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PRSC Limited Partnership
4760 Joyce Avenue
Powell River, BC V8A 3B6

Powell River Waterfront Development Corporation
6910 Duncan Street
Powell River BC V8A 1V4

Tees'kwat Land Holdings Ltd
4885-B Highway 101,
Powell River, B.C. V8A 0B6

Dear Sirs/Mesdames:

Re: Timber Rights on Lot A Plan BCP23887 District Lot 450 Land District 1 Land District 36 Except Plan BCP42255 , PID: 026-685-591 (“Sino-Bright Parcel”)

I write on behalf of Dr. Andrew Bryant, resident of Powell River, regarding PRSC Limited Partnership's timber rights in regard to the Sino-Bright Parcel of Lot 450. As I understand it, PRSC has taken the position that Island Timberlands owns the cutting rights to this land by virtue of a 1998 license granting timber rights to MacMillan Bloedel Ltd. – the predecessor to Island Timberlands. As a result, PRSC has assumed that Island Timberlands is entitled to harvest the standing timber, notwithstanding the concerns of many within Powell River arising from the ecological and recreational values associated with Lot 450.

Based on the available information, however, it is far from clear that Island Timberland retains cutting rights to the Sino-Bright Parcel, or if it does, that its ability to cut is unhindered. In particular, the 1998 Licence indicated a clear intent that a one-time right to cut would occur soon after the licence was signed, and there is, in fact, evidence that this occurred on the Sino-Bright Parcel.

PRSC is required to manage its assets appropriately for the benefit of its partners, and ultimately for the benefit of the citizens of Powell River and Sliammon First Nation. If there is any legal question as to the strength of Island Timberland's claim to these cutting rights, you have a legal and/or moral obligation to clarify this question, which could be done through a comparatively cheap petition to the courts, so that the property can be appropriately managed.

Background

In 1998 the then landowner transferred the cutting rights to MacMillan Bloedel Ltd. The 1998 Licence provided, in part:

The Licensor acknowledges that the Licensee has the full right and privilege to harvest and remove the **timber growing on the lands as of May 31, 1998**. A harvesting plan is to be

reasonably agreed to between the Licensee and the Licensor. The Timber is deemed to be owned by the Licensee. ...

Once the timber has been harvested in accordance with the agreed to harvesting plan and removed from the lands by the Licensee, this licence and all the rights inferred will terminate. **Any remaining timber not harvested by the Licensee at this time will belong to the Licensor.**

MacMillan Bloedel Ltd. was acquired by Weyerhaeuser Ltd. in 1999, which thereby acquired the cutting rights for various properties on Lot 450. While we have no information on whether a harvesting plan was agreed to, as contemplated under the licence, satellite imaging indicate that between September 1999¹ and April 2000² approximately 22% of the Sino-Bright Parcel (and almost 25% of the forested area of the parcel) was clear-cut and the Timber removed. I enclose a copy of the satellite data, prepared by Dr. Bryant, supporting this assertion (labelled by Dr. Bryant as Exhibit A).

Subsequently, the Sino-Bright Parcel was acquired by PRSC and Weyerhaeuser's cutting rights by Island Timberlands.

Analysis

It seems clear that the 1998 Licence did not contemplate a situation in which harvesting did not occur for nearly 20 years after the agreement was signed. The agreement is clear that cutting rights only extend to trees growing as of 31 May 1998, but no provision is made for the management or protection of trees which grow after 1998. Rather, the 1998 Licence appears to anticipate that logging would occur promptly before new trees would grow.

If, in fact, logging occurred, as the satellite imagery suggests, in 1999 or 2000, this would be entirely consistent with the intent of the 1998 Licence. Assuming that the satellite imagery is correct, then it is reasonable to suppose that the logging occurred pursuant to the 1998 Licence, and was not an illegal trespass.

This being the case, it appears that the one-time logging rights granted by the 1998 Licence have likely been exercised and, in the language of the Licence, the remaining timber: "at this time will belong to the Licensor."

However, if the logging shown in the satellite imagery did not occur, or for some other reason it should not be considered to be an exercise of the logging rights under the 1998 Licence, then Island Timberlands has an additional constraint on its timber rights – the presence of trees which have grown since 31 May 1998, some of which are now almost 20 years old.

The 1998 Licence agreement does not contemplate a situation in which a full generation's worth of tree growth can be wiped out as "by-catch" to Island Timberlands logging. Certainly the maintenance of these trees is something that PRSC could, and should, reasonably insist upon in agreeing to any harvesting plan. Under the circumstances, selection logging, together with compensation for timber inadvertently harmed, would seem reasonable measures should logging by Island Timberlands proceed. The requirement of PRSC to "reasonably agree" to a harvest plan certainly does not require you to agree to the destruction of almost two decades worth of growth of timber that the partnership owns. Any prejudice to Island Timberlands is the result of its and its

¹ USGS LE70480251999264EDC00, Landsat_7, image 21 Sept 1999.

² USGS LE70480252000107EDC01, Landsat_7, image 16 April 2000.

predecessors' delay in exercising their legal rights under the 1998 Licence, and not the actions of PRSC.

Accordingly, there are two fundamental questions the PRSC must ask in relation to Island Timberland's alleged Timber rights.

First, does the company still hold such rights, or was the one-time right to log exercised in respect of the Sino-Bright Parcel, in or about 2000 by Weyerhaeuser Ltd., in keeping with the intent of the 1998 Licence that logging occur in a timely manner? As discussed above, there is evidence that the one-time right to log may already have been exercised.

Second, if the company does still hold timber rights in respect of the Parcel, will PRSC exercise its right to require Island Timberlands to log in a way that will protect the almost 20 years of growth of new trees on Lot 450? Doing so will enhance the financial and recreational values associated with the property post-logging, and it may be that faced with the cost of not harming PRSC's trees, Island Timberlands might be willing to abandon some or all of its cutting rights.

Conclusion

The almost 20 years since the 1998 Licence was signed have created considerable legal uncertainty in how the Licence is to be implemented. To the extent that the PRSC is uncertain as to its legal rights and wishes to pursue a cautious approach, I note that the BC Supreme Court Rules provide that clarification of the nature and extent of legal rights in respect of land can be brought by petition³ – a comparatively straightforward and inexpensive legal procedure. We note also that individual members of a Limited Partnership have legal rights to ensure that the partnership's assets are managed appropriately.

PRSC is ultimately owned (through other holdings) by the public of Powell River and the members of the Sliammon First Nation. It is expected by those populations that the PRSC manage its assets in a financially and ecologically responsible manner. In our view, that means the PRSC must assert its full legal rights in respect to the trees currently growing on Lot 450. There appears to be a case to be made that PRSC owns all of the trees on the Sino-Bright Parcel, and in any case, it owns a significant number of younger trees on that land.

Sincerely,



Andrew Gage,
Staff Counsel

cc. Dr. Andrew Bryant

³ BC Supreme Court (Civil) Rules, R. 2-1(2)(g). See also R. 2-1(2)(c).