

July 16, 2008

**MINISTRY RESPONSE TO AUDITOR-GENERAL'S REPORT –  
REMOVING PRIVATE LAND FROM TREE FARM LICENCES 6, 19 & 25:  
PROTECTING THE PUBLIC INTEREST?**

The Ministry of Forests and Range issues the following response to the Auditor General's report:

**Introduction**

The Ministry of Forests and Range welcomed the Office of the Auditor General's (OAG) review of the ministry's decision-making process as it relates to the decision to allow the removal of private lands from Tree Farm Licences (TFLs) 6, 19 and 25. However, the ministry would have also appreciated concrete recommendations arising from the examination and a meaningful opportunity to respond.

Given the importance of the issues raised and the immediacy of the political and public debate related to the matters reviewed, we felt it was important to make the following response available.



**Actions to Address the Key Findings**

The OAG makes no specific recommendations to improve decision-making or the public process. While no further actions are required, the Auditor General's observations do allow the ministry to identify potential improvements to its processes with regard to documentation, consultation and communication.

The ministry acknowledges that it could have done a better job of public consultation. The ministry has taken steps to improve its consultation processes. In the most recent application to remove private land from Pope and Talbot's TFL 23, the ministry consulted directly with local government and held open public consultations. A public website was established, and public meetings held in Revelstoke, Nakusp and Castlegar were well-attended. A summary report from those meetings will be forwarded to the Minister to consider in making his decision on whether to approve the request to remove private land from TFL 23.

The ministry will work to improve documentation but holds that briefing notes are not public communication documents and, as discussed further below, should remain focused on providing a Minister with the incremental or unique information required to make an informed decision.

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and Range**

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There are legitimate transition issues when land moves from forestry to other uses. The ministry is committed to working with the Ministries of Community Development, Agriculture and Lands, and Transportation and Infrastructure to ensure local governments are better-positioned to exercise their zoning authority in an appropriate and orderly manner if and when private land deletions occur.

We also agree that it would be of benefit to publish more information, and distribute it more broadly, with respect to the major factors considered and key aspects of similar decisions.

We will continue to strive for improvement and believe our performance exhibits that goal. We remain open to additional suggestions to amend and refine our practices.

### **The Role of the Ministry and the Public Interest**

The ministry appreciates the controversial nature of the decision to permit the removal of private land from TFLs 6, 19 and 25.

Western Forest Products is a major employer and its financial health is directly linked to the economic well-being of many coastal communities. The company employs over 3,000 British Columbians in its logging and milling operations. Since January 31, 2007, Western has invested about \$20 million in upgrading its mills and equipment.

Clearly, the company, emerging from a period of significant financial uncertainty associated with the creditor protection process, had some interest in increasing the value of some of their private property by making subsequent applications to other public bodies for zoning changes or subdivision approval. But the nature, extent, and location of these were not known or declared to the ministry at the time of the decision.

The OAG maintains the ministry's processes resulted in a decision that was made without sufficient regard for the public interest. The Ministry of Forests and Range disagrees with key aspects of the Auditor General's argument and resulting conclusion.

The OAG created a definition of public interest by looking to the Government Strategic Plan and the ministry Service Plan and selectively choosing particular elements. They excluded other clear expressions of what the Government of British Columbia considered to be the "public interest." For example, both documents in place at that time (2006/07) prominently featured the goal to "Create more jobs per capita than anywhere in Canada," with the ministry Service Plan adding this would be achieved by "working to maintain competitive forest and cattle industries." By excluding the goal of job creation, the definition fails to address a central objective of the decision examined.

Given the central matter concerned private lands and their relationship to forestry issues, we would have expected the OAG to have at least noted the importance of private property rights, if not provide a more fulsome consideration, in their deliberation of public interest.

The OAG does not provide guidance on what definition of "public interest" the ministry should use from now on or how the definition should change over time to reflect adjustments in government and ministry goals. However, we believe it is safe to assume that a different interpretation of the public interest could have led to a very different conclusion.

