

# ISLANDS TRUST BRIEFING

DATE: August 13, 2008

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**TOPIC: PRIVATE MANAGED FOREST LAND ACT**

**DIRECTED TO:** Trust Council

**CONFIDENTIAL:** NO

## **DESCRIPTION OF ISSUE:**

At its quarterly meeting in June 2008, Trust Council passed a resolution requesting that staff provide a briefing on the implications of making a request to the Lieutenant Governor in Council to exempt the Trust Area from the requirements of the *Private Managed Forest Lands Act* and its regulations. This briefing considers a) the consequences if the PMFLA were to no longer apply in the Trust Area and b) the implications of making such a request of the Lieutenant Governor in Council.

## **BACKGROUND:**

### **Trust Council Resolution**

*That the Islands Trust Council request staff to provide a briefing regarding making a request to the Lieutenant Governor in Council to make a regulation under Section 42(8) of the Private Managed Forest Land Act to exempt the Trust Area from the requirements of the Act and its regulations*

### **The Private Managed Forest Land Act**

#### **Legislative Overview**

- Since at least 1985, the province has enacted a series of statutes that prohibit local governments from restricting forestry operations on managed forest lands. The two most recent statutes are the *Forest Land Reserve Act* (FLRA; enacted in 1994) and the *Private Managed Forest Land Act* (PMFLA, enacted in 2004)
- Effective August 3, 2004 the FLRA and its associated regulations were repealed and replaced with the PMFLA and three regulations, significant among which is the *Private Managed Forest Land Regulation* (PMFLR).
- At that time, properties that were designated 'Forest Land Reserve' under the FLRA and that were assessed as managed forest land were automatically entered into the new Managed Forest Program established under the PMFLA. Land that was in the Forest Land Reserve but was *not* classified as managed forest was re-assessed for the 2005 BC Assessment roll.
- In 2007, a new regulation came into effect that was intended to improve protection of drinking water supplies and riparian areas and address road maintenance standards.
- Duties of the Land Reserve Commission in relation to the Forest Land Reserve were assumed by the Private Managed Forest Land Council, which now takes responsibility for the administration of the PMFLA and its associated regulations. The Private Managed Forest

Land Council is a 5-member body comprised of two forest land owners, two ministerial appointees and a chair who is jointly appointed by the other four members.

- Unlike the FLR, which was imposed and administered by the provincial government, the PMFL program is voluntary.
- The PMFLA applies to any properties that are assessed as Managed Forest under the BC Assessment property classification system. Under this classification, properties are assessed at lower values than those that are typically applied to other classes, such as residential.
- In order to qualify for the managed forest assessment class, property owners are required to:
  - have properties that are over 25 hectares (62 acres) in area, either singly or as smaller contiguous properties, and
  - file a Management Commitment with the PMFL Council indicating their commitment to use the property for the purposes of timber management and associated forest management activities.
- In order to retain the managed forest classification a landowner must also meet minimum productivity requirements. If a property is 50 hectares (124 acres) or less, at least 70% of the land must be productive. If the land is more than 50 hectares at least 50% of the land must be productive.
- BC Assessment assesses managed forest land in a two step process that evaluates the value of the bare land separately from the value of the trees. Only after the trees are harvested is the value of the cut trees assessed and added to the value of the property for taxation purposes.
- The Management Commitment identifies a landowner's objectives for their property and the strategies that they will use to meet them. Areas addressed (where appropriate) are: the growing and harvesting of trees, reforestation, soil conservation, fire protection, water quality, and fish and wildlife habitat. Applicants are also required to submit a soil quality assessment, an inventory of existing roads, and forest cover information.
- If a dwelling occupies a portion of a managed forest property the land is subject to a split assessment. That is, the fraction of the property containing the dwelling, typically between one and two acres, is assessed at the residential rate.
- In considering the legislation it should also be noted that while s. 42 (8) identified in the Trust Council's resolution above references the ability of the Lieutenant Governor to grant exemptions from certain *requirements* of the legislation, it does not speak specifically to the possibility of receiving an exemption from the Act and its regulations in their *entirety*. Consultation with the Ministry of Agriculture and Lands and the Ministry of the Attorney General suggests that full exemption provisions are uncommon in legislation and would need to be interpreted quite narrowly. In this case, the intention of s. 42(8) is to allow for an exemption from the imposition of a specific obligation(s) that is imposed under the Act, not to grant exemptions from the Act in its entirety.

