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West Coast Environmental Law Submission to the Special Committee on Timber Supply July 10, 2012

We welcome the opportunity to provide submissions to the Legislative Assembly of British Columbia's Special Committee on Timber Supply, and have directed these to the questions posed in the Committee's Discussion Paper.

1) What values and principles should guide the evaluation and decision-making regarding potential actions to mitigate the timber supply impacts?

Enable “jobs for our children” by planning for more diverse community economic and business opportunities from forest lands that can be sustained over the long term. A recent report from the Pacific Coast Collaborative whose members include the province of British Columbia, and the states of California, Oregon and Washington, recently reported that *not* resource extraction, but rather the so-called “clean economy” in our region was expected to be “the single most important global opportunity on the medium-term horizon with revenues expected to reach \$2.3 trillion by 2020.”¹ “Environmental protection and resource management” is flagged as one of three key sectors of the “clean” economy that stand out for their job growth potential. The report finds that emerging opportunities for employment gains in this sector “are linked directly to conservation, ecosystem restoration, and climate adaptation initiatives.”

Recognize and respect Aboriginal title and rights: Powerful court cases make it clear that First Nations constitutionally protected title and rights must be dealt with honourably. The courts have held that both the process for allocation and the actual allocation of the resource must reflect the prior Aboriginal title interest of First Nations. This imperative must inform any changes to the forest tenure system. As the Supreme Court of Canada held in the *Haida* decision, assumed Crown sovereignty must be reconciled with “pre-existing Aboriginal sovereignty”² in the context of tenure decisions. Honourably addressing title and rights should also include, in the words of the Clayoquot Sound Scientific Panel: “co-management based on equal partnership and mutual respect as a means of including indigenous people and their knowledge in planning and managing their traditional territories.”³

Identify and implement new mechanisms for local self-determination and community benefit, and distribute benefits fairly. Over the years, the benefits of forestry on ‘public’ lands have been slipping away from local communities, while First Nations have rarely benefited. There have been calls for many years for vastly expanding area-based First Nations and community tenures and for new models of regional/local decision-making (e.g., co-jurisdictional boards made up of First Nations and local individuals appointed by the Province to represent the range of public interests in forest lands), as well as the creation of open, transparent regional log markets located as locally as possible to where timber is harvested to diversify access to the resource, including for value-added manufacturers. With respect to some of the potential actions being considered: we stress that any tenure shifts must not further entrench existing corporate tenure rights (e.g., rolling over corporate volume-based tenures to area based ones). The high level of corporate control in our forests is one of the root causes of our current dilemma.

¹ The West Coast Clean Economy, *Opportunities for Investment & Accelerated Job Creation* (March 2012). Available on-line at: <http://www.globeadvisors.ca/market-research/west-coast-clean-economy-study.aspx>.

² *Haida Nation v. BC (Ministry of Forests)*, [2004] 3 S.C.R. 511, 2004, SCC 73 at para 20.

³ Clayoquot Sound Scientific Panel, *Report 3: First Nations Perspectives Relating to Forest Practices Standards in Clayoquot Sound* (March 1995) at viii.

Any shifts towards area-based tenures should focus first and foremost on First Nations and community tenures.

Respect ecological limits and apply the precautionary principle. Economies are part of human cultures, and human cultures are part of ecosystems; thus we ignore the ecological limits of our natural environment at our peril. Healthy human societies and economies rely on the ecosystems that provide ecological services and resources (whether this is clean drinking water or continued resource availability for future generations) and we are already reaching a point in many areas of the province where the cumulative effects of human activities are threatening the supply of vital goods like clean water and environmental services (such as air and water purification, nutrient cycling, carbon storage and sequestration, and waste treatment). We would thus recommend great caution with respect to some actions under consideration, not only logging in reserved areas, but also broadcast fertilization and/or increasing the harvest of economically marginal timber (where it is uneconomical for example because of constraints like steep slopes prone to landslides) due to the potential for unintended impacts on ecological systems and human communities.

Manage for resilient forests and resilient communities. The ability of an ecosystem to cope with disturbance or stress and rebuild itself is referred to as “resilience”. In the face of the unprecedented impact of the current mountain pine beetle infestation and the now inevitable impacts of some degree of climate change, we need to ensure that the decisions we *do* have control over are taken with a view to increasing the likelihood that our ecosystems can heal themselves in the face of human and natural disturbances. This will almost certainly mean retaining the limited areas that have been set aside for biodiversity and other ecological values and maintaining or improving connectivity⁴ between them.

