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Removing Private Land from Tree Farm Licences 6, 19 & 25:

Protecting the Public Interest?

July 2008

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The Honourable Bill Barisoff
Speaker of the Legislative Assembly
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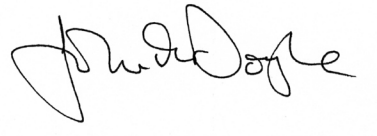
Dear Sir:

I have the honour to transmit herewith to the Legislative Assembly of British Columbia my 2008/2009 Report 5: Removing Private Land from Tree Farm Licences 6, 19 & 25: Protecting the Public Interest?



John Doyle, MBA, CA
Auditor General of British Columbia

Victoria, British Columbia
July 2008

copy: Mr. E. George MacMinn, Q.C.
Clerk of the Legislative Assembly

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John Doyle
Auditor General

On January 31, 2007, the Minister of Forests and Range approved the removal of approximately 28,000 hectares of private land from three coastal tree farm licences (TFLs) held by the licensee, Western Forest Products Inc.

Recent legislative changes allow licensees to more easily remove their private land from a TFL, and from forest use altogether. British Columbians put high importance on land use. They expect government's land use decisions to be thoroughly informed, and they expect they will have the opportunity to participate in these decisions. British Columbians also expect government to communicate transparently the reasons for its decisions. All of these expectations are consistent with decision-making that gives due regard to the public interest; a priority for the Ministry of Forests and Range as described in its Service Plan.

The decision to remove private land from TFLs 6, 19 and 25 has drawn criticism from many members of the public and First Nations. My Office received many requests from individuals and organizations to review the land removal decision. After considering the issue, I did think it appropriate to review the processes supporting the Minister's decision and assess whether due regard for the public interest was exercised in allowing the removal of private land. My review was not an assessment of whether or not the Minister made the "right" decision; the decision was for the Minister to make but our expectation was the decision would be made with due regard for the public interest.

Overall, the report concludes that the removal of private land from TFLs 6, 19 and 25 was approved without sufficient regard for the public interest. The report notes that:

- the decision was not adequately informed—it was based upon incomplete information that focused primarily on forest and range matters and the interests of the licensee, with too little consideration given to the potential impacts on other key stakeholders;
- consultation was not effective and communication with key stakeholders and the public about the decision was not transparent; and
- the impacts of previous land removal decisions were not monitored to help inform future decisions.

Auditor General's Comments

Several outcomes of the decision were predictable, particularly given that the ministry was aware that the licensee intended to sell the land. Individuals and organizations have expressed dissatisfaction with the process and the lack of opportunity for input. Some are looking for alternative ways to influence land use in the affected areas. For example, the Capital Regional District reacted to the decision with new bylaws in an attempt to prevent uses of the land that it deems incompatible with its community plans for the area.

In addition, important and longstanding forestry research sites, some of which may not be replaceable, will likely be lost. Populations of deer and other ungulates in the removed areas will likely decline, and tourism and recreational opportunities will likely be lost. Local residents are concerned by the potential for adverse visual impacts and degraded water quality. First Nations are concerned because their asserted territories include some of the land involved in the decision and because the decision places more pressure on the crown land remaining in the TFLs. At least one group is taking legal action as a result of the decision. Other stakeholders see the decision as breaking a long-standing arrangement between the licensee and the province.

At the time of approval, the ministry estimated the value of the land in question to be $150 million. The decision is expected to help the licensee financially, and this may ultimately lead to benefits for coastal forest workers and the provincial economy. Unfortunately, the decision-making and communication processes did not analyze and explain these potential benefits so that British Columbians might better understand the Minister's decision.

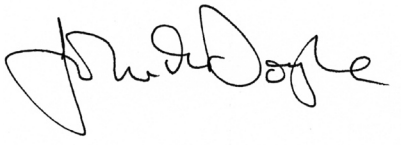
There is little private land remaining in TFLs so I have made no recommendations. I do, however, believe that other government ministries and agencies can learn from the report's findings and conclusions. In particular, the linkages among government programs need to be acknowledged and accommodated to produce decisions that consider all interests.

For my office, the review highlighted the need to better understand government's approach to public consultation. As a result, my staff are currently reviewing the direction and guidance provided to ministries and agencies on the consultation process. The results of this work will be reported later in the year.

Auditor General's Comments

During the course of this review information came to my attention which has been published in a separate report under section 12 of the Auditor General Act dealing with matters relating to the Members' Conflict of Interest Act.

I would like to thank the staff at the Ministry of Forests and Range, Western Forest Products Inc. and those in other ministries and organizations for the cooperation and assistance they have provided to my staff during this review.



John Doyle, MBA, CA
Auditor General of British Columbia

Victoria, British Columbia
July 2008

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Executive Summary

British Columbia has one of the largest public forests in the world. Nearly two-thirds of the provincial land base is forested and most of the forests are owned by the Crown. This high level of public ownership allows the provincial government the opportunity to manage the land base in keeping with the economic, environmental and social interests of British Columbians.

While only about 5% of the province's land base overall is privately owned, the percentage on Vancouver Island has long been much higher, about 23%. This is largely the result of extensive railway land grants dating from the late 1800s. As a result, a significant amount of the forest on Vancouver Island is privately owned.

The Tree Farm Licence tenure system: a brief primer

British Columbia's tenure system for allocating timber to users has been developed over many years. Tree Farm Licences (TFLs), the subject of this review, originated in the 1940s as a means of granting forest companies long-term, exclusive access to harvest Crown timber in exchange for committing to sustained yield forestry and investing in processing facilities. The terms of each TFL agreement differ, but in many instances the licensee was required by government to include private land.

The responsibilities on the TFL licensee are more onerous than under other forms of tenure. Detailed management plans must be prepared by a Registered Professional Forester. Cutting Permits are also required to harvest timber in the licence area, whether on private or Crown land. Until recently, most TFL licensees were required to maintain timber manufacturing facilities and use the harvested TFL timber in those facilities. The 2003 Forestry Revitalization Plan removed these and other requirements as part of a reform package aimed at revitalizing the forest industry. Also, a series of TFL private land removals since 2004 led staff of the Ministry of Forests and Range to conclude that government was open to accepting removal of the private lands without compensation.

Executive Summary

The implications of removing private land from TFLs

Prior to the Forest Land Reserve Act being repealed and replaced by the Private Managed Forest Land Act in 2004, private land removed from a TFL remained in the forest land reserve. However, as a result of the change in legislation, private land removed from a TFL may now remain as forest land and subject to the Private Managed Forest Land Act or it may be removed from forest use altogether, subject to any applicable local zoning requirements. The changes in regulatory requirements and in the potential use of the private land raises concerns for First Nations and the general public. First Nations are concerned because their asserted territories frequently involve the private lands in question. Many First Nations still fish and hunt the lands and the changes can impact the wildlife living there. The general public is also concerned about losing forest land and recreational opportunities, visual impacts, and effects on drinking water if the land-use changes. All groups want to ensure that due regard for the public interest is exercised when a land removal decision is being made.

The Office's decision to review the processes supporting the removal of private land from TFLs 6, 19 and 25

On January 31, 2007, the Minister of Forest and Range approved the removal of private land from three Vancouver Island TFLs 6, 19 and 25, (the Quatsino, Tahsis and Naka licences, respectively) held by Western Forest Products Inc. (WFP). The decision has drawn criticism from many members of the public, including First Nations. Our Office received numerous requests from citizens and organizations to review the land removal decision. After considering the issues, we decided that we should review the processes supporting the Minister's decision. Our purpose was to assess whether government exercised due regard for the public interest when approving the removal of private land from TFLs 6, 19 and 25. Specifically, we sought answers to the following questions:

- Was the decision adequately informed?
- Was there effective consultation and communication with stakeholders?
- Does the ministry adequately monitor the results of its private land removal decisions?

Executive Summary

In planning our review, we recognized that making a decision "with due regard for the public interest" does not necessarily mean that the final decision must balance all of the competing interests. Rather, it means that the final decision will be informed by a thorough consideration of all factors but ultimately shaped by the overarching aim of ensuring that the overall public interest is met.

We carried out the review from December 2007 to May 2008. We focused on the decision to release private land from TFLs 6, 19 and 25, but also reviewed past land removal decisions to determine what processes government followed and what, if any, precedents may have been established. We did not carry out a complete review of those earlier decisions and therefore do not provide an opinion on them. We also did not look at licensee land removal requests that were being evaluated by the ministry at the time of our work.

The evidence for our review included key documents, and interviews with ministry staff, other government staff, WFP and a range of other stakeholders. The material in the report attributed to the Minister is based on written responses to written questions. We requested a meeting with the Minister to understand his decision-making process but he was unable to meet with us. The quantitative information we provide was drawn from ministry sources. We have reviewed the information for reasonableness.

Our examination was performed in accordance with assurance standards established by the Canadian Institute of Chartered Accountants, and accordingly included such tests and other procedures as we considered necessary in the circumstances.

Overall conclusion

We concluded that the removal of the private land from TFLs 6, 19 and 25 was approved without sufficient regard for the public interest.

The information provided by the ministry in support of its recommendation to allow the land removal was incomplete. The information reflected a narrow view of the stakeholders possibly affected and of the potential impacts. Also, the recommendation put greater weight on assisting the licensee's financial restructuring than on other public interests, including the potentially negative impacts on the forest and range and on other stakeholders, but the information included no analysis to

support this position. Overall, the recommendation was not clearly supported by ministry analysis to demonstrate how the removal on the terms proposed was in the interests of British Columbia. The Minister was the final check in the process and the statutory decision-maker but, given the importance of the decision, he did not do enough to ensure that due regard was given to the public interest. Meanwhile, the ministry is not adequately monitoring its other land removal decisions to better inform future requests, to assess stakeholder capacity to deal with decision impacts, or to ensure that conditions agreed to by licensees are met.

Key findings

The land removal recommendation was not adequately informed

The recommendation to allow removal of all private land from TFLs 6, 19 and 25 was based on incomplete information. Because the ministry's process for making its recommendation to the Minister was not well defined, important information was not gathered and evaluated. As a result, the recommendation was based primarily on forestry and First Nations information and on unsupported statements about the licensee's financial health.

Not enough consideration was given to the potentially significant impacts on other key stakeholders and future costs to government. Even those issues that were identified were often not fully explored and the implications summarized. The recommendation to allow the private land removal did not clearly follow from the ministry's briefing material and analysis and there was no explanation of how allowing the land removal was in the public interest.

We concluded that the ministry's process and recommendation were based largely on a belief that the removal of private land was consistent with government's direction. The Minister, as the final check on the process and the statutory decision-maker, did not do enough to ensure that due regard was given to the public interest, given the magnitude of the decision.

The ministry did, however, secure statutory rights-of-way to the remaining Crown land in the TFLs and legal title to the Cape Scott Provincial Park access road as part of the TFL 6, 19 and 25 decision.

Executive Summary

Consultation and communication with key stakeholders were insufficient

The ministry did not consult effectively or communicate transparently with key stakeholders, including the public. First Nations consultation took place and was designed to meet the government's legal obligations. Some consultation occurred with the Ministry of Environment, mainly to help minimize the environmental impacts associated with approving the land removal. Also, some contact was made with the Recreation Sites and Trails Section (at the time a section within the Ministry of Forests) and the Integrated Land Management Bureau (regarding Old Growth Management Areas). Not enough was done to identify other key stakeholders and obtain their input. As a result, the ministry briefing material lacked important information that could have helped to ensure its recommendation gave due regard to the public interest. Neither did the ministry communicate the decision clearly to key stakeholders and the public. This, together with limited consultation, meant that stakeholders were slow to understand the significance of the decision and voice their concerns.

The ministry has not effectively monitored the impact of its past land removal decisions

The ministry is not monitoring its land removal decisions effectively and using the information to guide future decisions. In an effective monitoring system, the ministry would be:

- systematically documenting the key elements supporting its decisions;
- formally assessing the impacts of its decisions on stakeholders, including their capacity to deal with the impacts; and
- formally monitoring that licensees are complying with conditions of the agreements.

Detailed Report

The timber tenure system in British Columbia

British Columbia is home to about four million people including First Nations who have lived here for thousands of years. British Columbia is also home to the greatest diversity of native wildlife in Canada and one of the largest public forests in the world. With a total land base of 95 million hectares (235 million acres), nearly two thirds—some 60 million hectares—is forested. About 5% of the land base is privately owned—meaning that most of the forests belong to the people of British Columbia as Crown land.

Public ownership allows the government the opportunity to manage the land base in keeping with the economic, environmental and social interests of British Columbians. The government's goal is to manage the public forests through laws that enable forest resource use while ensuring the long-term sustainability of those resources.

Vancouver Island presents a slightly different case. Largely for historical reasons, there is a much higher degree of privately owned land on the Island (see sidebar). About 23% of its 3.5 million hectares is held by individuals and organizations, including forestry and asset management corporations.

British Columbia's tenure system for allocating timber to users has been developed over many years, evolving through distinct eras during which governments and the people directed the use of public forest in accordance with their values. While timber tenures were initially created to fuel economic expansion, they have since evolved to reflect new values, most notably sustainable forest management (Appendix A).

E & N (Esquimalt & Nanaimo) land grants

The colony of Vancouver Island was established in 1849. In 1866, the colony was combined with the mainland colony to become British Columbia. In 1871, in response to the promise of the Canadian Pacific Railway being completed by 1885, British Columbia joined the Dominion of Canada.

The provincial government granted almost 2 million acres (800,000 hectares) of land to the federal government for the building of a railway. In 1883, the federal government entered into a contract with Robert Dunsmuir, the Nanaimo coal baron, to build a railway from Nanaimo to the terminus in Esquimalt. It granted the lands to Dunsmuir and also provided a cash grant of $750,000. The amount of land totalled about 20% of the entire island and included all known coal deposits.

Background

What is forest tenure?

Most forested lands in British Columbia are publicly owned. Under the Forest Act, the Crown is able to grant specific rights to use its forest land via tenure agreements to private interests called licensees. Each agreement is unique and may vary in form, extent, and duration, as well as in the forest management duties required of the licensee.