*42(8) The Lieutenant Governor in Council may make regulations exempting a person, place or thing, or class of persons, places or things, from a requirement of this Act or the regulations and may make the exemption subject to condition (emphasis added).*

- Furthermore, and as alluded to above, the PMFLA does not appear to contain a full exemption provision. Therefore, if Trust Council was to request an exemption from application of the PMFLA, the request would not be made pursuant to s. 42(8) of the PMFLA as suggested by the Trust Council resolution, but would require a broader form of legislative change to exempt all or part of the Trust Area from PMFLA provisions.

### ***Allowable Activity Under the Act***

- Enactment of the PMFLA included a new Schedule A to the Private Managed Forest Land Regulation (attached) that provided explicit direction as to what constitutes allowable forest management activities.
- Activities contained in Schedule A consist of the following: silviculture and timber harvesting, transportation, delivery and sale, dryland sorting and scaling, road, bridge and trail construction and maintenance, drilling and blasting, aggregate production and processing, storage and repair of equipment and vehicles, slash and prescribed burning, treatment of noxious weeds, introduced plants, competing vegetation, and other pests and damaging agents, safety and security measures, water storage, agroforestry and silvopasture systems, soil production, improvement or processing, site rehabilitation and improvement, disposal of wood waste, the harvesting and sale of botanical forest products, portable processing of forest resources, forest management administration including accommodation of personnel, and the construction of one dwelling per registered parcel unless additional dwellings are permitted under applicable local bylaws.

### ***Environmental Protection Under the Act***

- Landowners are not constrained to a particular level of harvest under the PMFLA. The Act and regulations do, however, establish certain provisions intended to address the protection of environmental values.
- Very generally these consider:
  - Critical wildlife habitat: the minister may establish an area of private managed forest land as critical wildlife habitat and require modification to forest activities in that area
  - Soil Conservation: road construction is limited to the minimum necessary to conduct operations; logging trails constructed in a cutblock are to be rehabilitated following deactivation
  - Water Quality and Fish Habitat: sediment is not to be deposited into a watercourse if it will have a detrimental effect on water that is diverted by a licensed waterworks intake (LWI) or fish habitat; set backs are required for road construction occurring near fish bearing streams or upstream of a LWI unless there is no greater risk of sedimentation (10-30m dependent on stream classification); various requirements regarding: stream crossings, natural surface drainage patterns, culvert removal on deactivated roads, application of fertilizer, commercial and non-commercial tree retention along streams (number dependent on stream classification)
  - Reforestation: landowners are required to replant within 5 years of harvest or destruction; successful regeneration must be established within 15 years.

### ***The Role of Local Government Under the Act***

- While preceding statutes have prohibited local government bylaws and permits that restricted 'forest management activities' related to the production and harvesting of timber on managed forest land, they have not defined 'forest management activity'.
- Under section 21 of the PMFLA, local governments (including local trust committees) are prohibited from adopting bylaws or issuing permits that would restrict, directly or indirectly, one of the forest management activities that have been specifically listed in Schedule A on managed forest lands.

