

This paper outlines the history of private forest land management in BC. It explores different phases and levels of provincial governmental control over private forest land use, and it identifies tensions between the private, local government, and provincial government positions on the best use of the land. Using Galiano Island as a case study, it queries whether a consensus or compromise can be reached regarding the highest and best use of the land.

Private forest land is the exception rather than the rule in BC. Ninety-five percent of the land in BC belongs to the Crown, and most commercial forestry is done on Crown land through a tenure system.¹ Despite the fact that only five percent of the land in BC is privately owned, significant private forestry operations have historically existed throughout the province. Currently, some 3 million hectares of forested land in BC are privately owned and managed.²

The majority of managed forest land belongs to large industrial forestry operations, but in the past 20 years these companies have begun to sell the land for development. Local governments have tried to prevent or slow subdivision and development, but they are constrained by provincial legislation in how they can regulate property.

Provincial control over the ways BC forest land owners can use their property has undergone several changes since the mid-twentieth century. The Tree Farm License (“TFL”) regime was introduced in the 1940s.³ In 1988, the BC government introduced a “managed forest” designation to the *Assessment Act*, and in 1994, the NDP government introduced the Forest Land Reserve (“FLR”) under the *Forest Land Reserve Act*. The purpose of the FLR Act was to minimize the impact of urban development and rural settlement on commercial forest land.⁴ In 2000, the Agricultural Land Commission and the Forest Land Commission were merged into one body, the Land Reserve Commission.⁵ After the BC Liberals came into power in 2001, several legislative changes were made to the benefit of natural resource industries. Much of the FLR Act, including the provisions restricting the use of FLR land, was repealed in 2002. In 2004, the *Private Managed Forest Land Act* (“PMFLA”) replaced the FLR Act. The PMFLA is a highly flexible, industry-friendly Act, which does not prohibit activity on forest land, but provides incentives to forest land owners who comply with its provisions. It provides that one may construct a residence on private managed forest land. It prohibits local government regulation that restricts “a forest management activity,” but does not otherwise affect a local government’s zoning power.

Galiano Island provides a useful example of how these legislative changes at the provincial level have impacted local governmental attempts to regulate private forest land, and how both local and provincial government limit and shape what private actors can do with their forest land. Until 1991, over half of Galiano Island was private forest land held by MacMillan Bloedel (“MB”). In 1991, MB expressed its

¹ “A Quick Reference: British Columbia’s Timber Tenure System,” online: http://www.cortex.org/TimberTenSysWeb_Nov2001.pdf

² Private Forest Landowners’ Association, online: <http://www.pfla.bc.ca/private-forest-land/private-managed-forest-land>

³ *Supra* note 1.

⁴ “A Strategic Plan for British Columbia’s Land Reserve Commission,” online at: <http://www.alc.gov.bc.ca/Publications/Archives/stratplan2000.pdf>

⁵ *Ibid.*

intention to offer this land for sale to the public. The Galiano Island Trust Committee responded by passing bylaws that changed the zoning of this land to prohibit the construction of family dwellings on the land, and to significantly restrict subdivision.⁶ In 1995, just after the introduction of the FLR Act, the BC Court of Appeal overturned a trial decision that held these bylaws to be discriminatory and in bad faith. The BCCA held that the purpose of the bylaws was to preserve the land's rural atmosphere and to maintain and develop a "healthful and attractive environment," which was consistent with the *Islands Trust Act* and the *Municipal Act*, and so lawful.⁷

In March 2000, Galiano adopted a Land Use Bylaw designating much of the land previously held by MB as "Property F1," which prohibited the construction of dwellings on this land. In 2003, he obtained private managed forest land status. In 2008, Mr. Stevens applied for a building permit to construct a home on the land, and was denied. He brought an action in the BC Supreme Court to grant an order requiring the Chief Building Inspector to issue a building permit. In its April 1, 2010 decision, the court found that because Mr. Stevens' land became private managed forest land after the permitted uses section of the FLR Act had been repealed, the F1 zoning bylaw was valid and the building permit could be denied.⁸

In my view, private forest land faces significant legal uncertainty. This uncertainty stems from tensions over what constitutes the highest and best use of the land, and over what the proper level of government control should be. After 2001, the legislative scheme became significantly more hands off than it had been under the FLR, preferring a market-driven approach to determining the best use of the land. It seems that this facilitates commercial forestry companies' sale of their land for development. However, this use may be at odds with the goals of local government, which seeks to constrain urban expansion and settlement in previously rural areas for strong infrastructural and environmental purposes. For instance, in places like Galiano Island, groundwater levels may not be able to support increased human use.

If the Province sees value in the preservation of private forest land, I am of the view that it should increase its regulation of private forest land, or that local government and the Province work together to find a solution that is economically viable for private landowners but preserves forestry on that land. However, if the Province does not seek to preserve the use of the land for commercial forestry, it may be that the way forward is to defer to local government's regulatory plans - and the recent BCSC decision in the Stevens case lends weight to this possibility.

⁶ *MacMillan Bloedel Ltd. v. Galiano Island Trust Committee*, [1995] B.C.J. No. 1763 (BCCA).

⁷ *Ibid* at para 34.

⁸ *Stevens v. Capital Regional District*, 2010 BCSC 445.