Tenures may be replaceable or non-replaceable. Non-replaceable tenures are for a fixed term and are granted to achieve such goals as involving First Nations in the forest sector and harvesting beetle infested or killed trees. These licences could be up to 20 years in term. Replaceable tenures, such as Tree Farm Licences and some Forest Licences, have terms ranging from 15 to 25 years, providing licensees with the long-term security to invest in such things as business planning, forest management and manufacturing. Every 5 or 10 years, these licences must be updated or replaced so they can reflect current government policy. Generally, the replacement licence confers the same rights and obligations as the existing licence. When a licence is replaced, it is extended for the term of the original licence. If it is not replaced, the existing licence continues to be in effect until it expires.

Source: Ministry of Forests and Range

Tree Farm Licences

Tree Farm Licences (TFLs), the subject of this review, originated in the 1940s and granted licensees long-term, exclusive access to harvest timber in certain areas in exchange for committing to sustained yield forestry and investing in processing facilities. The terms of each TFL agreement differ: in some instances the licensee was required to include private land and practice sustained yield forestry on it; in other instances, the licensee did not need to include private land. By 1956, the government had awarded 23 TFLs and received applications for a further 28.

Over the years, some TFLs have been amalgamated. The total today is 33 (Exhibit 1). A provincial map of current TFLs is included as Appendix B.

Licensees harvest timber on a designated parcel of Crown land under the general supervision of the Ministry of Forests and Range. In addition to being responsible for forest management, the licensee pays a stumpage fee to the Province for each cubic metre of timber cut on the Crown land. The allowable annual cut in each TFL is set by the province's Chief Forester.

Lands in TFLs are designated as Schedule A (primarily the licensee's private land) or Schedule B (Crown lands). The location and position of a TFL's boundaries were often influenced by the licensee's Schedule A lands.

Term

The 23 TFLs granted between 1948 and 1958 had perpetual terms and could be cancelled only if the licensee failed to fulfill its obligations. In a 1958 amendment to the Forest Act, all new TFLs were granted 21-year renewable terms. Uncertainty as to whether this change applied to existing TFL agreements led to the 1978 Forest Act changing all TFLs to 25-year renewable terms. The current Forest Act requires that the licences be replaced under substantially the same terms (the "evergreen" clause). Under the Act, if the licensee fails to comply with the terms and conditions set out in the legislation, the licence or Cutting Permit, the Minister may suspend and/or cancel the licence.

Management obligations

The responsibilities of the TFL licensee are heavier than under other forms of tenure. For each TFL, management plans are required for successive five-year periods. The Forest Act sets out the requirements for management plans on all tenures within the TFL, including reforestation programs, inventory data, allowable cut determinations and development priorities. The plans are prepared by a Professional Forester and approved by the BC Forest Service. Cutting Permits are also required to harvest timber in the licence area. Terms and conditions concerning utilization standards, environmental protection and other matters are contained in the Forest and Range Practices Act.

Background

Exhibit 1

Tree Farm Licences in British Columbia

			Significant private land removals since 1999		Balance as at March 15, 2008	
TFL #	TFL Name	Current Licensee	Private (ha)	Year	Crown (ha)	Private (ha)
Coast Region						
6	Quatsino	Western	14,087	2007	184,026	0
10	Toba	Hayes			160,451	55
19	Tahsis	Western	2,188	2007	189,804	0
25	Naka	Western	12,050	2007	468,099	0
26	Mission	District of Mission			9,339	1,216
37	Nimpkish	Western			184,020	4,725
38	Squamish	Northwest Squamish			189,036	0
39	Haida	Western	17,462	2004	780,439	0
43	Fr-Hom-King	Kruger			9,300	806
44	Alberni	Western	70,263	2004	239,582	0
45	Cord-Knight	International Forest			226,146	720
46	West Coast	Teal Cedar	10,260	1999/2004	76,573	0
47	Duncan Bay	TimberWest	53,630	1999	147,636	905
54	Maquinna	Ma-Mook			60,864	0
57	Clayoquot	Iisaak Forest			80,104	0
58	Moresby	Teal Cedar			26,714	0
			179,940		**3,032,133**	**8,427**
Northern Region						
1	Port Edward	Coast Tsimshian			609,831	529
30	Sinclair	Canadian Forest			181,045	737
41	Kitimat	West Fraser			703,744	0
42	Tanizul	Tanizul Timber			47,592	1,519
48	Chetwynd	Canadian Forest			643,511	0
53	Naver	Dunkley			87,661	0
			0		**2,273,384**	**2,785**

			Significant private land removals since 1999		Balance as at March 15, 2008	
TFL #	TFL Name	Current Licensee	Private (ha)	Year	Crown (ha)	Private (ha)
Southern Region						
3	Little Slocan	Springer Creek			79,796	0
8	Boundary	Pope & Talbot			77,703	0
14	Spillimacheen	Tembec			150,293	138
18	Clearwater	Canadian Forest			74,621	0
23	Arrow Lakes	Pope & Talbot			551,711	4,613
33	Sicamous	Federated Co-operatives			8,366	0
35	Jamieson Creek	Weyerhaeuser			71,219	64
49	Okanagan	Tolko			143,580	807
52	Bow-Cotton	West Fraser			293,154	331
55	Selkirk	Louisiana			92,700	0
56	Goldstream	Revelstoke Community			119,748	0
			0		**1,662,891**	**5,953**
Total Provincial Area			**179,940**		**6,968,408**	**17,165**

Source: Ministry of Forests and Range

Note: Crown land includes timber licence land. See Appendix B for full name of licensees.

Appurtenancy and transferability

Historically, most TFLs required timber manufacturing facilities as an appurtenance (addition). The facilities had to be capable of processing a greater volume than the allowable annual cut of the licence(s) and had to use the timber in those facilities unless exempted by the Minister. In many TFLs, the manufacturing facilities could not be sold or traded separately from the licence. Therefore, the same entity had to own the mill and the licence. After 1987, TFLs could not be transferred without the ministry taking back 5% of the TFL Schedule B allowable annual cut available to the licensee. The 2003 Forestry Revitalization Act removed these requirements (discussed later in this section and in Appendix C).

Private land removals

At their peak, TFLs across the province contained about 200,000 hectares of private land and about 8 million hectares of Crown land. Tenure holders have been permitted to remove the private land component of a TFL with the consent of the Minister of Forests and Range, but until recently that did not occur on a large scale.

Since 1999, about 180,000 hectares of private land have been removed from TFLs as a result of four decisions by the Minister of Forests (subsequently the Minister of Forests and Range) (Exhibit 1). As at March 15, 2008, only 17,165 hectares of private land remain in TFLs. And of that, there are only two large parcels. One is TFL 37, which includes 4,725 hectares of private land owned by WFP on northern Vancouver Island. The other is TFL 23, which includes 4,613 hectares of private land near Revelstoke. TFL 23 is owned by Pope and Talbot Ltd and they have requested approval to remove their private land. The four large private land removals approved since 1999 are:

- January 1999: TimberWest Forest Corporation removed 61,290 hectares from TFLs 46 (near Port Renfrew) and 47 (near Port Hardy)
- July 2004: Weyerhaeuser Company removed 87,725 hectares from TFLs 39 and 44 near Port Alberni
- July 2004: Teal Jones Forest Ltd (as requested by TimberWest Forest Corporation) removed the remaining 2,602 hectares from TFL 46 near Port Renfrew
- January 2007: WFP removed 28,283 hectares of private land from TFLs 6, 19 and 25 with 12,050 hectares located on southern Vancouver Island (Appendix B).

Roles and responsibilities related to TFL operations

The Ministry of Forests and Range is the principal government agency responsible for British Columbia's public forest and range lands. The ministry's objective is to protect, manage and conserve the province's diverse forest and range resources on an economically, socially and environmentally sustainable basis.

The ministry groups having a role related to the operation of, or removal of private land from, TFLs are shown in Exhibit 2.

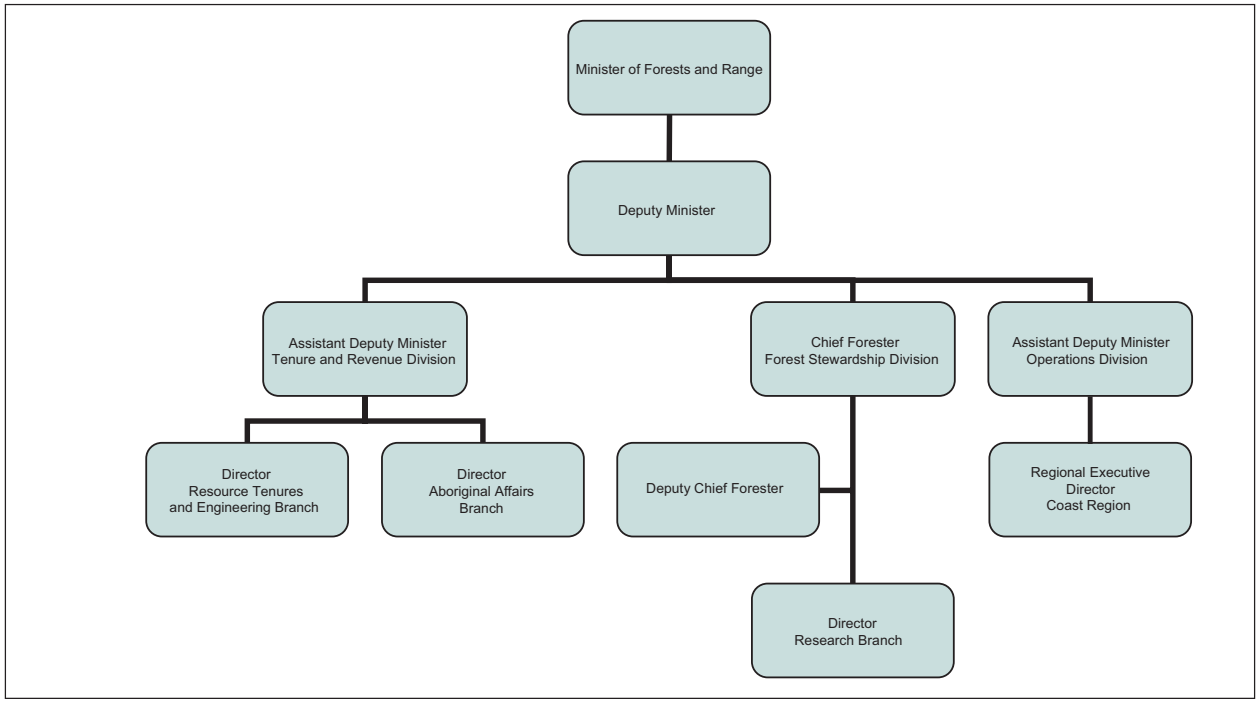
The Resource Tenures and Engineering Branch is part of Tenure and Revenue Division. The branch's primary business

is timber tenure administration and road access management. Timber Tenures, a section within the branch, is responsible for the administration of all timber tenures, including policy and procedures to guide tenure administration at the region and district levels. Within Timber Tenures, the Tree Farm Licence section is responsible for legislation, policy, procedures, development and administration and operational support for, among other things, TFL replacement and area deletions and additions.

The initial assessment of the private land removal was undertaken by senior staff within the Tenure and Revenue Division and began in November 2004. The Resource Tenures and Engineering Branch was given responsibility to complete the assessment in February 2006 which was midway through the process. The Branch was instrumental in developing the Minister briefing material related to the removal of private land from TFLs 6, 19, and 25 with input from senior ministry executive. The briefing materials were also formally reviewed by the Assistant Deputy Minister, Tenure and Revenue Division and the Deputy Minister prior to submission to the Minister.

Exhibit 2

Ministry of Forests and Range: Partial Organization Chart



Background

Key legislation related to TFL operation

Minister's authority under the Forest Act to remove private land from TFLs

Change in boundary or area

39.1 (1) The Minister may change the boundary or area of a tree farm licence with the consent of its holder.

(2) The discretion of the Minister under subsection (1) includes the discretion to change the boundary or area of the tree farm licence with the consent of its holder by:

(a) adding private land of the holder of the tree farm licence to the area of the licence, or

(b) removing private land from the area of the licence.

The key statute governing timber tenures is the Forest Act. The Act sets out the forms of agreement under which Crown timber can be issued to other interests. It describes each form of tenure including details such as duration, the rights and obligations of the holder, and the way the tenure will be administered. Of particular note is that the Minister has the authority under the Act to remove private land from the area of the licence. That authority was amended in May 2004 (see sidebar).

The Ministry of Forests and Range Act outlines the purposes and functions of the ministry as being to:

"(a) encourage maximum productivity of the forest and range resources in British Columbia;

(b) manage, protect and conserve the forest and range resources of the government, having regard to the immediate and long term economic and social benefits they may confer on British Columbia;

(c) plan the use of the forest and range resources of the government, so that the production of timber and forage, the harvesting of timber, the grazing of livestock and the realization of fisheries, wildlife, water, outdoor recreation and other natural resource values are coordinated and integrated, in consultation and cooperation with other ministries and agencies of the government and with the private sector;

(d) encourage a vigorous, efficient and world competitive timber processing and ranching sector in British Columbia;

(e) assert the financial interest of the government in its forest and range resources in a systematic and equitable manner."

Licensees must also comply with Acts and regulations that govern sustainable timber harvesting activities, including logging, road building and reforestation. These include the Forest and Range Practices Act (2002). Other relevant provincial statutes that are important to timber tenure holders include the Land Act, Heritage Conservation Act, Wildlife Act, Drinking Water Protection Act and the Private Managed Forest Land Act. Other levels of government also require tenure holders to comply with, for example, the federal Fisheries Act and Species at Risk Act.

If removed from a TFL, private land is no longer subject to the TFL agreement, the Forest Act or the Forest and Range Practices Act. However, the Fisheries Act, Species at Risk Act, Heritage Conservation Act, and the Drinking Water Protection Act continue to apply. The Private Managed Forest Land Act also applies to land deleted from a TFL, as long as the owner chooses to keep those lands under Managed Forest Land tax status.

The Forestry Revitalization Plan

In 2003, government introduced the Forestry Revitalization Plan. The plan's purpose was to introduce reforms to help build a more diverse forest sector and allow timber to flow to its highest and best use within the province. It was expected that the changes would allow the forest sector to be more able to compete successfully in global markets and this would create more stability for B.C.'s forest-based communities and more opportunities for those living in them.

One of the components of the plan was that the largest licensees, including most TFL holders, were required to return about 20% of their replaceable tenure to the Crown. About half of this volume was to be redistributed to First Nations and small tenure holders, including community forests and woodlots. The other half was to be sold at auction to increase the portion of timber going through open markets and thereby establish a market price for timber. Government set aside $200 million (about $23 per cubic metre) to compensate licensees for the reduction in harvesting rights (tenure "take back"). At the time, some licensees valued the tenure at a significantly higher rate.