*21 (1) A local government must not*  
*(a) adopt a bylaw under any enactment, or*  
*(b) issue a permit under Part 21 or 26 of the Local Government Act in respect of*  
*land that is private managed forest land that would have the effect of restricting, directly*  
*or indirectly, a forest management activity.*

- While it has not been tested in the courts, legal opinion suggests that these prohibitions also apply to local building and development permit requirements that are triggered by residential development on managed forest lands.
- Where activities on managed forest lands do not relate to forest management they are subject to local government regulations. This includes regulations for subdivision (lot size, density, servicing requirements, park dedication, etc.) which, assuming no interference with forest management activities, the PMFLA and its regulations do not override.
- Local governments are not involved in the decision process to include or exclude land from the managed forest class. Under the *Private Managed Forest Land Council Regulation* the PMFL Council is, however, required to provide written notice if a property is either classified or declassified as managed forest and becomes removed from or subject to, the requirements of local zoning bylaws.

*(7) If the assessor notifies the council that an area has been  
 (a) classified as managed forest land under section 24 of the Assessment Act, or  
 (b) declassified as managed forest land under section 24 (3) (b) of the  
 Assessment Act,  
 the council must give written notice to the affected local government of the classification  
 or declassification of the area.*

- Concerns have been raised that the PMFL Council may not be notifying local governments. The Islands Trust may wish to discuss the importance of complying with the regulation with the PMFL Council.
- If a property is withdrawn from the managed forest land class within 15 years of its entry the landowner must pay an exit fee. This fee is based on the difference in taxes between the next highest property class, with a discount related to the number of years the property was classified as managed forest.
- While the PMFLA is the continuation of a series of provincial statutes that prohibit local governments from restricting forest management 'activities', there is nothing in either the Act or its associated regulations that suggests that this legislation was intended to have retroactive effect in regards to local government bylaws that restrict residential use of managed forest land. To this end, it is thought that by-laws that were in effect prior to the enactment of the PMFLA may continue to restrict residential use. It should be noted, however, that this assumption has not been tested in the courts and legal opinions on this matter vary. There is some thought, for example, that a court could determine that local government's inability to restrict a residential use accessory to forest management was implied by the legislation that preceded the PMFLA. In any event, any new bylaws adopted by a local government must permit at least one dwelling per parcel on managed forest land and may not further restrict forest management activities that are already permitted.
- It is also worth noting that the PMFLA is not the first piece of legislation to fetter local government control. The *Agricultural Land Commission Act*, for example, takes precedence over local government bylaws by requiring regulatory consistency with the provisions of the Act at the local level. It does not permit local governments to prohibit agricultural activities on land that has been provincially designated for this purpose.

## **Islands Trust Policy and the PMFLA**

### ***The Policy Statement***

- The provisions of the PMFLA have created some uncertainty about the ability of the Islands Trust to meet its obligations with respect to its object under the *Islands Trust Act*.
- While there are some specific planning-related issues around, for example, the difficulty in identifying whether a local bylaw will have a direct or indirect effect on forest management

activities, the primary concern is that by restricting local government's ability to regulate development on lands in the managed forest classification, the PMFLA limits the Trust's ability to preserve and protect the natural environment of the Trust Area.

- The Policy Statement contains several commitments and directives that could be interpreted as supporting both the protection of forest ecosystems from adverse land use impacts and the protection of forestry as a traditional land use in the Trust Area.
- Examples of this include:

*3.2.2 Local trust committees and island municipalities shall, in their official community plans and regulatory bylaws, address the protection of unfragmented forest ecosystems<sup>1</sup> within their local planning areas from potentially adverse impacts of growth, development and land use.*

*4.2.6 Local trust committees and island municipalities shall, in their official community plans and regulatory bylaws, address the need to protect ecological integrity on a scale of forests and landscapes.*

*4.2.1 Trust Council recognizes that forestry is a traditional land use in the Trust Area, and supports sustainable forestry as an appropriate form of land use.*

*4.2.7 Local trust committees and island municipalities shall, in their official community plans and regulatory bylaws, address:*

- *The retention of large land holdings and parcel sizes for sustainable forestry use, and*
- *The location and construction of roads, and utility and communication corridors to minimize the fragmentation of forests.*

## **Islands Trust Process to Date**

### ***Order in Council***

- Initially the PMFLA did not specifically identify how local government was to be defined under the regulation. This created some uncertainty as to whether local trust committees were bound to the requirements of the legislation.
- The issue was resolved with a December 2004 Order in Council that amended the regulation so as to include a definition of 'local government.' This definition explicitly included local trust committees, as had the preceding *Forest Land Reserve Act*.

