



Photo of the steam donkey which will be visited during the Forestry Field Tour on June 15th. Photo: David Hooper

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(October 2010):

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- Zero Net Deforestation Act
- Private Managed Forest Land Act
- Private Forest Land & Local Government Zoning Bylaws.

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2010 AGM & Conference

The 2010 Private Forest Landowners Association's Annual General Meeting, Forestry Field Tour and Private Forestry Forum and related events will take place based at the Kingfisher Resort & Spa near Courtenay on Vancouver Island on June 15th & 16th, 2010.

Full details and registration forms are available at www.pfla.bc.ca.

To whet your appetite, we are very excited to advise you that this year, in addition to the regular popular features including:

- An unrivalled opportunity to meet and network with private land forest owners and friends from all across BC, large and small, Coast & Interior.
- An update on PFLA activities and an opportunity to provide input to the direction and priorities for the PFLA in the coming year
- A 'meet the Private Managed Forest Land Council' presentation and Q & A session.
- A presentation on wood fibre market trends and the market outlook.
- Mike Brooks' Political Scan & Analysis.
- Private Forest Steward Awards Banquet.

...There will also be:

A special discussion panel of property tax experts during the Private Forestry Forum focussing on private forest land property assessment and taxation.

A presentation on carbon offset markets and potential opportunities for BC's forest owners.

During the Forestry Field Tour, a special steam-powered journey and visits to local highlights in and around beautiful Port Alberni including:

- A ride on a 1926 steam logging train
<http://www.alberniheritage.com/alberni-pacific-railway/welcome-alberni-pacific-steam-railway>,
- A steam-powered sawmill
<http://www.alberniheritage.com/mclean-mill/welcome-mclean-steam-sawmill>, and
- A visit to a working steam-powered yarding donkey
- http://www.alberniheritage.com/ihs-newsletter/2009_11-newsletter/page4.php.

We will keep you posted and we look forward to your ideas, questions or comments.

Communications

PFLA Communications – Past, Present & Future

We are excited to advise that PFLA is currently in the process of modernizing the way we communicate – with PFLA members and other forest owners, and all our key audiences including multiple levels of government, media, other associations, and with the public. We have been working with communications specialists both inside and outside the PFLA membership, and we are exploring the potential for using more email and web-based communications tools as well as social media tools (e.g. Facebook). Consistent with PFLA's recent trend, we will continue to publish the PFLA Member Update Newsletter, but increasingly PFLA will be sharing news, events, and reporting out on activities on a more regular frequency using these electronic methods.

We will keep you posted and we look forward to your ideas, questions or comments.

Communications Committee

With other PFLA members in support, your PFLA Communications Committee members have had another extremely busy and productive year. Over the past twelve months the PFLA have participated in events and briefings that have positively profiled private forest land and brought our messages front and centre to over 500 elected officials in the provincial, federal, and local governments.

- Association of Vancouver Island & Coastal Communities (AVICC)
- Union of BC Municipalities (UBCM) convention
- Elected official (government & opposition) briefings
- Event participation & networking

PFLA's Key Messages

- BC's Private Managed Forest (MF) owners are just like farmers, but we grow trees rather than food.
- We are responsible stewards who make a significant contribution to the BC economy. Private lands provide approximately 10% of BC's timber harvest, and since the revised PMFL Act was passed in 2004 we have planted in excess of 80 million seedlings.
- Just like farmers, private MF owners need protection of the right to practice forest management and a property taxation regime that does not disadvantage us compared to our competitors.
- We strongly encourage government to foster and improve conditions that encourage a strong, vibrant private forestry sector and to engage private MF owners in the event that policy changes are being considered.

Special Focus on Legal Matters, Appeals & Rulings

The PFLA and others have been monitoring a number of court cases and tribunals in recent months. A number of the cases consider property rights under the PMFL Act and the right to residency on Managed Forest land, which is of course very important to all landowners. These are important cases and the PFLA will endeavour to keep you up to date on the outcomes and consequences.

Stevens v. Capital Regional District

(Reasons for ruling:
<http://www.islandstrust.bc.ca/news/pdf/newsapr012010attach.pdf>)

This case can be described as a test of the powers of section 21 of the Private Managed Forest Land Act against a pre-existing local government bylaw, which in this case compelled the Capital Regional District (CRD) to refuse issue a building permit that would allow a residential dwelling on private managed forest land on Galiano Island.

The court found that the PMFL Act does not supersede the local government bylaw in this case. PFLA is working with government currently to advocate strongly on behalf of forest owners and encourage the satisfactory resolution of this matter.

Merrill & Ring v. Canada

(Reasons for ruling:
<http://pfla.bc.ca/news>)

NAFTA Chapter 11 Challenge – Merrill & Ring claimed financial damages as a result of Canada's log export restrictions. The basis of the claim was that NAFTA is supposed to provide protection to investors from NAFTA signatory nations and secure fair treatment for their investments within NAFTA - member host nations. Merrill & Ring argued that Canada's restriction of log exports under Notice 102 of the Import Export Act was a contravention of NAFTA.

Western Forest Products & Association of BC Landowners v. CRD

<http://www.courts.gov.bc.ca/jdb-txt/CA/09/03/2009BCCA0356.htm>

The Capital Regional District, following the removal of Western Forest Products (WFP) private lands from Tree Farm Licence 25 in 2007, attempted to downzone the properties by vastly increasing the minimum lot size. While Managed Forest owners have certain rights under the PMFL Act, land can be down-zoned from e.g. a 1 acre or 5 acre minimum lot size to a 50 acre or 300 acre or higher minimum. This can significantly impact the market and appraised values of property.