Although not clearly documented as policy, senior ministry staff advised us that the direction from government arising subsequent to the plan included private landowners having more control over the use of their private land. In May 2004, government amended the Forest Act to clarify that removal of private land from TFLs was permitted at the discretion of the Minister with the consent of the licensee. In July 2004, the then Minister of Forests approved the first TFL private land removals under the new legislation (Weyerhaeuser and Teal Jones).

Continuing with its shift in policy to allow private landowners greater control of their land, government also repealed the Forest Land Reserve Act in August 2004 (up to that point, the Act required

that all private land in forest use was restricted to that purpose, whether inside a TFL or not). And, at the same time, the Private Managed Forest Land Act (PMFLA) was introduced. The effect of these changes was that private land could now be removed from a TFL and remain as forest land and subject to the PMFLA or it could be removed from forest use altogether. The provisions of the PMFLA are less restrictive than those that had been in place on the private land when in a TFL and subject to the Forest and Range Practices Act (Appendix E).

In November 2004, the ministry and WFP began negotiating a Settlement Framework Agreement to compensate the licensee for the reduction of harvesting rights as a result of the Forestry Revitalization Plan implementation. Other outstanding issues were also dealt with in the agreement, including:

- allowing undercut on two TFLs held by WFP to not be sold to third parties and to remain in inventory to support future harvesting by the licensee subject to the Minister's discretion; and
- settling five lawsuits by WFP with legal costs being paid by the ministry.

At the time, WFP was planning to request the removal of private land from its TFLs and so this was also included in the settlement agreement. The agreement reference stated that the ministry "agrees to facilitate such removals upon application by WFP subject to the unfettered discretion of the Minister to approve, deny or place conditions on such removal and subject to any requirements on the Crown to consult with any First Nations who are deemed to have an interest that might be affected by such removals." The agreement was signed in December 2004.

The agreement provisions listed above were fulfilled and the land removal was approved. However, the ministry advised us that the Settlement Framework Agreement had no bearing on the processes it followed to develop its recommendation to the Minister to approve the land removal request. We have accepted this explanation as reasonable for the following reasons:

- with the exception of the Deputy Minister, the other key staff involved in the land removal review and recommendation process advised us that they were unaware of the agreement;

- senior WFP management involved in developing the agreement clearly understood that it provided no guarantee that the private land removal request would be approved; and
- WFP were aware of the changes flowing from the Forestry Revitalization Plan and government's shift to allowing private land owners greater control over the use of private land. Only months earlier government had agreed to private land removals for Weyerhaeuser and TimberWest under the new legislation. As such, we believe that the licensee expected that, so long as the ministry did not have any significant concerns, particularly in regard to First Nations and/or forest and range matters, there was a strong likelihood that the Minister would approve its request.

Overall, we concluded that a series of TFL private land removals since 2004 led staff of the Ministry of Forests and Range to conclude that government was open to accepting removal of the private lands without compensation.

The Minister approved the removal of WFP's private land in January 2007 with much of the delay relating to the 2005 Supreme Court of British Columbia *Hupacasath First Nation vs British Columbia* decision that required more First Nations consultation about private land removal decisions than the ministry had initially been advised by its lawyers.

Appendix D provides key dates in the land removal timeline.

Review purpose and expectations

As there is little private land remaining in TFLs, a review aimed specifically at informing future requests to remove private land from TFLs would have been of limited value. Instead, we concluded, a broader review of the decision-making process used by the Ministry of Forests and Range to approve the private land removals from TFLs 6, 19 and 25 would benefit other parts of government where decisions made also affect a range of stakeholders.

In a modern democracy, the citizens elect a government that will, when making decisions, exercise due regard for the broad range of public interests. In two important legal cases related to TFL management in the province, this principle has been

formally acknowledged. The Supreme Court of British Columbia, in *Hupacasath First Nation vs British Columbia* and in *Haida Nation vs British Columbia* (the latter case subsequently heard in the Supreme Court of Canada), recognized the objective of the Crown to manage TFLs in accordance with the public interest, Aboriginal and non-Aboriginal.

The purpose of our review was therefore to assess whether the provincial government, in approving the removal of private land from TFLs 6, 19 and 25, did so after exercising due regard for the public interest.

Because we did not find an official definition of "due regard for the public interest," we used the government's and the ministry's service plans to develop review expectations based on both bodies' own declared values and objectives.

According to the Province's service plan, the aims of the government are to:

- achieve coordination across government (i.e., effective horizontal integration and collaborative work on issues and priorities that affect or involve the same client group, or more than one ministry or organization in government);
- give British Columbians open and transparent government and consult with them on important issues;
- ensure accountability of government practices;
- maintain positive intergovernmental relations; and
- ensure that government decisions are made in a consistent, professional, fair and balanced manner.

The service plan of the Ministry of Forests and Range calls for upholding diverse and sustainable forest and range values for the province including, economic, environmental and social values. (Economic values include timber, forage and fisheries resources that contribute to the economy. Environmental values include soil, water, fish, biodiversity and wildlife. Social values include recreation resources, visual quality, resource features and cultural heritage resources.) The ministry notes that all of these values are converted into socio-economic benefits for the British Columbians who obtain their livelihood and recreation from provincial forests, and for all British Columbians who benefit from the Crown revenue collected. As well, the plan says that:

- the purpose of the ministry is to "protect the public's interests and provide leadership in the protection, management and use of the province's forest and rangelands;"
- the ministry pursues its goals in a consultative manner with the public, forest and range industries and other Crown agencies, while recognizing the unique interests of Aboriginal people;
- the ministry works to earn the public's trust as its staff make day-to-day decisions;
- the ministry's values include being open, honest and fair, and showing respect by listening to and recognizing a diversity of values and interests; and
- the ministry is responsible for its decisions and actions.

Exhibit 3 shows how we drew on the above statements to arrive at our review expectations for assessing whether due regard for the public interest was exercised in the decision to remove private land from TFLs 6, 19 and 25. The rest of this report describes our assessment of the extent to which the decision-making process met our expectations.

Exhibit 3

Review Expectations

Government Service Plan	Ministry Service Plan	Review Expectations
• Make decisions that are consistent, professional, fair and balanced	• Protect the public's interest in the management and use of the province's forest and range lands	→ The decision was adequately informed.
• Ensure coordination across government (i.e., horizontal integration and collaboration on issues and priorities that affect or involve the same client group or more than one government organization) • Ensure positive intergovernmental relations • Ensure transparency of government practices and consult with citizens on important issues	• Consult with the public, forest industry and other Crown agencies • Recognize unique interests of Aboriginal people • Listen to and recognize a diversity of values and interests • Be open, honest and fair	→ There was effective consultation and communication with stakeholders.
• Ensure accountability of government practices	• Earn the public's trust in the ministry's decision-making • Be responsible for its decisions and actions	→ The ministry effectively monitors its land removal decisions.

Was the decision adequately informed?

The briefing note that recommended against the removal of land from TFLs 39 & 44

A senior staff member within the ministry commissioned a briefing note on the land removal to ensure that the strategic issues were fully considered. This briefing note recommended against the removal and has recently been publicly circulated. This note was not circulated widely within the ministry at the time and was not an "official" briefing note. It was drafted prior to the decision being made.

The Minister of Forests (subsequently the Minister of Forests and Range) has made several significant decisions over the last decade in response to licensee land removal requests. In 1998/99, the Minister approved TimberWest Forest Corporation removing private land from tree farm licences (TFLs) 46 and 47 on Vancouver Island. In 1999, in response to an application by MacMillan Bloedel to remove private land from TFLs 39 and 44 near Port Alberni, the Minister denied the request because of public opposition. Five years later, in 2004, Weyerhaeuser (as the new owner of TFLs 39 and 44) repeated the request—and that time got the Minister's approval (Appendix F).

In all of these instances, there was a high level of public interest. We therefore expected the ministry's decision-making process for TFLs 6, 19 and 25 to be guided by all of the key information gained from previous experience in ensuring due regard for the public interest.

Specifically, we expected to find that:

- a well-defined process had been followed to evaluate the licensee's request to remove its private land from the TFLs;
- all the information relevant to the decision had been collected;
- a rigorous analysis of the facts had been carried out to arrive at a recommendation; and
- the Minister had ensured that his ministry's recommendation was supported by such an analysis.

We concluded that the decision to allow removal of the private land from TFLs 6, 19 and 25 was not adequately informed. Our reasons:

- The ministry's process for making its recommendation to the Minister was not well-defined. The information on which the recommendation was based was focused on forestry and First Nations matters and on unsupported statements about the licensee's financial health. Not all information relevant to the decision had been collected. Little analysis and evaluation were done of the potentially significant impacts that such a decision might have on other key stakeholders or on future costs to government.
- The recommendation to allow the land removal was not clearly supported by the briefing material analysis.

- The ministry did not make a persuasive case to support its recommendation given the importance of the land removal decision. The ministry was guided by a belief that the removal of private land was consistent with government direction and would assist the licensee's financial restructuring.
- The Minister, as the final check on the process and the statutory decision-maker, did not do enough to ensure that adequate consideration was given to the public interest.

The ministry's process for arriving at its recommendation was not well-defined

Good management practice involves providing clear, documented guidance to staff to help with identifying, collecting and analyzing the information needed to support effective decision-making. Clear direction helps to provide assurance about the quality, consistency and objectivity of the work carried out.

Large land removal requests are relatively infrequent. We therefore did not expect to find exhaustive policies and procedures for them, but simply an approved plan to guide the ministry's work and help ensure due regard for the public interest.

Western Forest Products Inc. (WFP) submitted its initial request to remove the private land from these TFLs in November 2004. The decision was made by the Minister in January 2007 (Appendix D). The process followed by the ministry was, we found, neither clear nor well documented. As a result, those charged with gathering the information and reaching a recommendation for the Minister were doing so without clear direction about critical matters, among them:

- key principles to consider, including those established in past decisions;
- the information that needed to be collected to arrive at a fully informed recommendation;
- who the key stakeholders were and the extent of consultation planned for each group;
- how the information collected would be weighed and evaluated;

Was the decision adequately informed?

- how the integrity of the process would be protected against unauthorized use of key information—particularly the ministry's recommendation and the Minister's decision;
- timelines for completing the work; and
- approval requirements.

We found that the ministry did not have a formal work plan detailing the above requirements. As a result, the ministry lacked the assurance needed to ensure that it arrived at a recommendation that was fully informed and gave due regard to the public interest. This resulted in deficiencies in the actual process detailed in this report.

We also noted that the ministry did not clearly describe how it planned to ensure the integrity of the decision-making process. Clearly, the ministry knew that the licensee was considering selling some or all of the private land—land whose value would increase once outside a TFL. According to the briefing materials, the ministry itself had estimated that the "highest and best use" value of such lands to WFP outside of the TFL would be $150 million. Anyone having early knowledge of the ministry's recommendation to the Minister or of the Minister's decision, whether inside or outside of the ministry, would have then been in a position to potentially profit personally from that information by purchasing shares in WFP, which is a publicly listed company.

Unusual Stock Trading Patterns

During our review, we were advised that some large trading of WFP shares occurred shortly before the announcement by the ministry and WFP of the land removal decision. We reviewed the information and concluded that it was unusual and referred it to the B.C. Securities Commission. The Commission is undertaking an initial review and will determine the appropriate action to take, if any.

The information used by the ministry to inform its recommendation was incomplete

We expected the ministry to make a recommendation that gave due regard to the public interest and that required collecting the right information. The ministry's briefing material included:

- descriptions of the land in question;
- an explanation of the licensee's reason for making the land removal request;
- information on the regulatory oversight considerations, including impacts resulting from a change in applicable legislation were the land removed from the TFLs;
- information on potential forest and range management matters (e.g., impacts on the allowable annual cut, watersheds, wildlife habitat);
- First Nations consultation results;

- an assessment of the:
  - impact on recreational users of the land; and
  - public and stakeholder reaction that was likely to occur;
- an estimate of the value of securing statutory rights-of-way and the access road to Cape Scott Provincial Park.

However, we also expected to find, but did not, in the briefing material key information on the following areas.

A synopsis of key legislative changes and how these affected the recommendation — The underlying legislation and policies related to TFLs have changed many times since TFLs were first formed. The Forestry Revitalization Act (2003) (FRA) brought about more changes, as did the repeal of the Forest Land Reserve Act and the introduction of the Private Managed Forest Land Act.

A brief analysis and summary of the history of the three TFLs — The type of information we expected to find, for example, was how the TFLs originated, how long the licensee had rights to them and what, if any, changes had occurred to the TFL agreement and boundaries.

An assessment of the TFL arrangement — No assessment appeared to have been done of whether the arrangement had been equally beneficial to both government and the licensee, or whether one party had benefitted more than the other. The government, licensee and public have different perspectives on who has gained the most. Analysis of the relative harvest rates on the Crown and private land in the TFLs was not conducted to determine how the licensee had harvested on the land. Such an analysis would have helped determine whether more or less Crown land had been harvested than the private land in the TFL.

An estimate of the value of the land to the licensee if removed from the TFLs — The estimated value of the land if removed from the TFLs was not included in the briefing note. Although it was clear that the decision would be of significant worth to the licensee, the ministry did not include in the briefing note the $150 million value it had estimated. The ministry had based this on an average market value of $5,000 to $7,500 per hectare over the 28,000 hectares and recognized that while the majority of the land would remain as private managed forest land some would be designated as "higher and better use". The ministry advised us that it did bring the information to the attention of the Minister before he made his decision.

A discussion about the value obtained from the licensee — No discussion of compensation was included in the briefing materials even though it was clear the licensee would benefit significantly by the land's removal from the TFL and the government was in a strong negotiating position. Government had established this principle in past TFL land removal decisions (see below).

Value Obtained in Past Land Removal Decisions

TFLs 46 and 47

In 1998, approval was given to remove private land from TFLs 46 and 47 on Vancouver Island. The ministry's analysis attributed a value of $9.5 million for government agreeing to release the private land. When the remaining private land was removed in 2004 no value was sought or obtained by the ministry from the licensee.

TFLs 39 and 44

In 1999, MacMillan Bloedel requested removal of its private land from TFLs 39 and 44 near Port Alberni and a value was attached to government's approval to release the private land. In the end, as a result of significant and negative public reaction, government decided not to allow the land removal at that time.