#### ***ORDER IN COUNCIL 1200***

Ministry Responsible: SUSTAINABLE RESOURCE MANAGEMENT

Statutory Authority: Private Managed Forest Land

Section 1(1) of B.C. Reg. 828/2004, the Private Managed Forest Land Regulation, is amended by adding the following definition:

*"local government" means*

*-in relation to land within a municipality, the municipal council,*

*-in relation to land within an electoral area, the board of the regional district, and*

*-in relation to land within a local trust area under the Islands Trust Act, the local trust committee or the executive committee acting as local trust committee for that area;.*

<sup>1</sup> Unfragmented Forest Ecosystem: areas of forested land that are large enough to contain and sustain the forests' characteristic species.

### ***Islands Trust Engagement***

- Efforts to clarify the impact of the PMFLA on the Trust Area and its relationship with the *Islands Trust Act* have been ongoing since the inception of the legislation. Actions have been varied and consist of the following:
  - Preparation of several briefings for Trust Council in the lead up to and immediately following the enactment of the PMFLA. These briefings provided general information about the intent of the legislation and identified the constraints that it places around local government's ability to adopt bylaws that would interfere with the PMFLA regulation.
  - Several legal services requests have been made by the Local Planning Services Unit (LPS) vis-à-vis the role of the Islands Trust and the Private Managed Forest Land Act
  - In September 2004, the Executive Committee, the Galiano Local Trustees and the CAO met with the Minister of Sustainable Resource Management and the Minister of Community, Aboriginal and Women's Services. At this time Trust concerns with the PMFLA were presented and an informal request to amend the legislation was made:

**Request:** *That the Minister consider amendments to the Private Managed Forest Land Act and Regulation in consultation with the Ministry of Community, Aboriginal and Women's Services, the Union of BC Municipalities and the Islands Trust in order to eliminate conflicts and uncertainties that have a negative impact on the land use planning function of local governments and on property tax equity issues.*

- The Executive Committee met with the Assistant Deputy Minister of Forests in September 2005 to discuss Islands Trust concerns with regards to the PMFLA. Subsequent to the meeting a follow-up letter, including the briefing note and request developed for the 2004 meeting, was sent to the Assistant Deputy Minister.
- A presentation was made to Trust Council in December, 2006 by the Executive Director of the PMFL Council. This session provided trustees with an opportunity to learn more about the legislation and the role of the Council.
- In September 2007 several members of the PMFL Council attended a Galiano Local Trust Committee Special Meeting to provide local trustees and community members with an opportunity to ask questions about the PMFL legislation and program.
- Since 2006, new Trust Council priorities regarding legislative changes have been at the forefront and Trust Council has not provided direction to any Council Committees to address issues related to the PMFLA.

### **Managed Forest Lands and Other Forest Land Zoning in the Trust Area**

- As noted, forest management activities occurring on lands that are classified as managed forest are exempt from any constraints that might be levied through local government bylaws.
- Among the list of allowable activities identified in Schedule A of the regulation, and therefore exempt from local government constraints, is the residential development provision, which permits a managed forest landowner to construct at least one dwelling per registered parcel.
- This allowance has raised concerns that the PMFLA authorises certain land uses in areas where it would otherwise be limited or prohibited by zoning regulations, fettering a local trust committee's ability to plan for such land uses and to preserve and protect forest lands in the Trust Area.
- Concerns about the residential development provision arise primarily from Galiano Island, as the existing land use bylaw there does not permit dwellings on much of the land that is classified as managed forest.