Ensure that decisions are informed by best available science and by Indigenous knowledge. Landscape level planning should be conducted with a focus on ecosystem elements and processes to be retained, and informed by proactive, broad-scale cumulative effects analysis for valued ecosystem components.

A word of context is also in order with respect to the proposal to log in areas currently constrained from timber harvest for biodiversity, wildlife habitat and scenic values. These areas were established as part of twenty years of collaborative strategic land use planning initiatives in BC. Indeed, “[t]he province of British Columbia is one of the only jurisdictions in the world that has applied this type of planning in such a systematic way in an effort to balance social, economic and environmental values.”⁵ Others were established as part of the Province’s biodiversity strategy.

However, before we move to consider eliminating these areas to meet timber shortfalls, we must emphasize that *there are already serious questions regarding whether areas reserved for these purposes would currently be sufficient to meet the objectives identified above*. Some of the reasons for this include the following:

- climate change considerations were virtually absent from these deliberations;
- forest carbon was not recognized as a value (i.e. the services that forests provide with respect to climate change mitigation, as carbon storehouses and through ongoing carbon sequestration were not accounted for);

⁴ Species range shifts northward or upward to stay within their climate ‘comfort zone’ are already happening, are expected to continue, and can be impeded by human land uses. Because of the speed with which climate is changing, “[e]ven with a completely unfragmented landscapes, some species will not be able to move with the rapidity necessary” to avoid extirpation or extinction: Victoria Stevens, Opportunities in a Changing Climate: British Columbia Parks and Protected Areas, in *Proceedings of the 2007 George Wright Society Conference* at 254. For the past two decades, maintaining or improving connectivity across landscapes has been the action most frequently recommended by scientists for enabling biodiversity adaptation to climate change: Nicole Heller and Erika Zavaleta, “Biodiversity management in the face of climate change: A review of 22 years of recommendations,” *Biological Conservation*, vol. 142, no. 1 January 2009.

⁵See: <http://www.ilmb.gov.bc.ca/slrp/history.html>

- legal mechanisms to implement plan outcomes in ways that would guide resource industries other than forestry were lacking;
- scientific credibility of outcomes was limited by politically established caps on protected areas (and in the case of landscape level planning, timber supply impact caps on implementation of measures to conserve biodiversity and species);
- timber tenure reform (i.e., ‘who’ has the right to make operational decisions, manage and extract resources) was not on the table;
- absence of government-to-government engagement with First Nations in many cases; and,
- while periodic review and refinement of plans to deal with changing circumstances was contemplated, in practice this has been very limited.

Indeed, as the Chief Forester recognized in recommending a “conservation uplift” in mountain pine beetle affected areas,⁶ it is very likely that more, not less, retention is required above and beyond areas already managed for non-timber values.

2) How should decisions be made regarding potential actions to mitigate the timber supply impacts be made, and by whom?

We recommend that the principles identified above guide decision-making about possible actions, e.g., the establishment of new mechanisms for local/regional decision-making that respect the distinct constitutional role of First Nations and advance greater self determination for forest communities, informed by the best available scientific information and Indigenous knowledge. Regional, provincial, national and international non-governmental organizations with mandates associated with environmental stewardship and scientific research will also be an invaluable source of information and expertise.

Similar to the recommendation of the Forest Practices Board in its 2009 report *Biodiversity Conservation during Salvage Logging in the Central Interior of BC*,⁷ we recommend that landscape level planning (and if necessary planning at other scales) be carried out to identify ecosystem elements and processes that must be retained in mountain pine beetle affected areas to give effect to the principles identified above. We should ensure that this planning and ongoing management is collaborative — by encouraging broad participation in planning; by clearly articulating collaborative decision-making procedures; by respecting the diverse values, traditions, and aspirations of local communities; and by incorporating the best of existing knowledge including traditional, local, and scientific knowledge.

Furthermore, broad-scale, proactive assessments of cumulative effects on key environmental and cultural values, including the current condition of these values as compared to scientifically-based benchmarks and low risk thresholds, should be a key input into decision-making about any potential actions to mitigate timber supply impacts.

⁶ *Guidance on Landscape- and Stand-level Structural Retention in Large-Scale Mountain Pine Beetle Salvage Operations* (December 2005). Available on-line at: www.for.gov.bc.ca/hfp/mountain_pine_beetle/stewardship/cf_retention_guidance_dec2005.pdf

⁷ Available on-line at: <http://www.fpb.gov.bc.ca/publications.aspx?id=4940>

3) What cautions and advice do you have for this committee in considering whether and how to mitigate mid-term timber supply?