In 2004, Weyerhaeuser (the new owner of TFLs 39 and 44) requested approval to remove the private land (80,000 ha) and government agreed. Government justified the decision in part because the licensee agreed to a value for reduced harvesting rights and lost improvements under Bill 28 Tenure Takeback Legislation — an agreement that was beneficial to government. Other forms of compensation obtained by government for the 2004 TFL decision included the licensee:

- ceasing its lawsuit against the government relating to Bill 96 (Timber Licences Settlement Act) and a Chapter 11 NAFTA Challenge; and
- working to develop a strategy and funding sources for the expansion of Cathedral Grove near Port Alberni.

The value to Weyerhaeuser of the private land removal was estimated to be between $15.4 million to $31.8 million. The overall value to government was estimated to be as much as $240 million.

Prepared by the Office of the Auditor General

The ministry advised us that it was aware that a case could be made for government to share in the increased value of the land based on its removal from the TFLs and, as such, discussed that option with the Minister during meetings in advance of the decision. However, we were told the Minister believed that an important factor in allowing the land removal was to assist the financial restructuring of the licensee and he did not want to reduce the value for them.

Was the decision adequately informed?

The ministry negotiated a number of conditions on the WFP land removal decision, but the value of the conditions is limited because most of them apply only for as long as the licensee owns the private land (see below). Furthermore, government has little authority to enforce the conditions (e.g., there are no covenants on the land).

Conditions of the Decision

The licensee, WFP, agreed to the following conditions, which are to apply for as long as it owns the applicable private land, unless otherwise specified:

First Nations Access: WFP agrees to provide keys to gates on the applicable private land to a First Nation to allow access to Crown lands for hunting, fishing and cultural purposes, so long as the First Nation members agree to return the keys after use and unless there are reasonable needs to restrict access such as the roads are being incompatibly used by other parties, public safety, active forest operations, fire hazard or water quality issues.

Log Exports: WFP agrees to a temporary moratorium on the export of timber from the private land for a period beginning on the date the private lands are deleted from the TFLs and ending 36 months later. During this 36-month moratorium period, WFP agrees that:

- it will not export or seek to export timber from the private lands;
- it will not sell or trade any timber harvested from the private lands if WFP is aware of the purchaser's intention (express or implied) to export from the province the private land timber obtained from WFP and will ensure that any purchasers of such timber are expressly notified that such timber is not to be exported;
- in the event of a breach of these conditions, it will not resist an application for injunctive relief sought by the province to protect its interests under this agreement;
- it will not sell any of the relevant private lands during the 36-month moratorium without first ensuring that the purchaser provides the province with an agreement to comply with all of these bulleted "Log Export" conditions for the remaining portion of the 36-month moratorium on log exports.

Wildlife Habitat: WFP, working in collaboration with Ministry of Environment staff, agrees to submit an Ungulate Winter Range (UWR) package to the Deputy Minister of Environment for consideration within one month of the private lands being deleted from the TFLs. The UWRs to be included in the package are as outlined in WFP's letter to Environment, dated November 17, 2006.

Certification: WFP intends to maintain certification on the private land similar to that held on its adjacent Crown tenures. Currently, that is ISO 14001 for private land and, in addition, CSA certification for the private land now in TFL 6, MF 61.

Community Watersheds: WFP will continue to use forest practices that are intended to protect human drinking water on the private land included in community watersheds.

Research: WFP agrees to a memorandum of understanding with the Ministry of Forests and Range, Research Branch regarding research plots established on the private land.

Recreation: WFP agrees to continue to provide recreational opportunities on the private land subject to available funding and potential reclassification of such land for other uses.

Source: Ministry of Forests and Range

The ministry had, however, learned from the TFL 39 and 44 private land removal decision in 2004. At that time, the ministry did not negotiate statutory rights-of-way to Crown land remaining in the TFLs—an oversight that resulted in additional government costs of about $4 million to acquire those roads and statutory rights-of-way after the fact. Thus, the ministry took this into account when it evaluated the TFL 6, 19 and 25 land removal request and secured critical statutory rights-of-way. It also secured legal title to the access road to the Cape Scott Provincial Park. The ministry briefing note estimated the value of these roads at $2.5 million.

An analysis and summary of future costs to government — An analysis of expected future costs to government if the land were removed from the TFLs would have been prudent because the removal changes the longstanding relationship between the licensee and the government. As noted earlier, TFL agreements were expected to remain in place for the long-term unless both parties agreed to make a change.

Given the duration of these past relationships, the ministry has invested in research sites located on the private lands. The ministry's Research Branch estimates the cost of losing their investment in these sites at about $2 million for TFL 25 alone. The branch entered into a memorandum of understanding with WFP in April 2006 that set out guiding principles for the establishment, maintenance and conduct of the research sites. However, this did not provide any legal protection for the research sites. While the briefing materials identified the existence of the research sites, it attached no cost to government of losing them. Furthermore, from a research perspective a number of these sites are deemed significant by staff and scientists. One, for example, is designed to monitor the impacts of climate change on spruce. The ministry advised us that WFP would forward the ministry's concerns about the future of the research sites to the new owner of the land.

In securing statutory rights-of-way and the Cape Scott Provincial Park Road, the ministry also assumed additional costs. It acknowledged in its briefing materials that there would be survey costs associated with the park road (estimated at $300,000–350,000). However, an estimate of the costs for maintaining the roads was not included in the briefing materials. As well, the likely loss of several important recreational sites located on the private land were

Expected Future Consequences in Other Parts of Government

Ministry of Environment has a goal to increase hunting and fishing licences issued. The land removal decision will lead to a loss of ungulates for hunting. The ministry has been working to find replacement Ungulate Winter Range lost as a result of the decision, including trying to enter into new agreements with the licensee. The ministry is also losing access to lakes on the private land which it has, in past, stocked with fish to provide recreational fishing.

Government relations with First Nations. The decision will likely negatively impact government's relationship with First Nations, in particular treaty settlements given that land figures so prominently in those discussions. First Nations have been allowed access to the private lands for hunting and fishing at the discretion of the licensee. The Hupacasath decision suggests that having land removed from TFLs will put greater strain on Crown land, for example, to satisfy forestry requirements and settle land claims. The decision to remove the private land has resulted in legal action by the Kwakiutl First Nation.

noted. This could become a potential future cost to the government if it subsequently decides to purchase these sites because of their importance.

An analysis and summary of the decision's consequences for other parts of government — The land removal decision has potential consequences for other government ministries, most notably the Ministry of Environment and government relations with First Nations (see sidebar). None of these were presented in the briefing materials.

The ministry was aware that WFP was planning to sell some or all of the private land including some for non-forestry use. Despite this the ministry did not consider the land use planning consequences for other levels of government (e.g., Capital Regional District).

An assessment of the licensee's financial health — The ministry recommendation to the Minister concludes that the land removal would give WFP more options in making land use and business decisions; and that if the company chose to sell some or all of the private land, doing so would generate revenue to aid it in restructuring. The Minister's public statements following the decision mention the need to preserve the long term viability of the licensee as a key reason for approving removal of all the private land from the TFLs. (As noted earlier, the ministry estimated the land to be worth $150 million if it was removed from the TFLs.) Unfortunately, the briefing material included neither analysis of the licensee's financial health to support these statements nor analysis of other options the licensee might have to address its financial concerns.

The coastal forest industry has struggled in recent years and many observers attribute that, amongst a number of contributing factors, to weakness in the U.S. economy (including a slow-down in home construction) and the dramatic rise in value of the Canadian dollar relative to the U.S. dollar. While we recognize that WFP is a significant part of the coastal forest industry, the ministry did not explain how the decision to allow the removal would benefit the entire coastal forest industry.

Brookfield Asset Management

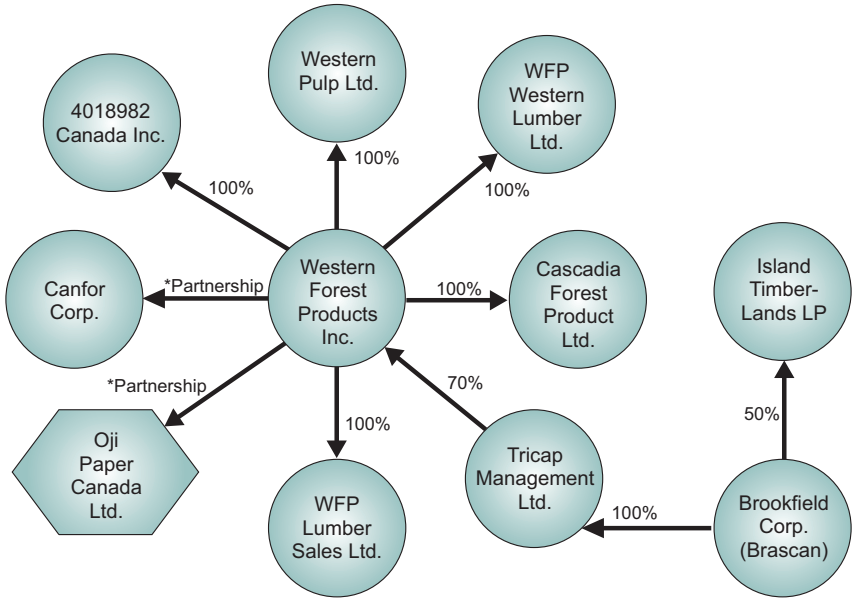
Brookfield is a global asset manager focused on property, power and other infrastructure assets, with approximately US$90 billion of assets under management. According to its website, it owns and manages one of the largest portfolios in the world of both premier office properties and hydroelectric power generation facilities, as well as transmission and timberland operations, located in North America, South America and Europe. Brookfield Asset Management is listed on the Toronto and New York Stock Exchanges.

The ministry's website information about the licensee indicates that WFP is 70% owned by Tricap Management Ltd. (representing 49% of the voting shares of WFP) and that Tricap is 100% owned by Brookfield Asset Management Corporation (Exhibit 4). Brookfield is a large conglomerate involved in numerous commercial enterprises worldwide (see sidebar).

Clearly, the ownership of WFP raises legitimate questions about how a decision that benefits a single publicly listed company with shareholders that may not have interests in common with those of British Columbia, can ensure that benefits flow to British Columbia. This important issue was not addressed by the ministry.

Exhibit 4

Western Forest Products Inc.: ownership and inter-corporate linkages



Source: Ministry of Forests and Range

A summary and analysis of other key stakeholder views — The decision to allow the land removal has the potential to affect many key stakeholders, including local residents, local government, the Capital Regional District and the Ministry of Tourism, Sport and the Arts. However, the ministry did not contact these groups before it made its recommendation, to obtain their views on the matter.

The ministry did not make a persuasive case to support its recommendation given the importance of the land removal decision

A ministerial decision allowing removal of private land from TFLs has significant consequences for the public, First Nations and other stakeholders. Most notable is that land removed is no longer subject to the regulatory requirements of the TFL agreement, the Forest Act and the Forest and Range Practices Act. Although the Private Managed Forest Land Act would apply to land deleted from a TFL, this is only the case if those lands remain under Managed Forest Land tax status. (Appendix E provides examples of differences in the two regulatory regimes.) If a licensee chooses, the private land can be removed from Managed Forest Land tax status and used for another purpose such as residential and commercial development, subject to any applicable local zoning requirements.

Given the potential impacts arising from land status changes, we expected the ministry to have conducted a thorough analysis and proposed a solid business case that clearly supported the recommendation to approve the removal of the private land from TFLs 6, 19 and 25. Instead, we found that the ministry's approval recommendation was not clearly supported by its analysis and business case. This business case indicated many potentially undesirable impacts of allowing the private land removal from the TFLs, in several areas (see below for extracts from the briefing note):

- allowable annual cut
- community watersheds
- wildlife habitat
- old-growth management areas
- ISO and CSA certification
- access by government and other stakeholders
- research facilities
- log exports

Was the decision adequately informed?

Forest and range matters

Ministry staff assessments on critical forest and range management matters included the following:

Allowable annual cut
The change will have an effect on the allowable annual cut (AAC) of TFLs 6, 19 and 25. The AAC will not be significantly reduced if removal is approved. The Chief Forester will adjust the AAC of the TFLs and will consider all forest management factors, including the reduced land base resulting from the deletion of the private land in the next timber supply review for the TFLs.

Community watersheds
Four community watersheds are involved on the private land in question. All are in TFL 25 near Jordan River, and there are no private water intakes on any of the private land proposed for deletion from TFLs 6, 19 and 25. The Drinking Water Protection Act prohibits actions that might contaminate drinking water, and the licensee has committed to employing only forestry activities that protect human drinking water.

Wildlife habitat
There are six Ungulate Winter Ranges (UWRs) on the lands proposed for deletion from TFLs 6, 19 and 25. The licensee has committed to "use reasonable efforts to retain the integrity and function" of the UWRs and to "assess existing and past ungulate use and whether replacement winter ranges are required" if road construction and harvesting are planned within the ranges. The Ministry of Environment is satisfied that the licensee UWR proposals will address its concerns should the private land be deleted from the TFLs.

Old-Growth Management Areas (OGMAs)
Only on TFL 6 are OGMAs legally established. However, there are draft OGMAs located on TFL 25, Block 1 (near Jordan River). The licensee has committed to maintaining the established OGMAs and continuing to work with government towards finalizing the draft OGMAs. Overall, there will be fewer OGMAs established on the land base as a whole and the reduction on private land may be an issue for local First Nations who use them for hunting and fishing.

Certification
TFLs 6, 19 and 25 are certified under ISO 14001, and there is CSA certification on a portion of TFL 6. The licensee has indicated that the private lands would remain certified despite being deleted from the TFL. If the lands are sold, the new owner would not be required to maintain the certification. However, as most forest land in British Columbia is not certified, loss of certification on this private land is not considered a significant issue in this decision.

Access (road systems)
Roads located on the private land within the TFLs provide access to adjacent Crown land. The TFL agreements provide for limited Ministry of Forests and Range licensed use. Also, the licensee, at its discretion, allows public use of its lands to access communities, parks and recreation areas on Vancouver Island. However, if the lands are removed from the TFL, nothing compels the licensee, or any future owner of the private lands, to continue allowing use of its lands. In order to ensure ongoing access, the ministry has negotiated statutory rights-of-way agreements for key roads on approximately 66 licensee properties, both inside and outside the TFLs; and the licensee is prepared to dedicate to the Crown, without compensation, 22 km of existing private road providing legal public access to Cape Scott Provincial Park. The ministry will be responsible for the survey and land title registration of the road before March 31, 2008, and assumes the legal survey costs (estimated at $300,000–$350,000). Dedication of the road will relieve WFP of all future liabilities associated with the maintenance and improvement of this road, except when it has a road use permit, and the road will become the ministry's responsibility. The ministry estimates the minimum purchase price of the road to be $2.5 million–$3 million.

cont'd

Was the decision adequately informed?