- Concerns about prohibitions on other types of local trust committee regulations have also been raised. In particular, there has been a concern that those local trust committees that have designated Development Permit Areas for objectives such as protection of the natural environment may not use Development Permits on managed forest lands to protect the natural environment if the permit would restrict a forest management activity. This concern has not been fully assessed to date.
- In an effort to reduce uncertainty around the degree to which the PMFLA affects local trust committee regulations, staff have conducted an analysis of the those local trust committee regulations that currently lie underneath existing managed forest lands in the Trust Area and that would be in effect were these properties not classified as managed forest and/or are currently in effect (dependent on the time of their implementation).
- The intention of this exercise is to assess what effect the absence of the PMFLA would have, given the underlying regulations and the potential capacity of local trust committees to adopt further protective regulations in the absence of the PMFLA.
- Materials from the analysis provided with this briefing include:
  - an overview of existing managed forest lands in the Trust Area (below),
  - a summary of the underlying regulations that local trust committees have in place on managed forest lands in the Trust Area (attached), and
  - a summary of the environmental regulatory capacities of local government as compared to the PMFLA (attached).
- Table 1 is shown below. Implications of the analysis are discussed in the following section.

The majority of major islands in the Trust Area contain managed forest properties. Table 1 shows the total hectares of managed forest lands (MFL) in the Trust Area and the percent of total area by island. Data is drawn from information provided by the Private Managed Forest Land Council, and is based on 2007 BC Assessment data.

<b>TABLE 1: MANAGED FOREST LAND IN THE ISLANDS TRUST AREA</b>		
<b>Island</b>	<b>Total Area (ha)</b>	<b>% of Total Area by Island</b>
Galiano	1040	17.9
Salt Spring	855	4.6
Lasqueti	484	7.3
Denman	230	4.5
Gabriola	154	2.9
Saturna	151	4.7
Thetis	132	11.7
South Pender	61	6.7
North Pender	58	2.1
Gambier	14	.2
Bowen	0	0
Hornby	0	0
Mayne	0	0
<b>Total MFL</b>	<b>3181</b>	<b>NA</b>

Note: managed forest properties are not found on any of the smaller islands contained within individual LTAs.

## **Implications**

### ***Justification for an Exemption***

- Any request for an exemption from the PMFLA is likely to be grounded in the suggestion that the provisions of the PMFLA make it difficult for the Islands Trust to fulfil its legislated object. This implies that the justification for seeking an exemption would be based on a desire for stronger protection of forest ecosystems and sustainable forestry initiatives than are afforded by the PMFLA.
- This in turn suggests that those local trust committees with managed forest land in their jurisdiction either have in place or wish to enact:
  - tighter regulations around allowable development on forest lands, and
  - stronger controls over forest management activities