The ministry admits that attempting to define the public interest is no easy task. That is why, in a democratic system, it is generally left to elected officials to express the public interest through legislation or other public policy decision-making processes. In the absence of more specific guidance from the OAG, it is difficult to see how this approach serves as a practical means of informing decisions that affect a range of stakeholders.

The ministry fundamentally disagrees with the Auditor General that the *Forest Act* is an appropriate legislative framework to deal with rezoning or subdivision applications for private land. British Columbia has established legislation, decision and consultation processes for these types of decisions and these lie in the purview of other agencies and levels of government, which are better able to balance inherent and fundamental rights of private property owners with community interests.

As noted earlier, we recognize there are legitimate transition issues, and we commit to improving processes that ensure local governments are better positioned to exercise their zoning authority in an appropriate and orderly manner if and when private land deletions occur.

Nonetheless, the ministry focussed on its proper responsibilities by examining the issue from a forestry and resource management perspective. It followed the same process it used in previous deletions. It looked at access, wildlife habitat, old growth management, research, water management, and a number of other resource management related issues. It did so with the knowledge that other decision-making processes could ultimately approve changes in the use of the private land.

The ministry also worked through these processes with the knowledge that the overwhelming majority of all past "removed lands" remain in forest production. The Private Managed Forest Land Council estimates 97 per cent of private land continues to be managed as forest land after removal from tree farm licences.

### Documentation

We also brought to the Minister's attention necessary and relevant matters to make an informed decision. The fact the decision document did not include all the information that the OAG felt relevant does not mean the decision was inadequately informed.

Briefing notes are neither designed nor intended to be encyclopaedic reports with detailed histories on public policy issues and detailed analysis of all the potential ramifications of every policy decision. They are intended to provide the incremental or unique information required to make an informed decision. Briefing notes take into account a Minister's existing knowledge, acquired through similar decisions and other briefings, both verbal and written.

### Western Forest Products' Financial Health

The OAG points out that the briefing note did not include a detailed analysis of Western Forest Products' financial health. The ministry maintains there was no need given the public company's quarterly reports and regular discussions between ministry executive and the Minister. It was well known by the Minister that Western was recently out of creditor protection and struggling financially at the time the decision was made.

We agree that the Crown should consider opportunity and operation costs inherent in the decision. The ministry negotiated the transfer of over 85 roads and statutory rights of way that protected existing industrial access corridors as well as creating new public and industrial access corridors over areas of private land that were both inside and outside the tree farm licences. These provide access to provincial parks and other areas of Crown land and have a multi-million dollar value to the Crown. However, we question the OAG's perspective that the Crown should receive a direct share in any potential value increase which might be derived from altered land ownership rights.

Ultimately, the Minister decided that any subsequent increase in value should be retained by the company and that this provided the highest public good by promoting investor confidence, helping maintain a viable operation which pays taxes, employs thousands of individuals in coastal communities, and increases the likelihood of investment and modernization.

It was a decision that was made under the authority granted to the Minister by the Legislative Assembly of British Columbia. It was informed by consultations, through the Minister's knowledge of forest policy and the state of the forest sector, and additional information brought forward by the ministry to support the Minister's decision making.

### Unsupported Statements and Omission of Key Information

Apart from the substantive issues identified above, it is unfortunate that the report establishes a tone that is neither neutral nor factual. The mandate and authority for the report is unclear; there are no specific recommendations; it contains irrelevant statements and information; and conclusions unsupported by data or evidence, of which the ministry questioned their inclusion. We are disappointed these issues were not addressed. Items of particular note include:

- **Allegations of insider trading** – the Auditor General raised the issue that anyone inside the Ministry of Forests and Range who had advance knowledge of the Minister's decision would have been in a position to profit personally from that information by purchasing Western Forest Product shares. The OAG cited their finding of "unusual" stock trading patterns and subsequent referral to the B.C. Securities Commission. However, the OAG fails to note the Commission decided not to pursue the allegations of insider trading.