Research installations
Several research installations have been established on private land within TFLs 6, 19 and 25. The Ministry of Forests and Range and WFP have developed a non-binding memorandum of understanding that establishes ground rules for the management of these installations and has made provision in the event of change in ownership. The ministry's Research Branch recognized the risk when establishing research plots on this land and are willing to renegotiate the terms of management with any new land owners.

Log exports
All Crown timber and timber from private land "Crown granted" after 1906 is subject to log export restrictions under the Forest Act. While associated with a TFL, all private land is subject to those restrictions despite when it was Crown granted. There are also federal restrictions on log exports, but they are less comprehensive than those under the Forest Act. If deleted from the TFL, those private land parcels with pre-1906 Crown grants (about 72% of the total area) would be subject only to the federal restrictions (commonly referred to as "exportable" areas). However, if the land is removed, the licensee has agreed to an 18-month moratorium on log exports.

Source: Ministry of Forests and Range

The ministry also noted that First Nations will be troubled by a variety of impacts from the decision, locals and other long-time users of recreation sites may be frustrated and there may be negative stakeholder reaction (see below for extracts from the briefing note).

First Nations and Other Stakeholder Issues

Ministry staff assessments on First Nations and other stakeholder issues included the following:

First Nations
Consultation was conducted with 23 First Nations whose Aboriginal interests may be potentially affected by the proposed decision to delete the private lands from TFLs 6, 19 and 25.

Ministry staff believe that they adequately completed the procedural side of the consultation process for the decision. Regarding the substantive side of the consultation process, of these 23 First Nations, 14 have either Forest and Range Agreements or Forest Opportunities Agreements with the ministry, which means they have been provided with an interim accommodation to address the economic component of their Aboriginal interests. Of the First Nations consulted with, only six provided input regarding the decision. An appendix outlines the specific concerns raised and the response provided to those concerns. The Pacheedaht First Nation requested that coastal lands in TFL 25 (near Jordan River) not be removed from the TFL. The ministry committed to bringing this to the attention of the Minister when the decision was made.

Should the Minister decide to delete the private lands from the TFLs, he would have two options regarding accommodation: (1) to accept that First Nations have been adequately accommodated; or (2) to determine that additional accommodation is necessary for this decision.

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Was the decision adequately informed?

Recreation
WFP voluntarily maintains 10 recreation sites on TFLs 6, 19 and 25. Five of these sites are on private land and five are on Crown land. In their proposal, WFP commits to continue maintaining these sites, but does not rule out that this may change as a result of funding pressures or reclassification of the lands.

Considering the high value of these sites, ministry staff feel it likely that some or all of the recreation sites on private land will be either sold or changed significantly should the private land that they are on be deleted from the respective TFLs. This may frustrate locals and other long-time users of these sites.

Public and stakeholder reaction
The decision to delete private land from TFLs 39 and 44 received negative reaction from the public and First Nations. The public, rightly or wrongly, equated the deletion of private land to increased harvesting on private land and increased export of timber from private land. Most of the lands involved in the WFP deletions are exportable, and the public might have similar concerns about this decision. First Nations objected strongly to the lack of consultation over the deletion of private lands for TFLs 39 and 44 and were somewhat successful in a court action regarding that decision. First Nations consultation has been completed for the WFP decision, so that same claim should not be made. However, that does not rule out First Nations launching objections or legal actions over the decision.

Source: Ministry of Forests and Range

However, after noting some of the potentially negative effects of allowing the deletion, there is little discussion of options to mitigate these impacts that the Ministry could have explored to make the recommendation more compelling.

In the face of these potential concerns, the ministry recommended that the Minister approve the licensee's request. The briefing materials contain no explanation as to how the ministry weighed the individual items so that, taken together, it led them to that recommendation. And, as noted earlier, ministry staff believed that the government did not support seeking licensee compensation and/or concessions and so they did not explore that option extensively. Because no direction or mandate for negotiation had been set out by the Ministry, its position on this was never clarified.

We concluded that the ministry's process and recommendation were based largely on a belief that the removal of private land was consistent with government's direction and also would assist the licensee in its financial restructuring. Unfortunately, there was no ministry analysis of when or by how much such a restructuring would benefit British Columbians.

The Minister did not do enough to ensure that adequate consideration was given to the public interest given the importance of the land removal decision

As discussed earlier, Section 39.1 of the Forest Act gives the Minister authority to remove private land from a TFL, but makes no reference as to what the Minister must consider when making the decision. Given the importance of land use to British Columbians, we expected the decision to be informed by a thorough consideration of all the economic, environmental and social factors and ultimately shaped by the overarching aim of ensuring that the overall public interest is adequately considered. We concluded that the Minister, as the final check on the process and the statutory decision-maker, did not do enough to ensure that adequate consideration was given to the public interest.

When making a decision of this significance a Minister needs to be satisfied that he is fully informed. Before making his decision regarding the land removal, the Minister should have been satisfied that:

- the ministry recommendation considered all the key facts;
- stakeholder views were sufficiently considered;
- the ministry recommendation logically followed from the ministry staff analysis; and
- the recommendation was consistent with the broad goals of government that encompass the "public interest."

As noted earlier, we concluded that the briefing material was incomplete in several respects, including inadequate analysis of the licensee's financial health. We also concluded that the ministry's briefing material did not make a persuasive case for allowing the land removal.

We requested the opportunity to meet with the Minister to understand his decision-making process but that meeting did not occur. Instead, he provided written answers to written questions. The Minister informed us that he considered only the information presented in the briefing materials and ministry staff briefings. He advised that he considered no other factors and that there was no additional documentation.

Donations to Political Parties

During the course of our review we were advised that WFP had made donations to the BC Liberal Party. Donations to political parties are permitted in BC and a number of organizations, including forestry organizations, make donations to political parties. Between 2005 and 2007, WFP donated $60,470 to the BC Liberal Party — in the same time period, as an example, TimberWest donated $164,751 and Weyerhaeuser $109,045 both to the BC Liberal Party. We also noted that Brookfield Asset Management Inc. donated $50,000 to the BC Liberal Party in 2007.

Was there effective consultation and communication with stakeholders?

Seeking participation by the broader community in the decisions of government is a cornerstone of modern democracies. Failing to do this has the unintended consequence of damaging democracy. In the past decade, most Western governments have moved to increase the involvement of community members in their decision-making.

In British Columbia, both the provincial government and the Ministry of Forests and Range have set goals that call for community involvement by:

- striving for horizontal integration and collaboration on issues that affect the same client group or more than one government organization;
- consulting with the public, forest industry and other Crown agencies;
- recognizing the unique interests of Aboriginal people; and
- listening to and recognizing a diversity of values and interests.

Given the importance the public puts on land use, we expected that a key component of the decision would be consultation and communication with key stakeholders. In particular, we expected to find:

- reasonable efforts made to identify and consult with key stakeholders;
- consultation efforts that were proportional to the impact of the decision on each stakeholder group;
- consultation results summarized and factored into the decision; and
- transparent communication of the government's decision.

We concluded that the ministry did not effectively consult or transparently communicate with key stakeholders and the public. Several key groups that should have been consulted were not identified. Reasonable efforts were made to consult with First Nations, and some consultation occurred with the Ministry of Environment and to a lesser extent with the Recreation Sites and Trails Section (at the time a section within the Ministry of Forests) and the Integrated Land Management Bureau (regarding Old Growth Management Areas) but mainly to minimize the impacts associated with allowing the private land removal.

Was there effective consultation and communication with stakeholders?

Not enough was done to obtain the input of other key stakeholders. As a result, the ministry briefing materials lacked important information that would have ensured that the public interest was fully considered.

We also found that the ministry's communication of the decision to key stakeholders and the public was too limited to be meaningful. This, together with the lack of consultation, meant that stakeholders were slow to understand the significance of the decision and voice their concerns.

The ministry consulted with some but not all key stakeholders

A decision to remove WFP's private land from its TFLs could be expected to impact a wide range of stakeholders. In particular, TFL 25, which is located on southern Vancouver Island, has attracted much public attention. It is located near Jordan River, Sooke and Victoria and is contained within the boundaries of the Capital Regional District. As well, the three TFLs are subject to First Nations land claims. For all these reasons, the ministry should have sought the input of the many affected stakeholders to ensure that it arrived at a recommendation that gave due regard to the public interest (see below).

Key stakeholders potentially affected by the decision

We expected the Ministry of Forests and Range to have identified the need to consult with the following groups:

- the 23 First Nations impacted by the decision;
- local governments (e.g., the Capital Regional District (impacts on land use planning in progress and other impacts));
- the Ministry of Environment;
- the Ministry of Community Services (impact on local governments in the areas of the TFLs);
- the Ministry of Tourism, Sport and the Arts (impacts on tourism);
- the Integrated Land Management Bureau (a cross-agency group established to encourage an integrated approach to land use planning decisions involved with sustainable use and management of natural resources);
- various organizations dedicated to environmental and local community issues; and
- other groups having an interest in the final decision (e.g., Truck Loggers Association, Coastal Forest Products Association, Association of BC Professional Foresters, Pulp, Paper and Woodworkers of Canada).

Was there effective consultation and communication with stakeholders?

We found that the ministry clearly identified the First Nations that needed to be consulted (it maintains records of First Nations and where their claims are located). The ministry also recognized that the TFLs in question had wildlife habitat, parks and watershed issues and so identified the need to consult with the Ministry of Environment. The ministry also identified recreational sites and old growth management areas and had brief discussions with the Recreation Sites and Trails Section (at the time a section within the Ministry of Forests) and the Integrated Land Management Bureau (regarding Old Growth Management Areas). However, the ministry did not include the need to consult with the remaining key groups in the above list. As a result, the ministry's consultation efforts were limited and focused on First Nations and the Ministry of Environment.

First Nations — The courts have consistently recognized that the Crown has a duty to consult and accommodate First Nations where a decision has the potential to adversely affect aboriginal interests. This requires the Crown to assess the strength of the case and the seriousness of the potentially adverse effect upon the right or title, to determine the nature and scope of the Crown's duty.

WFP made its request to the ministry in late 2004 and provided its supporting information package in July 2005. At this time, notification of First Nations was considered to be adequate consultation (according to legal advice received by the ministry). However, the ministry was also aware that the B.C. Supreme Court was going to rule on a challenge made by the Hupacasath First Nation related to the decision to remove private land from TFLs 39 and 44 near Port Alberni.

For this reason, the ministry worked with the Ministry of Attorney General to develop an approach to notify, before the court decision was made, the First Nations whose asserted traditional territories fell within TFLs 6, 19 and 25. It was also decided that no final decision would be made on the land removal until the ruling on the Hupacasath case from the BC Supreme Court was released. The legal advice suggested that this notification would lessen any risk of successful litigation by First Nations who believed that the land removal decision would affect them. In August 2005, the ministry sent letters to the 23 First Nations identified by the Ministry of Forests and Range and carried out additional

Was there effective consultation and communication with stakeholders?

Extended First Nations Consultations

The ministry carried out extended consultation concerning proposed private land removals from TFLs 6, 19 and 25 with the following eight First Nations:

- Kitasoo
- T'Sou-ke
- Quatsino
- Kwakiutl
- Pacheedaht
- Haida
- We Wai Kai
- Mowachaht/ Muchalaht

Source: Ministry of Forests and Range

communication with eight of the groups. WFP also sent a letter to the affected First Nations, indicating its availability to answer questions.

In December 2005, the Hupacasath BC Supreme Court decision was released. It required more First Nations consultation about private land removal decisions—more than the legal advisors to the ministry had thought would be needed. The judgment clarified that a removal decision affected both the private land and the remaining Crown land in the TFL. After assessing the strength of the case and the seriousness of the potentially adverse effect, the court decided the duty to consult in that case was at a moderate level for the Crown land and at a lower level for the private land. The ministry therefore increased its First Nations consultations regarding the proposed change to TFLs 6, 19 and 25 (see sidebar). This was a key reason that the final decision was not made until January 2007.

The question is whether the Crown fulfilled its duty to consult and accommodate for this decision. We are not the appropriate body to assess whether the ministry's efforts fulfilled the Crown's duty. This is a developing and uncertain area of law. Appropriately, the ministry sought assurance from its legal advisors about whether its consultation with First Nations was adequate to satisfy the Province's legal obligations. The ministry was advised that its efforts were adequate.

As the ministry was aware, some First Nations groups (as is the case with other stakeholder groups) often lack the capacity to become fully and quickly informed about an issue and effectively engaged in the consultation process. Not surprisingly, then, the ministry did not receive extensive input from the First Nations groups notified. We acknowledge the government has a number of initiatives to attempt to address some of these capacity issues with First Nations.

We also acknowledge that most First Nations we spoke with as part of our review felt a strong sense of grievance and loss arising from the removal of the private land. This is consistent with the observation in *Hupacasath* that the potential effect of the removal decision on claimed traditional territory is serious. Most First Nations we spoke to felt that the process of consultation did not adequately accommodate them. We note that the Kwakiutl First Nation has filed a case about the decision to allow removal of the land.

Finally, we note that the Ministry briefing note specifically left open for the Minister to decide whether suitable accommodation of First Nations interests had been made, if he decided to approve removal of the private land from the TFLs. Included with the briefing note was a summary of First Nations consultation. Therefore, by approving the removal the Minister must have concluded that adequate accommodation had been made.

Ministry of Environment — The ministry's consultation efforts with the Ministry of Environment resulted in the licensee agreeing to meet conditions related to ungulate winter range and watersheds, and to transfer the Cape Scott Provincial Park Road to the ministry. However, the Ministry of Environment advised us that its first preference, which was to protect the ungulate winter ranges on the private land, was not an option that the Ministry of Forests and Range would advocate for. The ministry left it to WFP and the Ministry of Environment to find a solution and they ultimately agreed to an acceptable but less satisfactory solution (i.e., creating ungulate winter range on the remaining crown land).

Other agencies — The ministry contacted the Recreation Sites & Trails Section (at the time a section within the Ministry of Forests) and was advised that there were four priority public recreation interest areas. The ministry referred to recreation sites in the briefing note and stated that if the land was deleted this might frustrate locals and other long-time users of these sites.