### **1. Tighter Regulation Over Development**

- Any request made to the provincial government for an exemption based on the need for tighter development regulations is predicated on an assumption that all or most local trust committees with managed forest land either have in place or wish to restrict development beyond the scope of what is allowable under the provisions of the PMFLA.
- Analysis of the land use bylaws and development permit areas that lie underneath existing managed forest lands demonstrates, however, that equal or greater development is currently permissible under local trust committee regulation across the majority of the Trust Area. Thus, an exemption from the PMFLA would not necessarily increase the protection of forest lands in the Trust Area from development. Indeed, in the case of many of the islands, the local trust committee's underlying regulations offer greater development opportunities and smaller subdivisions than are likely to take place while the property remains in managed forest classification.
- While the legislation does not preclude subdivision, under the terms of the classification a landowner must have a minimum of 25 hectares of land (either singly or as smaller contiguous parcels) that is managed as a single unit. If the land is less than 50 hectares in size, at least 70% of the land must be in active forest production. The requirement for single ownership of multiple parcels combined with the minimum productivity obligation is thought to act as a disincentive for an owner to subdivide their property. Subdivision is often costly, and where properties are smaller in size, removing a portion of the land for building or sale may make it difficult to meet the productivity and/or the minimum parcel size requirements.
- This is not to say that subdivision of managed forest properties does not occur. Consultation with staff at BC Assessment indicates that in the last year approximately 10 managed forest properties from across the province made applications for subdivision. Of these, approximately half remained in the managed forest program. It is worth noting, however, that the majority of these applications were made on behalf of large forestry companies who are moving away from forest management and towards land development. According to BC Assessment subdivision applications from small, individual landowners are rare.
- From the perspective of subdivision at least, this suggests that the PMFLA may actually offer LTAs some benefits with regards to the retention of large tracts of forest land, unless and until the affected local trust committees amend their land use bylaws to reduce the subdivision potential of lands currently assessed as managed forest
- The majority of the local trust committee bylaws currently permit subdivisions into parcels less than 25 ha in some, if not all, of the zones in which the managed forest properties are located. Some local trust committees may have relied somewhat on the presence of the managed forest land classification, (in its various forms over the years) to reduce the potential for subdivision of forest lands and may not have fully considered the

appropriateness of the parcel sizes that they permit in their underlying subdivision regulations

- The implications of eliminating the managed forest land tax classification have not been fully assessed and no consultation with community members has been undertaken to assist in predicting what consequences might result. However, given the tax benefits currently afforded to property owners by this legislation and the high value of land across the islands, it is conceivable that were the option to retain a managed forest classification removed in the Trust Area, some landowners might choose to subdivide portions of their properties for sale and/or development in an effort to offset the increased costs of residential taxes.
- This has implications for both the level of development and the retention of forested landscapes in the Trust Area. While forestry can have detrimental impacts on the natural environment, it is at least possible for the land to regenerate if left in its natural state. That ability is largely removed, however, if the land was subdivided and developed as smaller residential lots.

## 2. Stronger Control Over Forest Management Activities

- Generally speaking, as long as a parcel of land is not within a tree farm licence or a woodlot license, landowners with forested lands have the legal freedom to manage their lands in the way that they best see fit, subject to local bylaws and certain controls enacted by provincial and federal legislation such as the *Water Act* or the *Fisheries Act*.
- As a result, even were the restrictions imposed by the PMFLA removed a local government would still have limited authority in the area of forest management practices. For example, a local government may not establish cut controls to regulate the amount or rate of harvest, nor can it require reforestation of lands that have been subjected to harvesting activities.
- Despite the limited scope of local government authority in the area of forest management, there are several tools that may be utilized to exert some protections with regards to the conservation of forested land. These include:
  - development permit areas<sup>2</sup>: can prohibit the subdivision of land, construction or alteration of buildings, or alteration of land (including tree removal) until a permit is obtained, but cannot restrict the use or density of use permitted in the relevant zoning regulations. Permits may include conditions necessary to achieve the very specific objectives for which the *Local Government Act* allows designation of a development permit area. The recognized objectives most relevant to conservation of forested lands include: protection of the natural environment, its ecosystems and biological diversity, protection of development from hazardous conditions and protection of farming.
  - tree cutting permit bylaws: can regulate tree cutting in areas that a local government considers may be subject to flooding, erosion, land slip or avalanche
  - screening bylaws: can set standards for the provision of screening or landscaping to separate different land uses; to preserve, protect, restore or enhance the natural environment; or to prevent hazardous conditions
  - subdivision regulations: can require that development be clustered

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• <sup>2</sup> It should be noted that while the ability to designate a Development Permit Area allows a local government to exert protective measures over the natural environment, the legal authority of this designation does not extend to the ability to regulate forestry practices on private land (see *Denman Island Local Trust Committee v. 4064 Investments Ltd.*, 2000 BCSC ruling for the legal basis of this opinion).

