivisions as being against the public interest.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Irene C. Faulkner

Counsel for Sea-to-Sea Greenbelt Society

Tim Tielmann

Articled Student

Rachel S. Forbes

Rachel Forbes

Articled Student

[62] B.C. Climate Action Team. July 28, 2008. *Meeting British Columbia's Targets: A Report from the B.C. Climate Action Team,* pg.37. Available at: http://www.climateactionsecretariat.gov.bc.ca/cat/report.html