The ministry also contacted the Integrated Land Management Bureau regarding Old Growth Management Areas (OGMAs). The ministry referred to OGMAs in the briefing note and stated that there would be fewer OGMAs established on the land base as a whole and the reduction on the private land might be an issue for local First Nations who use them for hunting and fishing.

Stakeholders not consulted — The ministry did not consult with:

- Capital Regional District
- local governments
- Ministry of Community Services
- Ministry of Tourism, Sport and the Arts
- Integrated Land Management Bureau (other than the section dealing with OGMAs) in the Ministry of Agriculture and Lands

- numerous environmental and community groups with interests in the area
- other groups having an interest in the final decision

As a result, there was significant reaction to the decision when it became known to the public and other stakeholders who had expected to be involved in the decision about whether to allow the private land removal.

Consultation efforts were not proportional to the magnitude of the decision and the impacts on different stakeholders

Consultation involves a range of activities, from limited to extensive involvement. The International Association for Public Participation describes the following categories within the range:

- *Inform* — The goal is to provide participants with balanced and objective information to assist them in understanding the problem, alternatives, opportunities and/or solutions. The decision-maker promises to keep the participants informed.
- *Consult* — The goal is to obtain participants' feedback on analysis, alternatives and/or decisions. The decision-maker promises to keep the participants informed, listen to and acknowledge concerns and aspirations, and provide feedback on how the participants' input influenced the decision.
- *Involve* — The goal is to work directly with participants throughout the process to ensure that their concerns and aspirations are consistently understood and considered. The decision-maker promises to work with the participants to ensure that their concerns and aspirations are directly reflected in the alternatives developed and to provide feedback on how the participants' input influenced the decision.
- *Collaborate* — The goal is for the decision-maker to partner with the participants in each aspect of the decision-making process, including the development of alternatives and the identification of the preferred solution. The decision-maker promises to work with the participants to ensure that their concerns and aspirations are directly reflected in the alternatives developed and to provide feedback on how the participants' input influenced the decision.

Was there effective consultation and communication with stakeholders?

- *Empower* — The goal is to place final decision-making in the hands of participants. The decision-maker promises to implement what the participants decide.

We found that the ministry focused its consultation efforts on First Nations because the Hupacasath BC Supreme Court decision indicated that the ministry had to make reasonable efforts to consult meaningfully. Secondarily, the ministry focused its consultation efforts on the Ministry of Environment because of the obvious potential for environmental issues if the land removal was approved.

For the other parts of the provincial government, the Capital Regional District, local governments and the public, we expected that the ministry's consultation efforts would be in the range of "informing" to "involving." However, except for the Ministry of Environment and to a lesser extent with the Recreation Sites and Trails Section (at the time a section within the Ministry of Forests) and the Integrated Land Management Bureau (regarding Old Growth Management Areas), this was not the case. As a result, the ministry's recommendation to the Minister concerning TFLs 6, 19 and 25 lacked important input from key stakeholders that could have helped to ensure the decision gave due regard to the public interest. We concluded that the ministry's stakeholder consultation effort was not proportional to the impact of the decision on each group.

The ministry factored into its recommendation some of the requests made by First Nations and the Ministry of Environment

Stakeholders who participate in a decision-making process expect that their concerns and aspirations will be acknowledged and maybe even addressed by the eventual decision. In relation to First Nations, the Crown's duty to consult comes with a related duty to accommodate First Nations to varying levels (depending on the facts).

We found that the ministry summarized the specific issues raised by each First Nation group it contacted and its response. All of this information was included in the ministry briefing note provided to the Minister. We also found that the final decision was influenced to some extent by the First Nations input. For example, as noted

Was there effective consultation and communication with stakeholders?

earlier, it resulted in WFP agreeing, for as long as it holds the private land, to:

- give keys to gated roads for continued hunting and fishing;
- continue its "open roads" policy;
- retain ISO certification; and
- maintain the majority of the private land as Managed Forest Land.

Also, Ministry of Environment input resulted in securing the Cape Scott Provincial Park Road. In relation to recreation sites WFP agreed to continue to provide recreation opportunities on the private land subject to available funding and potential reclassification of such land for other uses. However, as noted earlier, because the ministry did not contact and meaningfully consult with other parts of the provincial government, the Capital Regional District, local governments and the public, their interests could not be factored into the decision.

The final land removal decision was not communicated transparently to all stakeholders

Stakeholders, especially those who have participated in the decision-making process, expect transparent communication of the eventual decision. We expected that the ministry would make special effort to communicate with First Nations, given that their views were sought on the land removal decision. We found that the ministry communicated with First Nations after the Minister's decision about how some of their interests and concerns had been addressed.

We expected the ministry's public communication to include not only a statement of the final decision but enough information to help stakeholders understand the rationale for the decision, such as:

- the location of the land in question;
- the licensee's intent to sell some or all of the land and that some would be used for "higher and better use" (e.g., residential development);
- how the regulatory oversight will be affected;
- potential forest and range management and stakeholder impacts and the ministry's mitigation plans to address these;

Was there effective consultation and communication with stakeholders?

- how the broader public interest issues were identified and how they factored into the decision; and
- benefits secured on behalf of the public.

We found that the ministry's public information bulletin included some but not all of the above information (see below). The ministry provided information about the location of the land and the conditions it negotiated with the licensee and it mentioned that the land would now fall under the Private Managed Forest Land Act. The ministry did not, however, provide information about the licensee's intent to sell some of the land for residential development, about the potential forest and range management impacts, or about how the public interest was identified and factored into the decision. We therefore concluded overall that the information provided was inadequate to allow most stakeholders to understand the potential importance of the decision and the factors that were considered to arrive at the decision.

Ministry of Forests and Range — Information Bulletin

PRIVATE LAND REMOVED FROM TREE FARM LICENCES

VICTORIA — Forests and Range Minister Rich Coleman has approved the removal of 28,283 hectares of private land from three coastal tree farm licences held by Western Forest Products.

Approximately 16,100 hectares will be removed from Tree Farm Licences 6 and 19 on northern Vancouver Island. Almost 12,000 hectares will come from Tree Farm Licence 25 near Jordan River on southern Vancouver Island and about 200 hectares from two small parcels on the central coast.

Conditions of the Minister's approval include:

- A three-year ban on log exports from the removed private land.
- An agreement to work with the Ministry of Environment on protecting ungulate winter ranges.
- Maintenance of current International Organization for Standardization and/or Canadian Standards Association sustainable forest management certification.
- A memorandum of understanding with the Ministry of Forests and Range regarding established research plots on private land.
- Continued recreational access to the removed private land, subject to available funding.
- Continued access for First Nations using neighbouring Crown lands for hunting, fishing and cultural purposes.

The private land will be managed in accordance with the Private Managed Forest Land Act, Heritage Conservation Act, Drinking Water Protection Act and the federal Fisheries and Species at Risk Acts.

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Source: Ministry of Forests and Range

Was there effective consultation and communication with stakeholders?

The ministry did prepare a question-and-answer resource in anticipation of public queries and it covered several of the items listed above. Had the ministry included this information in either its information bulletin or in a backgrounder, the decision likely would have been better understood and attracted more attention from the public and the media.

Does the ministry effectively monitor its land removal decisions?

A decision allowing the removal of private land from TFLs has significant consequences of public interest. For example, once removed, the land is no longer subject to the regulatory requirements of a TFL. Although the Private Managed Forest Land Act would apply to land deleted from a TFL, this is only the case if those lands remain under Managed Forest Land tax status. If the licensee chooses, it can have the land's tax status changed, thereby making it available for another purpose such as residential and commercial development.

All of these changes cause stakeholders to be concerned about the potential impacts if the land status changes. As well, because land removal decisions often impose conditions that the licensee is expected to fulfill, stakeholders want assurance that this occurs.

Accordingly, we expected the ministry to inform future dealings with licensees and future land removal decisions by doing the following:

- documenting important elements of past decisions;
- monitoring the economic, environmental and social impacts of its decisions;
- assessing the capacity of key stakeholders to deal with the land removal impacts; and
- ensuring that the conditions of the land removal agreement are met.

We concluded that the ministry is not effectively monitoring its land removal decisions because the ministry has taken only limited action on the above items.

The ministry has not systematically documented important elements of past land removal decisions

Good management practice requires documenting important ministry decisions. A valuable reason for such documentation is that key staff members change over time, so good records help maintain "corporate memory" that can inform future ministry decisions.

We expected that the ministry would maintain good documentation of its land removal decisions, particularly larger transactions occurring in the recent past (e.g., decisions involving 1,000 hectares or more over the past 10 years). The specific information we expected to find included:

- details of compensation sought from the licensee (e.g., cash, land, public access);
- details of costs to government arising from the decision (including unforeseen costs);
- key matters considered when the decision was made (e.g., stakeholder input, economic, environmental and social considerations);
- impact of the decision on key stakeholder groups; and
- explanation of differences in the decision with earlier ones.

We found that the ministry did not have such documentation already available. However, it was able to provide to us much of the supporting information we requested to develop our own analysis. Although there has been some movement of key staff involved in the earlier decisions to other ministries, none have left government service, and those staff helped us better understand the previous decisions.

The ministry does not formally assess the impacts of its past land removal decisions

As noted earlier, once a private land removal decision is made the land is no longer subject to the regulatory requirements of a TFL and instead can fall under the less stringent requirements of the PMFLA. This change can have economic, environmental and social consequences. The City of Port Alberni has raised concerns about its capacity to deal with watershed issues related to the private land removal from TFL 44 in 2004. Citizens of Port Alberni also expressed a number of concerns (see below).

TFL 44 Citizen Concerns

A consultants' report, *Review of the Port Alberni Forest Industry*, was commissioned by the Ministry of Forests and Range and published in April 2007. The report details concerns expressed by the citizens of Port Alberni about the removal of private land from TFL 44, including:

- an age class imbalance in the TFL as a result of the more mature second growth on private lands being removed from the TFL;
- changed environmental rules for private lands removed from TFL 44 and the increased ease of log export from such lands permitted by federal regulations;
- impacts on access to Crown assets and loss of access to trails, both resulting from removal of private lands from TFL 44 and, more generally, the lack of established rights-of-way through large holdings of private forest lands; and
- concern about environmental and forest management standards applicable to private managed forest lands.

Source: Ministry of Forests and Range

Does the ministry effectively monitor its land removal decisions?

Accordingly, we expected the ministry to monitor the impacts of its land removal decisions to inform future dealings with the licensee and future land removal decisions. We found that the ministry is not formally assessing the impacts of its decisions, and does not think that it is a ministry responsibility to do so. Part of its reasoning is that, once removed from the TFL, the land is no longer in the ministry's jurisdiction. Instead, the land falls under the Private Managed Forest Land Act and, as a result, is subject to audits by the Private Managed Forest Lands Council. The Council reports through the Ministry of Agriculture and Lands and the Council's approach is to respond to complaints involving private managed forest land. The Council is not required to proactively monitor land removal decisions.

The ministry does not take into account stakeholder capacity to deal with the impacts of its land removal decisions

Earlier we noted that the ministry limited its stakeholder consultations mainly to First Nations groups and the Ministry of Environment and, as such, was able to address some of their concerns.

Because some other groups were not contacted by the ministry, no effort was made to address their concerns or consider their capacity to deal with the "downstream" impacts after the decision was made to remove the private land from the TFLs. For example, a large part of TFL 25 is in the Juan de Fuca electoral area which is contained within the Capital Regional District. The private land removal decision came in the midst of an updating of the community plan and development of a new parks plan. The CRD was caught off guard by the decision and pressed into taking unplanned action to respond to the licensee's move to sell part of the land for development—a move that occurred after WFP got its removal request approved. As a result, emergency meetings were held and new bylaws prepared for approval by the Minister of Community Services. However, a development application was submitted by WFP before the new bylaws were approved and will be considered under the old bylaws. Therefore this effort by the CRD to address its concerns by changing the bylaws has not been successful.

We also noted that at least one of the First Nations involved in the decision raised concerns about its financial capacity to investigate the impacts of the decision and is taking legal action.

The ministry does not have the processes or authority needed to ensure that all agreement conditions are met

As noted earlier, the ministry negotiated statutory rights-of-way to the remaining Crown land in the TFLs and ownership of the access road to Cape Scott Provincial Park and took the steps needed to legally secure these benefits.

However, the land removal decision for TFLs 6, 19 and 25 also included several other conditions, including:

- agreeing to a three-year ban on log exports from the lands;
- allowing access by First Nations for hunting and fishing;
- protecting community watersheds;
- protecting Roosevelt elk and black-tail deer winter ranges;
- maintaining ISO and CSA land certification;
- agreeing to a memorandum of understanding with Research Branch regarding research plots established on the private land; and
- providing recreational opportunities on the private land subject to available funding and potential reclassification of such land for other uses.

The value of the conditions is limited because most of them apply only for as long as the licensee owns the private land (except for the log export provision). Furthermore, government has little authority to enforce the conditions (e.g., there are no covenants on the land). We also found that the ministry does not have any formal processes in place to ensure that the licensee meets such conditions.

Appendices

Appendix A: A Brief History of the Timber Tenure System

The following summary is based on the Ministry of Forest and Range report, *"Timber Tenures in British Columbia: Managing Public Forests in the Public Interest."*

Pioneer Era: 1800s–1911

From its founding as a Crown colony until the early 1900s, British Columbia's focus was on attracting labour and capital to develop virtually untouched timber resources. From the early 1800s until 1865, Crown grants were the only means of allocating timber to potential users. Early grants were fee simple, with no restrictions on land or timber use. Much of the private land that exists today was granted during this period, including most of the private lands of southeastern Vancouver Island. These were granted in 1884 to railway entrepreneurs. The 1865 Land Ordinance established the policy of granting rights to harvest timber without alienating the land from the Crown—the basis of today's tenure system that preserves public ownership. In 1884, the Timber Act introduced the first stumpage fees, the price licensees pay for harvesting public timber.

Early Regulation and the Founding of an Industry: 1912–1946

In 1912, the first Forest Act was introduced, which established a system of "forest reserve" areas officially designated for timber harvesting. The new Forest Act also created a Forest Service to administer the reserves, protect them from forest fires, promote their commercial use and collect government revenues. The Act also established a new form of tenure called the timber sale licence, which granted a one-time right to harvest a specific stand. A period of rapid industrial expansion followed, together with continuous technological change and competition over timber resources.