- conservation covenants: can enable voluntary protection of all or part of a property that is legally binding on successive owners
- development approval information: can require environmental information in advance of application approval
- transfer of development potential policies: can enable the transfer of potential development from sensitive areas (such as sensitive forest habitat) to those more suitable for development
- amenity zoning: can encourage the protection of sensitive areas (such as sensitive forest habitat) by providing incentives in the form of increased density opportunities
- rezoning policies: can provide guidance in addressing issues of rezoning that might affect forest ecosystems.
- A preliminary analysis of the strength of local government's ability to protect the natural environment in specific areas relative to those provided for under the PMFLA is included with this briefing (attached). Tools that are listed under the local government section are those that are generally considered to be the most effective and/or are the most commonly used.
- The analysis of environmental regulatory capacity suggests that in some areas the ability of local government to regulate environmental protections is not significantly stronger than environmental requirements under the PMFLA.
- Where regulatory capacity diverges most appreciably is in the area of water quality/fish habitat, where local governments have significant ability to regulate riparian habitat, and in the area of reforestation, where the PMFL regulation has better ability to require replanting after a harvest.
- As with all of the PMFL provisions, the reforestation requirements only apply to those properties that are classified as managed forest. Should a property be harvested and then removed from the program the landowner is no longer subject to the reforestation requirements. While there are no known instances of this having happened within the program and the likelihood of it occurring with any regularity is believed to be low, the opportunity for such behaviour to take place does exist.
- In light of these points, prior to making a decision to request an exemption from the PMFLA based on an environmental regulatory logic Trust Council may wish to consider the following variables:
  - the capacity of local trust committees to effectively utilize the tools available to them to protect forested areas;
  - the extent to which local trust committees have tools in place to protect forested areas;
  - the type, extent, and potential impact of forestry activities that are, or are likely to occur, in the Trust Area (e.g. selective harvest versus clear cutting);
  - what the PMFLA offers in terms of regulatory control with respect to key environmental issues in comparison to the tools available to local government; and
  - the degree to which additional development may be stimulated in the absence of the PMFLA in the Trust Area.

### ***Likelihood of Receiving an Exemption***

- There are two approaches that the Island Trust could utilize should a decision be made to seek an exemption from the requirements of the PMFLA. The first of these is to make a simple written request to the Minister. The second is to develop a strategically oriented approach that would likely involve some form of advocacy and partnership building, and that would be grounded in an empirically supported and logically cohesive line of argumentation.

- At this time it is very unlikely that a simple written request to exempt the entire Trust Area from the requirements of the PMFLA and its regulations would receive assent from the Ministry, particularly since such a request would require a legislative change. Indeed, such an approach is almost certain to be turned down and a negative response may in fact be more difficult to overcome in the long run. Trust Council's recent experience with seeking legislative change is indicative of the minimum degree of analysis, justification, and public consultation that the province will likely expect prior to considering a request for legislative changes that would be of such significance and that could set a precedent for other parts of B.C.
- Based on the various analyses conducted, the Trust is also likely to have some difficulty in developing the stronger and more strategically oriented approach that would be necessary to support a request for a legislative exemption.
- There are a number of reasons for this:
  1. Shortly after the PMFLA was enacted it came to the government's attention that the regulation did not contain a definition of 'local government.' This was rectified with the December 2004 Order in Council, with the result that local government is clearly defined and makes explicit reference to the Islands Trust. This very intentional action was taken by the party that currently holds a majority in the BC Legislature.
  2. The Islands Trust has already made an informal request that the legislation be amended so as to "...eliminate conflicts and uncertainties that have a negative impact on the land use planning function of the local governments..." Provincial response to this request was primarily one of disinterest and the issue failed to gain any traction within the relevant ministries despite previous attempts including meetings with the MLA for Galiano Island, the relevant ministers and senior staff (Sustainable Resource Management, Community, Aboriginal and Women's Services, and Forestry).
  3. At this time there is not a great deal of compelling evidence that would allow the Islands Trust to build a strong case to advocate for an exemption based on concerns about allowable development. Local trust committee regulation across the majority of the Trust Area permits subdivision into land parcels that are smaller than the 25 ha. Thus the regulatory regime underlying managed forest lands does not currently offer stronger development controls than that which is encouraged by the PMFL legislation.
  4. Should an argument be put forward suggesting that PMFLA limits the Island Trust's ability to protect forest ecosystems and their associated values, it is unlikely that the Province will be any more sympathetic than they have been in the past. The government has clearly and consistently expressed its support for the PMFLA as a means of encouraging forest management on private lands while simultaneously protecting key values. A recent resolution by the Association of Vancouver Island and Coastal Communities to have the UBCM petition the Province to require timber harvesting on private lands meet the same standards as those for public lands, for example, was met with a response from the Ministry of Agriculture and Lands indicating that the PMFLA is there to protect those values (standards). At the same time, the Islands Trust Policy Statement may be interpreted in a way that makes it difficult to argue that forest conservation holds higher value than forestry activities.