We patently reject the idea that ministry staff participated in insider trading. There is no evidence to support the inclusion of this item in the report. Such allegations cast a pall over the entire Ministry of Forests and Range and the more than 3,500 dedicated public servants who work here. We believe they deserve a better explanation of the OAG decision to include an item that raises the spectre that ministry staff assisted or participated in insider trading.

- **Itemization of political donation** – the OAG reiterates the opinion that the ministry's briefing material did not make a persuasive case for allowing the land removal and that the Forests Minister only considered the information presented in the briefing materials and ministry staff briefings. The OAG then itemizes political donations from some forest companies but fails to draw any conclusions or explain the relevance of this material.

The reader may be left to infer that political donations influenced the ministry's processes and shaped the briefing materials. Once again, such perceptions taint the integrity of all public servants in the Ministry of Forests and Range. They deserve a better rationale regarding the OAG's decision to include information that creates the appearance that the ministry is influenced by donations to political parties.

- **Comments on Brookfield ownership** – the OAG questions how a decision that benefits a single publicly listed company with shareholders who may not reside in British Columbia, "can ensure that benefits flow to British Columbia."

Benefits accrue to British Columbia when forest companies pay stumpage, pay taxes, and employ workers (3,000 workers in the case of Western Forest Products), regardless of whether they are owned by British Columbians or those who reside elsewhere. The clear implication of the OAG's statement is that the Province's decision-making should include a bias against non-British Columbia investors since, as the OAG maintains, "they may not have interests in common with those of British Columbia." This is a policy statement with potentially significant impacts on British Columbia's economy and investment climate. To provide greater clarity to investors, the OAG should have provided a rationale for how this concept of economic protectionism should be applied by government.

#### **Other Unsupported Information, Errors and Omissions:**

- The OAG highlights the existence of a draft briefing note that recommended against the removal of land from TFLs 39 & 44. This note was undated, had no identified author, was not logged in the document tracking system, and was never seen nor considered by the minister. The relevance of including the reference is unclear.
- The OAG cited the absence of an analysis and summary of the history of the TFL in the briefing note. There is no explanation how this would be relevant to the decision.

- The OAG fails to discuss the importance of private property rights and make clear that the lands in question are private lands and that the ministry's interest was limited to forestry related matters.
- Since TFLs were formed in the 1950s, provisions have existed to allow owners to remove their private land parcels from the TFL, with consent from the Minister, for higher and better use.
- Subsequent to the removal of the private land from a TFL the owners must abide by established zoning or make application to amend zoning and/or subdivide the land;
- Private land under the former Forest Land Reserve Act could be taken out, albeit with greater financial impact than under the Private Managed Forest Land Act.
- The private land is still subject to the Drinking Water Protection Act, Heritage Conservation Act, and federal Fisheries and Species at Risk Acts. The Private Managed Forest Land Act also applies if the lands are maintained as managed forest land for tax purposes.
- The news release announcing the decision was widely reported and knowledge of the decision is apparent in local government minutes soon after the announcement.
- The ministry responds to all public concerns regarding the conditions under which consent to the private land removal was given and has responded to over 200 letters about the private land removal from TFL 25.
- In Exhibit 1, the land removal undertaken in respect of TFLs 39 and 44 was held by Weyerhaeuser at the time of the removal – Western Forest Products subsequently acquired the land; this may create the impression that the removals were linked to the decision with respect to TFLs 6, 19, and 25.
- The OAG observation that the ministry should give local governments a heads-up on the Minister's decision conflicts with the confidentiality and insider trading concerns they outline elsewhere in the report.
- The Deputy Minister is not aware of any specific direction from government to allow private land owners more control of private lands within a TFL. The decision to remove private lands rests with the Minister.