By 1943, the forest industry had expanded to the limits of its timber supply under existing tenures and so sought greater access to Crown timber. In response, the government appointed the Honourable Gordon Sloan as a Commissioner to review the forest industry including the existing legislation and policies. At the same time, there was a growing awareness among foresters of the need to manage timber supply for the long term.

Sustained Yield and Industrial Growth: 1947–1978

The report of Commissioner Sloan led to major changes in the tenure system, including amendments to the Forest Act in 1947.

Appendix A: A Brief History of the Timber Tenure System

Key among the changes was the establishment of forest management units that would be managed for a long-term sustained yield of timber, through the use of a regulated harvest rate.

The Public Sustained Yield Unit was the forerunner to today's Timber Supply Area. Public Sustained Yield Units were managed by the Forest Service with harvests shared among several operators, chiefly through the use of a new form of tenure, the Timber Sale Harvesting Licence. These licences were the first long-term, volume-based timber tenures. The second type of management unit was the Forest Management Licence, a new form of tenure and the forerunner to today's Tree Farm Licence (TFL). The Forest Management Licence, also gave companies long-term harvest rights on the condition that they invest in processing facilities and take on forest management obligations such as reforestation.

Integrated Forest Management: 1978–1988

In 1976, the report of the Royal Commission on forest resources, led by Peter Pearse, was completed. Many of the recommendations in this 1976 report were implemented in a new Forest Act and a Ministry of Forests Act in 1978. The changes were aimed at streamlining administration and providing new forms of tenure to diversify the forest industry. The more than 88 Public Sustained Yield Units were consolidated and redefined into 33 Timber Supply Areas (TSAs). As well, a new process for determining the allowable annual cut was implemented for these new TSAs. Existing tenure was overhauled: old licences were replaced or converted, and new forms of licence were introduced. Included among these new forms were timber sale licences and non-replaceable forest licences developed expressly for small business loggers and owners of small sawmills and independent manufacturing facilities. Awards of tenure were made both on economic and social criteria, such as job creation. Forest management obligations continued to grow. Several major forms of tenure required licence holders to carry out basic silviculture activities after harvesting, primarily reforestation. Licence holders were required to plant ecologically suitable and commercially valuable trees and to continue to manage the young forest until the trees were well established.

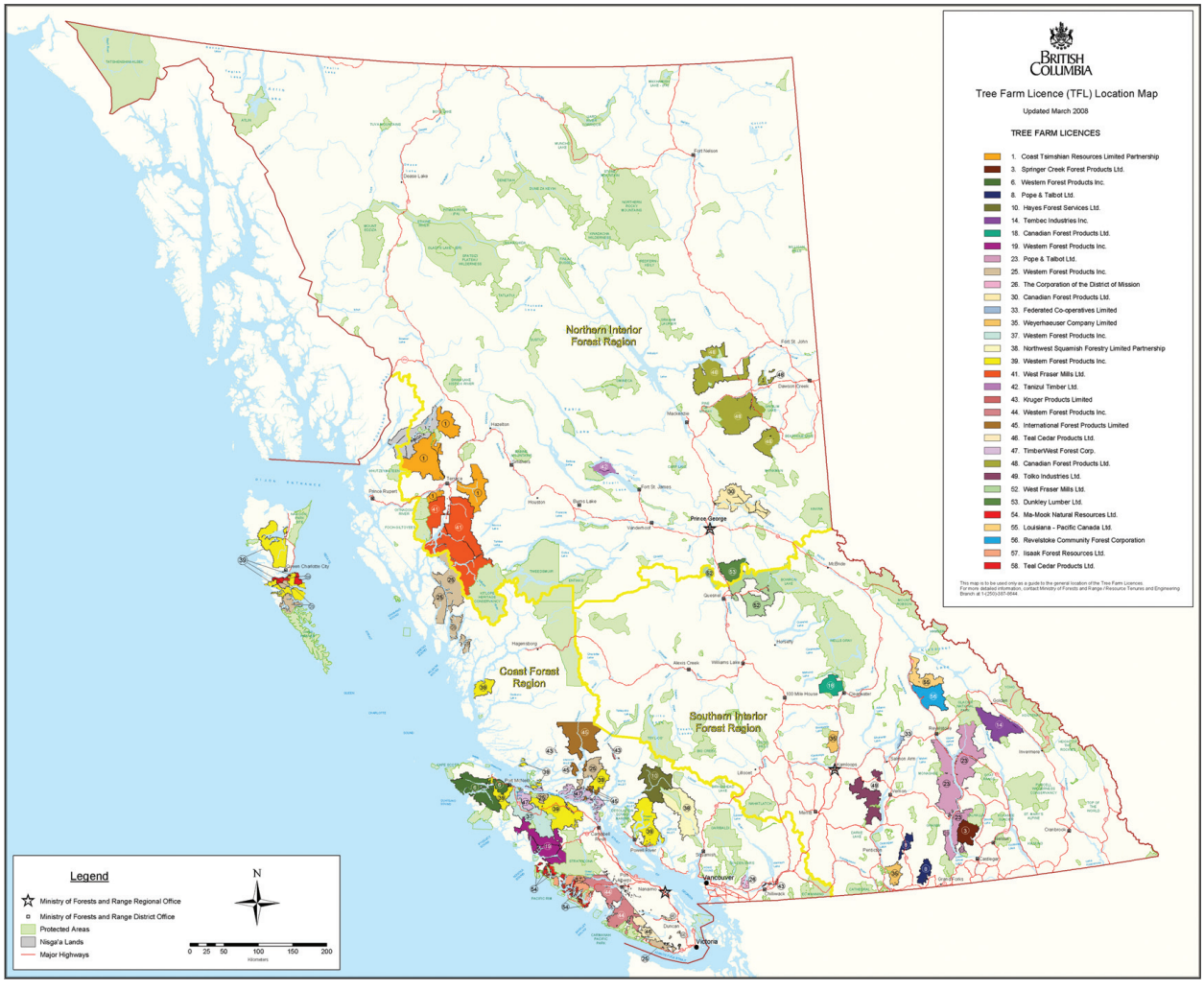
Appendix A: A Brief History of the Timber Tenure System

Sustainable Management: 1988–1990s

The concept of sustainable development was beginning to gain prominence by 1987. It emphasized the interdependence of environmental integrity and economic development in meeting the needs of current society and future generations. This idea began influencing British Columbia's management of its lands. Starting in the early 1990s, the province launched stakeholder-based land use planning to determine how public lands should be used, including which areas should be protected and which should be available for resource development and other uses. The province also committed to negotiate Aboriginal land claims and established a policy to consult with First Nations on land-use decisions that could infringe on Aboriginal rights and title.