This change in Official Community Plan and bylaws was invalidated due to an incorrect process.

Presently, the CRD is in the process of redoing these bylaws. WFP continues forestry activities under the PMFL Act and some development projects which were started under previous bylaws.

Taxation – ‘The Pulpmill Tax Revolt’ & TimberWest v. City of Campbell River

(Reasons for ruling:
<http://pfla.bc.ca/news>)

At PFLA's 2009 Annual General Meeting, taxation was identified as a major concern for members.

In 2009 Catalyst Paper (not a PFLA member) started a tax revolt. This revolt gained some traction with two other pulp producers: Celgar in Castegar and Neucel Specialty Cellulose in Port Alice. Catalyst, unhappy with its' tax burden, came up with their own formula, a consumption model. This model calculated their taxes at roughly 25% of what was billed and that is the amount they paid. These taxes were paid in the municipal jurisdictions of Powell River, Port Alberni, Campbell River and North Cowichan (Crofton). These municipalities have a long history of heavy taxation of industrial lands and took the matter to court, with the rulings that have been made to date supporting the existing tax rates.

What does this have to do with the PFLA or private Managed Forest land?

In Campbell River, as a result of the need to fill the possible shortfall of taxes and cash flow due to Catalyst's tax revolt, a committee was struck to find other ways to raise taxes and cash within the municipality. This committee targeted TimberWest's (a PFLA member) Managed Forest Lands and increased property taxes over tenfold. Media simply described TimberWest's response as another

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tax payer taking court action against a municipality, but in fact TimberWest's situation is quite different than Catalyst and the other pulp producers.

Under the Managed Forest Land Classification the land is valued by a provincial schedule in the Assessment Act. Campbell River achieved the tax increase by increasing the mill rate. TimberWest attempted to find some negotiated solutions with Campbell River but found no common ground or will to solve the problem. Upon this failure, TimberWest commenced legal action and paid the tax money into trust to the court. This was not a tax revolt, rather an attempt to seek fair taxation under existing rules. A tenfold-plus increase on one isolated sector of tax payers is unreasonable, and it certainly doesn't meet the Provincial Government's objective in the Private Managed Forest Land Act which is to "encourage forest management practices on private managed forest land".

As it turned out, TimberWest's petition in the BC Supreme Court to have the City of Campbell River's 2009 tax rates bylaw (as it relates to managed forest lands) set aside was successful.

In the Reasons for Judgment handed down, Madam Justice Gerow declared that the sum of \$1,211,639 was unlawfully levied by the City on TimberWest. Orders were made setting aside those portions of the Bylaw affecting TimberWest's managed forest lands and the Property Tax Notices issued by the City in relation to the Bylaw, remitting both the Bylaw and Tax Notices back to the City for reconsideration.

"While we are pleased with the outcome, it is unfortunate we had to resort to the courts in this case," said Paul McElligott, President and Chief Executive

Officer of TimberWest. "The ruling upholds the purpose of the Private Managed Forest Land Act and supports opportunity for investment in forestry on Managed Forest Lands."

(Courtesy of Don Avis, Jane Lake Holdings & TimberWest)

Margaret Hurst v. Administrator, Integrated Pest Management Act

(Reasons for Ruling: <http://www.eab.gov.bc.ca/ipm/2009ipm001a.pdf>)

Decision Date: December 3, 2009.
Panel: Alan Anderson

Margaret Hurst filed an appeal of a letter issued by the Administrator, Integrated Pest Management Act (the "Administrator"), Ministry of Environment. She sought to appeal the Administrator's refusal to amend a pesticide user non-service licence held by Island Timberlands Limited Partnership ("Island Timberlands"). The licence authorizes Island Timberlands to apply pesticides on its private managed forest lands located near Duncan, BC. Ms. Hurst had requested that the Administrator amend the licence to exclude certain areas located near her property. Ms. Hurst requested the amendment on the basis that the proposed use of pesticides to control the growth of Big Leaf Maple in commercial forest crops would cause unreasonable adverse effects including harm to the environment and human health.

After reviewing Ms. Hurst's notice of appeal, the Board requested submissions from the parties on the question of whether the Board had jurisdiction to accept her appeal.

The Board reviewed the relevant provisions of the Integrated Pest Management Act (the "Act"), in accordance with the principles

of statutory interpretation. The Board found that, although section 14(3) of the Act states that "A person may appeal a decision under this Act to the appeal board", and Ms. Hurst is a person, there must be an appealable "decision" as defined in the Act in order for the Board to have jurisdiction over the matter. The word "decision" is defined in a very specific manner in section 14(1) of the Act. Section 14(1)(c) lists "refusing to amend a licence" as an appealable decision. However, as a statutory decision-maker, the Administrator only has the powers granted to her under the Act, and section 9(3) of the Act expressly limits the Administrator's discretion to amend or refuse to amend a licence. Specifically, it states that she may amend a licence on her own initiative or in response to an application of the licence holder, and she may refuse to amend a licence in response to an application by the licence holder. The Administrator does not have the authority to amend a licence in response to a request by a third party, such as Ms. Hurst. Consequently, the Board held that the Administrator's refusal to amend the licence in response to Ms. Hurst's request is not an appealable "decision" under section 14 of the Act.

The Board also noted that there are various other provisions in the Act which authorize the Administrator to take action against unreasonable adverse effects, such as through the issuance of licences with term and conditions regulating the use of pesticides, and through various powers to ensure compliance with the Act, regulations, orders, and the terms and conditions of licences.

Accordingly, the appeal was dismissed for lack of jurisdiction.