I begin by reiterating the comments our organisation and others set out in our April 19, 2012 open letter to Ministers Thomson and Bell on this matter:⁸

Opening up reserves and view corridors for logging to fill timber supply shortfalls will have a long term effect on the environment without a long term benefit to communities. While the action might extend the life of a mill for a relatively short time it would undermine, for the better part of a century or more, the benefits these areas were set aside for, whether for tourism or for habitat, soil retention or water flow regulation. These designations continue to be at least equally important in areas hard hit by the Mountain Pine Beetle and with already significantly increased rates of logging over the past few years, to ensure at least partial environmental services provided by forests.

There are five key dangers to moving precipitously to fill timber supply shortfalls in this way:

- 1. Undermines an already inadequate level of conservation for species, habitat and maintenance of ecosystem services in an era of climate change*
- 2. Reinforces a culture and expectation that supports unsustainable activities for the provision of short term economic benefit*
- 3. Undermines the decades of scientific input and public process that went into establishing the reserves*
- 4. Negatively impacts existing business who rely on visual and recreational values of these areas and leaves communities with even less resources within which to diversify their economy after the timber supply from the reserves has been exhausted*
- 5. Sets an alarming precedent with respect to other provincial commitments to lasting legal protection for environmental values following land use planning processes.*

The current mountain pine beetle crisis challenges each of us to pause and consider what kind of future we want for BC's forests. The vision for forests that is implicit (and sometimes explicit) in BC's current forest laws is of an economy that maximizes the production of timber, and sees environmental regulation principally as 'red tape' constraining the rights of licensees.

Forest practices laws, first introduced in BC in 1995, never altered the fundamental timber production focus of our forest industry. This can be observed in the continued dominance of clearcut logging (96% of harvesting today), and the dramatically elevated allowable annual cut in recent years to facilitate 'salvage' logging of mountain pine beetle impacted areas.

Forest laws that have been principally oriented towards timber extraction have come at a cost to the natural life support systems provided by our forests; a cost which is becoming increasingly acute as a result of climate change. And while the so-called social contract that required companies to operate processing facilities as a condition of access to timber supply is long gone— a victim of a wave of deregulation of the forest sector in 2002 and 2003 —the rights held by timber companies have become even more secure.

For decades we have known that the long run harvest that can be sustained from British Columbia's forests will be significantly lower than current harvest rates (the so-called 'falldown' effect). Yet BC has continued to careen towards this point as if the party would never end. Like a fast-forward button held down by the warmer winters engendered by climate change, rapid harvesting of mountain pine beetle affected areas has brought us to a Lorax-type moment where the forest industry is now turning its sights on the small percentage of remaining lands set aside for conservation of old growth forest, wildlife habitat and similar values.

⁸ Available on-line at: <http://www.wcel.org/resources/new-at-westcoast/west-coast-and-other-engos-raise-alarm-about-proposed-logging-environment>.

The proposal to log these areas, one of several actions currently being considered by the Special Committee on Timber Supply, is a watershed moment for British Columbia. If we do not pause now to consider the implications of the course we are on, our options for the future, and those of our children may be irreparably harmed.

As we stand at this crossroads we should not need the Lorax to tell us that clearcutting the last remnants of forest in reserves only takes us further down a path of no return.

Instead it is time for us to face the hard questions, and take the future in our hands as British Columbians. There are no shortage of smart, well-researched and well-supported proposals for reform, from blue ribbon panel and commission reports, to citizens initiatives like the Healthy Forests Healthy Communities Initiative and the Forest Solutions for Sustainable Communities Act proposed by a broad-based coalition of organisations a decade ago. There are consistent themes to these proposals over time, and we'd be wise to listen. I have noted some of these above in the context of principles to inform decisions about actions that may be taken to address timber supply impacts. Furthermore, as we consider tenure reform in today's ecological and economic context it is time to begin thinking more holistically about the resources and services provided by our forests. We need to ensure that our laws regarding tenure and carbon ownership keep pace with new economic opportunities, for example from carbon markets, and give due priority to the key ecological services provided by nature, particularly in the face of climate change.

BC has a forestry law system that is stuck in the last century and it is time for change. The economic model it was designed to sustain is no longer serving BC communities. The challenges faced by communities in mountain pine beetle affected areas and by our forest sector are substantial, but keeping our heads in the sand for another few years will not produce solutions. It's time to move forward with designing solutions and reforming our forestry laws for the 21st century.

4) How would you as an individual or community want to be engaged in these considerations going forward?

We would be pleased to bring our experience and expertise on forestry law, policy and planning to bear with respect to further evaluation of actions to be taken, and in the design of solutions in the areas of tenure, co-management/shared decision-making, cumulative effects assessment and management, and land use planning.