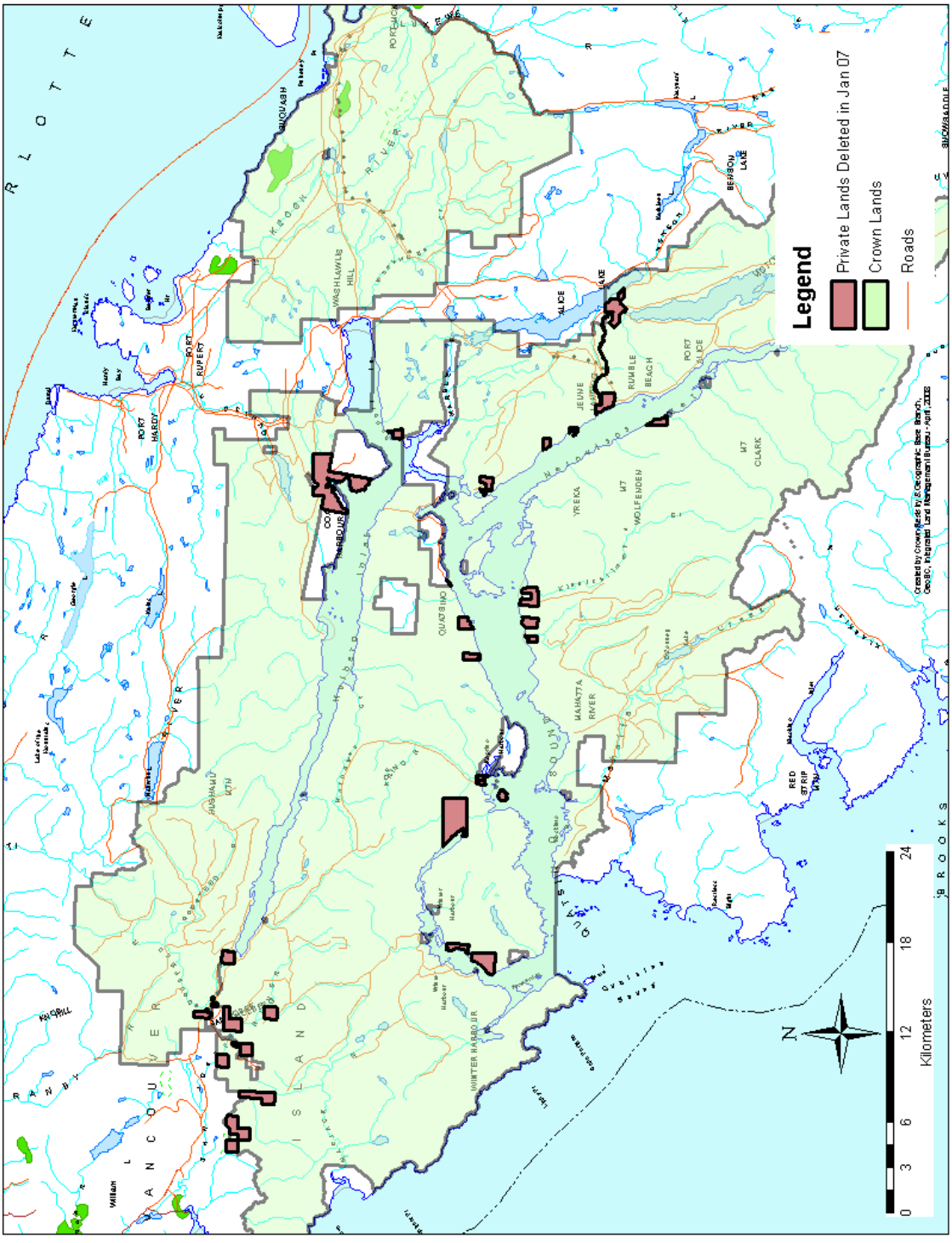
Appendix B: TFL Maps

Provincial Map of Tree Farm Licenses



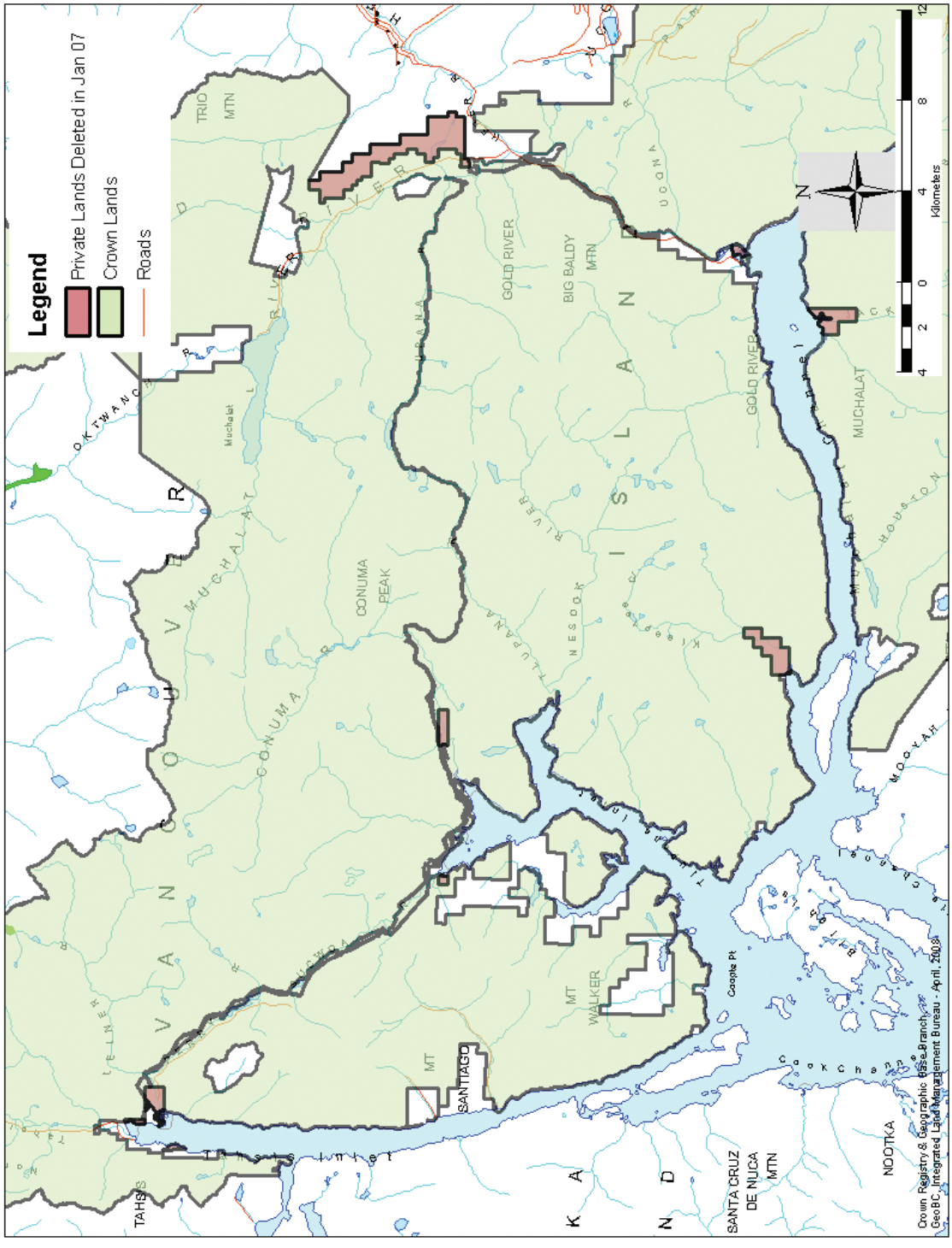
Appendix B: TFL Maps

Map of TFL 6



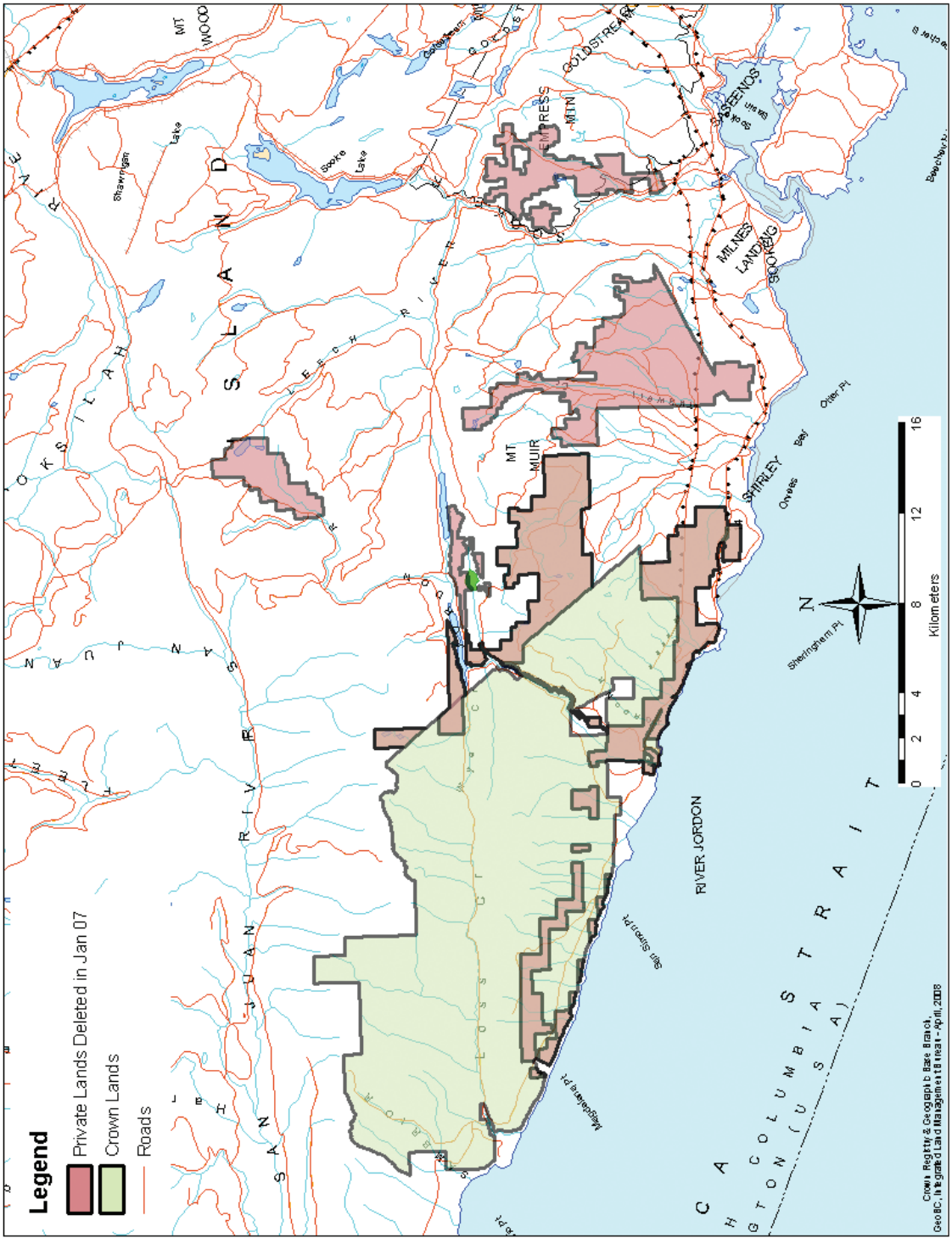
Appendix B: TFL Maps

Map of TFL 19



Appendix B: TFL Maps

Map of TFL 25 — Block 1



Appendix C: The Forestry Revitalization Plan

The following summary is based upon the Ministry of Forests and Range's Plan, *"The Forestry Revitalization Plan"*.

In 2003, the government introduced the Forestry Revitalization Plan. The plan introduced reforms intended to build a more diverse forest sector that would allow timber to flow to its highest and best use within the province. Public ownership of the forests was to be retained and strict environmental standards met. Forestry Revitalization Plan initiatives included the following:

- *A Commitment to Environmental Sustainability* — The Forest and Range Practices Act was introduced to govern forestry operations in British Columbia's public forests; the intention was to maintain or exceed the standards set by the Forest Practices Code, which it replaced.
- *Opening Up New Opportunities for British Columbians* — Licensees were required, in exchange for compensation, to return about 20% of their replaceable tenure (on Crown land) for redistribution as woodlots, community forests and First Nations and for sale at auction.
- *Getting the Most from Every Tree Cut* — Minimum cut control was removed so that there would be no penalties for failing to cut timber; government eliminated regulations that required licensees to both log and process timber at their own mills (appurtenancy/timber processing requirements); forest companies were allowed to transfer, subdivide or sell all or a portion of their licences without suffering a penalty.
- *Setting a Fair Price for the Public Resource* — Market-based pricing system was to be introduced.
- *Strengthening the Coastal Forest Sector* — Government was to simplify and streamline the dispute resolution process; a $75 million trust fund was established for those people caught in the transition from the old to the new forest economy.
- *Opening Up New Markets* — Government introduced the Forestry Innovation Investment program and the Market Outreach Network.

Appendix D: TFLs 6, 19 and 25 — Removal of Private Lands Timeline

November 24, 2004	Western Forest Products Inc. (WFP) letter sent to the Ministry of Forests and Range requesting deletion of private land.
December 31, 2004	Ministry and WFP sign a settlement framework agreement to negotiate a comprehensive settlement of all claims by WFP, including facilitating the removal of private lands from Tree Farm Licences (TFLs).
June 16, 2005	Honourable Rich Coleman appointed Minister of Forests and Range.
July 8, 2005	WFP information package submitted to the Ministry of Forests and Range on private land withdrawal.
July 14, 2005	Revised WFP information package submitted to the Ministry of Forests and Range on private land withdrawal.
August 30, 2005	Briefing note prepared for the Deputy Minister of Forests and Range recommending that the ministry proceed to notify First Nations on WFP's request to delete its private lands but refrain from making the final decision until the BC Supreme Court rules on the Hupacasath Petition; recommendation approved. Letters sent to 23 First Nations notifying them of WFP's proposal to remove private lands.
December 6, 2005	In Hupacasath First Nation v British Columbia (Minister of Forests), the Honourable Madam Justice Lynn Smith found that the decision by the Minister of Forests and Range to remove lands from TFL 44 gave rise to a duty on the Provincial Crown to consult the Hupacasath and the Crown failed to meet that duty.
February 2006	Letters sent to 23 First Nations advising them that the consultation process is being extended with an emphasis on a deeper level of consultation.
April 28, 2006	Letter sent from WFP to the Ministry of Forests and Range re: WFP's acquisition of Cascadia makes reference to the deletion of private lands and notes that, subject to the decision, WFP intends to offer its private timberlands for sale.
December 20, 2006	Briefing note prepared for the Minister of Forests and Range recommends the deletion of all private lands from TFLs 6, 19 and 25. We were advised that additional information was attached to the decision package for the Minister regarding the value of the land and potential increase in exports.
January 25, 2007	Letter sent from the Minister of Forests and Range to WFP advising the company that if it agrees to the conditions in the letter, WFP should sign the enclosed instruments and return one copy to the ministry.
January 31, 2007	The approval of the Minister of Forests and Range to allow the removal of private land from WFP's TFLs is announced in an information bulletin by the ministry.

Appendix E: Examples of Forest Management Legislative Requirements on Crown and Private Forest Land

Private Forest Land in a TFL and Crown Forest Land	Private Managed Forest Land
Objectives for soils • to conserve the productivity and the hydrologic function of soils (FPPR sec. 5)	• to protect soil productivity on harvested areas (PMFLA sec. 12)
Objectives for wildlife • to conserve sufficient wildlife habitat in terms of amount of area, distribution of areas and attributes of those areas, for (a) the survival of species at risk, (b) the survival of regionally important wildlife, and (c) the winter survival of specified ungulate species (FPPR sec. 7) BC currently has 725 species designated as endangered or threatened (red listed).	• to facilitate the long term protection of critical wildlife habitat by fostering efforts of the government and the owners to enter into agreements for the protection of any critical wildlife habitat identified by the Ministry of Environment — Critical Wildlife Habitats (CWHs) may be established to protect species at risk if there is insufficient suitable habitat on Crown lands; must not exceed 1% of private land — 36 species at risk listed (PMFLA sec. 15 and PMFLR schedule C) • no CWHs have been designated as of March 2008
Objectives for wildlife and biodiversity — landscape level • harvest to resemble natural disturbance patterns (FPPR sec. 9)	• no equivalent private land requirement
Objectives for wildlife and biodiversity — stand level • harvest to resemble natural disturbance patterns (FPPR sec. 9.1)	• no equivalent private land requirement
Objectives for visual quality • visual quality objectives for harvesting (FPPR sec. 9.2)	• no equivalent private land requirement
Objectives for cultural heritage resources • traditional use by an Aboriginal people that is of continuing importance to that people and is not regulated under the Heritage Conservation Act (FPPR sec. 10)	• no equivalent private land requirement
Practice requirements – landslides • primary forest activities must not cause landslides (FPPR sec. 37)	• an owner must notify the council, within 24 hours of becoming aware that a landslide or debris flow has occurred on the owner's land, if the owner knows that the landslide or debris flow has deposited debris or sediment into a class A, B, C, D or E stream (PMFLCR sec. 26)

Appendix E: Examples of Forest Management Legislative Requirements on Crown and Private Forest Land

Private Forest Land in a TFL and Crown Forest Land	Private Managed Forest Land
Practice requirements — stream riparian classes • seven stream classes (S1A-S6) • riparian management area 20-100 metres • riparian reserve zone 0-50 metres (dependent on stream class) • riparian management zone 20-100 metres (dependent on stream class) (FPPR sec. 47)	• five stream classes (A-E) • 15-30 trees per 100 metres of stream bank (dependent on stream class) • retain non-commercial trees, understory vegetation — 10 to 30 metres (dependent on stream class) (PMFLCR secs. 27 to 30)
Practice requirements — restrictions in a riparian reserve zone (RRZ) • restricts activities in RRZ e.g. no harvesting up to 50 metres (FPPR sec. 51)	• no riparian reserve zones on private land
Practice requirements — restrictions in a riparian management zone (RMZ) • retention targets in RMZ e.g. retain 10% to 20%+ of standing trees up to 100 metres from stream (FPPR sec. 52)	• no riparian retention targets on private land other than as mentioned above
Practice requirements — temperature sensitive streams • prohibition on impacting temperature sensitive streams (FPPR sec. 53)	• no equivalent private land requirement except via the Fisheries Act
Practice requirements — fan destabilization • prohibition on fan (slope) destabilization (FPPR sec. 54)	• no equivalent private land requirement other than the general prohibition against introducing sediment to fish streams and streams with water licence intakes
Practice requirements — maximum cutblock size • cutblock not to exceed 40 to 60 hectares (FPPR sec. 64)	• no equivalent private land requirement

Prepared by Office of the Auditor General, with the assistance of the Ministry of Environment

Appendix F: TFL Private Land Removals Comparison

All information contained in the following table is taken from briefing materials prepared by the Ministry of Forests and Range as at the time of the land's removal.

	TimberWest	Weyerhaeuser	Teal Jones	Western Forest Products
	TFLs 46 and 47	TFLs 39 and 44	TFL 46	TFLs 6, 19 and 25
	60,000 hectares deleted in December 1998	88,000 hectares deleted in July 2004	2,602 hectares deleted in July 2004	28,000 hectares deleted in January 2007
Estimated Value				
Estimated value of private lands	No specific value estimated	No specific value estimated	No specific value estimated	$150 million – $175 million
Estimated increase in value as a result of the removal	$9.5 million	$15.4 million – $31.8 million	No specific value estimated	No specific value estimated
Compensation/ Benefits				
Other	Yes – obtained TimberWest lands valued at $9.5 million	Yes – tenure take-back compensation amount agreed	No	No
Settlement of litigation	No	Yes – Weyerhaeuser to cease action re. Bill 96 and Chapter 11 NAFTA challenge. Government to pay Weyerhaeuser's legal costs of $1.6 million	No	No
Roads	No	No	No	Yes – access road to Cape Scott Provincial Park, valued at between $2.5 million – $3 million
Conditions				
Future forest management	No	Yes – "managed forest" status to continue subject to Weyerhaeuser's operational needs	No	No

Appendix F: TFL Private Land Removals Comparison

	TimberWest	Weyerhaeuser	Teal Jones	Western Forest Products
First Nations consultation	No	Yes – not required unless Weyerhaeuser's use of its private land interferes with the exercise of an Aboriginal right	No	Yes – undertaken as part of the decision making process
Access	No	Yes – current access to be maintained for the public, industrial road users and First Nations	Yes – public access secured through access agreement	Yes – statutory rights-of-way acquired by the Ministry of Forests and Range
First Nations access	No	Yes – as above	No	Yes – keys to be provided and returned after use[1]
Log exports	No	Yes – no log exports until Feb. 1, 2006 (18 months)	No	Yes – log exports not allowed for 36 months from date of deletion
Wildlife habitat	No	Yes – critical wildlife habitat areas to be maintained for 2 years; long-term plan for protecting Ungulate Winter Range (UWR) and Wildlife Habitat Areas to be developed	No	Yes – UWR proposal to Ministry of Environment to create UWRs on Crown land to partially mitigate loss of UWRs on private land[1]
Old growth management	No	No	No	No
ISO/CSA certification of private land	No	Yes – maintain certification	No	Yes – maintain certification[1]
Community watersheds	No	Yes – private forest watershed assessment plans to be developed for key community watersheds	No	Yes – forest practices intended to protect human drinking water[1]

Appendix F: TFL Private Land Removals Comparison

	TimberWest	Weyerhaeuser	Teal Jones	Western Forest Products
Research	No	Yes – memorandum of understanding (MOU) with Research Branch, Ministry of Forests and Range	No	Yes – MOU with Research Branch, Ministry of Forests and Range[1]
Recreation	No	Yes – Powell River Canoe Route to be maintained	No	Yes – provide recreational opportunities subject to available funding and potential reclassification of such land for other uses[1]

[1] Only while Western Forest Products owns the private land.