### **Requesting an Exemption**

- As previously noted, s. 42(8) does not allow the Islands Trust to seek an exemption from the PMFLA in its entirety. Furthermore, given that exemption provisions are rare and do not appear in the PMFLA, it is unlikely that the Trust could craft an exemption request such that it was based on provisions already contained within the Act.
- Should the Islands Trust choose to move forward with a request for exemption it would need to be in the form of a request for legislative change, done on the basis of Trust policy that seeks the protection of forest ecosystems and opportunities for sustainable forestry.
- This would likely require strong supporting evidence showing:
  1. the demonstrated ability and desire of all local trust committees to regulate forest activities in favour of forest conservation above and beyond the protections offered by the PMFLA, and
  2. specific instances of environmentally detrimental behaviours under the PMFLA that would otherwise have been mitigated by a local trust committee regulation.
- While it may be possible for local trust committees to adopt additional regulations in order to make a case with regards to the first point, at this time, there is little indication that evidence supporting point 2 exists. A review of complaints about forest practices to the PMFL Council, for example, does not show any investigations (triggered by complaints) conducted in the Trust Area.
- There is also no guarantee that possession of such evidence would lead to provincial approval for an exemption. Forestry is a contentious issue in British Columbia and historically the province has tended to favour the right to harvest over forest conservation.
- The lack of empirical evidence required to justify a request for an exemption, the history of Islands Trust relationships with the government in regards to this issue, and the current level of provincial support for the managed forest legislation also indicates that the Islands Trust Council would need to devote appropriate resources to a concerted effort if it does indeed wish to pursue a request to have the Islands Trust Areas exempted from the Private Managed Forest Land Act. While a simple written request for exemption may seem an easy way to quickly respond to some public concerns, it will very likely be refused and could unintentionally have a negative effect on Trust Council's credibility and relationship with the province.
- A possible alternative to making a full exemption request is to seek an area-specific amendment to the legislation such that environmental regulations under the Act are strengthened in the Trust Area. This would allow the Islands Trust to take advantage of some of the benefits of the PMFLA while simultaneously increasing its ability to meet its object under the *Islands Trust Act*.
- Significant analysis would need to be made into the nature of such amendments, however, when combined with the legislated object of the Islands Trust, it may be possible to justify such a request under (for example) the province's Coastal Douglas Fir conservation strategy. While a request for an amendment may not be granted, it would likely have a greater chance of success than a request for full exemption.

### **ATTACHMENT(S): YES**

1. Schedule A: Private Managed Forest Land Regulation
2. Summary of Regulations Beneath Managed Forest Land in the Trust Area
3. Environmental Regulatory Capacity comparison
4. Mapping of managed forest land, land use bylaws, and DPAs in the Trust Area
5. Mapping of subdivision potential on PMFL land in the Trust Area

