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Jordan River TFL removal breeds chaos for CRD

Patrick Brown

The chaos resulting from the provincial government decision to release most of Vancouver Island's remaining privately owned Tree Farm License (TFL) land from its jurisdiction might be straightened out by the courts, or it could be solved by provincial government intervention on behalf of the Capital Regional District. But while it continues, Western Forest Products are unlikely to be able to sell the land for development.

As reported in the March 12 edition of *Island Tides*, the BC Supreme Court has allowed new bylaws covering development on some 2,500 hectares of former forest lands near Jordan River to remain in place while an appeal of the Court's December 2008 decision is heard. The bylaws, recently passed by the Capital Regional District (CRD), are intended to control development in the Juan de Fuca Electoral Area (JDFEA) while planning of the area is done.

The lands in question were formerly part of Tree Farm Licenses (TFL) held by Western Forest Products (WFP), but also fell within the boundaries of the JDFEA, part of the CRD. They suddenly became developable in 2007 when the provincial Minister of Forests, Rich Coleman, unexpectedly allowed some 28,000 hectares of Western Forest Products-owned TFL land to be released from Forests Ministry control to become private managed forest lands, eligible for any development allowed by the current zoning.

Since Minister Coleman had not consulted or notified the CRD before allowing the release of the lands, the regional government was caught completely off-guard by a development application quickly submitted by WFP under the existing bylaws, which permitted forestry, and which allowed subdivision of much of the land into four-hectare parcels.

The CRD moved quickly to put new bylaws in place, mandating minimum parcel sizes of 120 hectares for much of the lands, and limiting bare land strata development. These bylaws were upset by a Supreme Court decision resulting from a legal challenge by WFP. The Court held that the voting procedure used by the CRD was improper, but did not comment on the bylaws themselves. It is this decision that the CRD is currently appealing.

Land For Sale

Back in August 2006, WFP had formally advised the Ministry that it planned to offer some of its land for sale. Soon after the 2007 release of the land from the TFL, real estate firm Colliers invited bids on some 2,500 hectares between Otter Point and Sooke, including a substantial part of the Jordan River townsite, and considerable waterfront. Bids closed on October 18, 2007.

Developer Ender Ilkay acquired an option on all of the land on offer, but by June, 2008 had completed the purchase of only 250 hectares for a reported \$3 million—about \$12,000 per hectare. (These seven parcels were among the few unaffected by the new CRD rezoning bylaws.) In July last year, he was quoted as saying that his original purchase plan was 'off the rails'.

Meanwhile, WFP prepared subdivision plans for all 2,500 hectares, which under the original zoning would allow 319 lots of 2-5 hectares. These plans were filed with the Ministry of Highways (responsible for approving subdivisions) in April 2008, just before the Minister of Community Services, Ida Chong, signed the new CRD bylaws. If the CRD bylaws are upheld on appeal, these subdivision plans must be approved by April 23, 2009 to be valid.

The CRD formally advised the BC Ministry of Transportation in November, 2008 that they were opposed to the subdivisions, but the ministry has the last word. In August, 2008, WFP started clearing road rights-of-way for these subdivisions; the CRD charged them with ignoring development permit requirements, but WFP continued, saying that the lands were still under the *PMFL Act*, and CRD couldn't stop them.

Ilkay, in April 2008, published his own preliminary plans for the entire area, including 1,186 hectares of 'natural green space,' 220 one-hectare lots, 454 hectares of denser development, and a Jordan River population of 10,000.

What Now?

At the moment, it is not known when the CRD's appeal of the judgment that upset the rezoning bylaws will be heard. If the CRD wins, the bylaws will be reinstated. If the CRD loses, then

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the bylaws would likely be reintroduced, and the voting procedures—the contested part of the bylaws—would have to be revisited; meanwhile the original bylaws, under which WFP's subdivision plans were prepared, would be validated for the interim, and WFP might proceed with its plans. Ilkay's plans, on the other hand, would in either case, require new bylaws to support them.

While the zoning issue remains unresolved, Western Forest Products won't be able to sell their land, either to Ilkay or anyone else.

There remains the possibility that the provincial government might intervene to straighten out the confusion caused by the Minister's original release from the TFL (see also related article, 'Provincial auditor criticized release of Jordan River lands,' on page 8). Cabinet could make the CRD's new bylaws legal and effective under the *Municipalities Enabling and Validating Act*.



Vancouver Island's Private Forest Lands

The first private land grants on Vancouver Island occurred in the early 1800s. Public ownership of land throughout the nascent province was asserted under the 1865 *Land Ordinance*, but the major grants on Vancouver Island were made to coal baron James Dunsmuir in an 1884 deal with the Government of Canada to build the E&N Railway. Dunsmuir specified—and got—lands throughout the Island that he thought might contain coal. These parcels were generally smaller on the south end of Vancouver Island and larger to the north. (Southern Vancouver Island parcels included lands along the southwest coast of Vancouver Island east and west of Jordan River.)

Tree Farm Licences (TFL) really originated with amendments, in 1947, to the 1912 *Forest Act*; however, licenses were at the time called Public Sustained Yield Units. In return for the inclusion of privately owned forest lands, owners got timber cutting rights on adjacent Crown lands but were required to operate sawmills and other facilities that would use the timber that was cut, creating a viable, integrated forest industry.

The current government's 2003 *Forest Revitalization Act*, implemented a couple of years before Rich Coleman became Forests Minister, gave the Minister the power to remove private land from TFL on request. It was followed by the repeal of *Forest Lands Reserve* legislation (with its requirement for forestry to be supervised by the Province) and its replacement, in 2004, by the *Private Managed Forest Lands (PMFL) Act* (in which forestry is supervised by a group of owners).

However, MacMillan Bloedel sold its tree farm license lands on Galiano Island in the early 1990s to a number of owners, calling it 'the urbanization of second growth.' This proved to be the pattern for the *PMFL Act*, which anticipates continuing removal and development of forest lands for other uses. And Galiano's forest lands were included in the PMFL.

The passing of the *PMFL Act* was followed by the removal of TFL lands by Weyerhaeuser (near Port Alberni) and Timberwest (near Port Renfrew). In December 2004, a new TFL agreement was made between Western Forest Products and the Ministry in which the Ministry 'agreed to facilitate' the removal of private lands from Western Forest Products's TFLs.

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