

The Great PMFL Scam on Galiano

by J. Azevedo

Four years ago this month, when then-Minister of Sustainable Resource Management Stan Hagen announced the creation of a public/private corporation to oversee forestry on private lands in BC, his press release trumpeted: “Sustainability Boosted On Private Managed Forest Lands”. Last month the community of Galiano found out exactly what he meant by “sustainability”. At a meeting with Private Managed Forest Land Council representatives convened at the community’s request by the Local Trust Committee, Council Chair Trevor Swan explained: “Forests are like cornfields; you cut them down and they grow back.”

Swan’s remarks confirmed what many in the Islands Trust area have long suspected: the new Provincial regulations for forestry on private Managed Forest lands, while providing a welcome subsidy to forest owners, are antithetical to the most basic tenets of the Islands Trust Act.

The difference between cornfields and forests: a primer

The very creation of the Islands Trust recognized the unique character of these islands and the importance of this environment to the small rural communities that live here and to the Province as a whole. The Province set up the Islands Trust with a special conservation-oriented responsibility to preserve and protect the Trust Area and its unique amenities and environment.

With respect to the islands’ forests, the position of Trust Policies is clear: “Forest ecosystems in the Trust Area should be protected.” (Policy 3.2.1) “Forest cover is a representative characteristic of the Trust Islands and should be maintained.” (Policy 4.2.4) “The aesthetic value of forest land should be protected.” (Policy 4.2.5) “Tree cover on the islands is of great importance and should be preserved.” (Policy 5.2.2) How many different ways could they say it? Communities in the Islands Trust Area see the forest, not just the trees. And not ears of corn.

Which is not to say that cutting trees is a sin on these islands. Quite the contrary, the Islands Trust Policies recognize that forestry is a traditional land use in the Trust Area and support sustainable forestry as an appropriate form of land use. (Policy 4.2.1) It’s how forestry is practiced on the islands that’s important. “Sustainable forestry”, in the context of the Trust Area, depends on maintaining the ecological integrity of the forest, and owners should adjust their forest plans and activities to achieve that. (Policies 4.2.2 and 4.2.3) Selective cutting at a rate that matches the growth of the forest. That’s how most people would interpret “sustainable forestry”. Nothing in the Islands Trust Act or Policies envisions the sort of industrial slash forestry that is a common sight on great swaths of Vancouver Island and elsewhere in the Province, all of it sanctioned by the Private Managed Forest Land (PMFL) Act and Regulations.

Tax-subsidized clearcuts . . . and development

But the PMFL legislation wasn’t about sustainability anyway, despite the tongue-in-cheek press releases. It was about tax subsidies for corporate giants. Tax subsidies and tax shelters for real estate development.

Unlike most land in BC, which is assessed for tax purposes on the value of the land on the open market, private forestland in the Managed Forest tax class is assessed on its presumed ability to grow trees. This value, set by the Province in a table attached to the Assessment Act, depends on the region, the topography, the accessibility, and the soil type. For example, in the Islands Trust area, forestland of average slope, accessibility, and soil type is valued at \$1110 per hectare (\$449/acre). Such a ludicrously low assessed value for land anywhere in the Trust Area is clearly not based on market value. Though the tax rate for Managed Forest land is higher than for residential land in most jurisdictions, the overall result is a net substantial reduction in the property tax bill. There's the incentive for owners.

Such an incentive made some sense when first introduced in the Forest Land Reserve (FLR) legislation, which preceded the PMFL. Patterned on the Agricultural Land Reserve, the idea of the FLR was to recognize the social value of the province's forest lands (both Crown and private) and to reserve them for forest use. As evidence of the long-term vision for these lands, the FLR designation was included on the land title, and the designation endured even if the land was sold. One of the objectives of the FLR was to "protect the integrity of the working forest land base by minimizing the impact of urban development and rural area settlement on forest reserve land." There were substantial penalties for withdrawing the land from the FLR, and the process was not easy, requiring permission from the local government.

Under the Private Managed Forest Land Act, the use of forestland is no longer inherent in the land and does not go on title. And there are no penalties for leaving. An owner can exit at will, paying some or all of the back taxes but never more than would have been owed if the land had not been assessed as Managed Forest. More significantly, the object of preserving the working forest land base was stripped from the object of the new PMFL legislation.

If sustainability is no longer the object of BC's Managed Forest, what is? Over 900,000 hectares of private forestland in BC is in Managed Forest tax classification (including PMFL and tree farm licence), and of this, 92% is owned by ten corporations. Though these companies cut a lot of trees, as anyone driving the back roads of Vancouver Island will note, the real money in these private holdings will come from land development down the road. Western Forest Products (#6 in Managed Forest land holdings) recently showed how this works when it pulled 28,000 hectares of private land from tree farm licences on Vancouver Island and put more than 1,800 hectares on the real estate market.

This should have come as no surprise. At an industry conference back in 2002, forest owner and consultant Don Avis noted that the new PMFL regulations "may permit better return from land". Looking to the future of forestry, Mr. Avis said that he would like to "explore changes to allow the capturing of the 'highest and best use' such as the subdivision of large acreage's (sic) without prohibitive development costs." There we have it, the clearest statement yet of the purpose of the PMFL legislation. The Managed Forest tax classification is a tax shelter where forestland can be parked at favourable tax rates until increasing land values justify putting it on the open real estate market. Mr. Avis was subsequently appointed to the PMFL Council, which oversees implementation of the PMFL Act and Regulations. He has since moved on.

What do we get for our tax dollars?

With the PMFL geared more towards large corporate holdings, few properties in the Trust Area – about 2500 hectares altogether, about 1.5% of the area – have been enrolled in the PMFL. On Galiano Island, where almost half the island is zoned for forestry, more owners have signed up.

About 16% of the island is in the Managed Forest tax classification. Along the waterfront, with Managed Forest land adjacent to residentially-taxed forest land, the difference in assessments between nearby properties can be astounding. An 8-ha waterfront forest lot in Managed Forest on Galiano's northeast shore is assessed at about \$11,000, whereas a similar nearby forest lot not in Managed Forest is assessed at over \$500,000. The owners of all of Galiano's 933 hectares of Managed Forest land contributed only about \$16,000 to the tax coffers this year. That's about \$17 per hectare. That's for schools, hospital, police, fire protection, everything. Seventeen dollars a hectare.

What do the other property owners on Galiano receive in return for providing this tax subsidy? All owners of Managed Forest must commit to protection of "key environmental values" and to reforestation after clearcutting. For example, PMFL regulations specify minimal protections for fish-bearing streams, but there are no PMFL properties near Galiano's only two tiny fish-bearing streams. PMFL regulations specify minimal protections for licenced waterworks intakes for drinking water, but there are no licenced water intakes on Galiano's streams. PMFL regulations provide for small bits of land to be set aside temporarily for protection of critical wildlife habitat, but only if the wildlife minister requests it and only if no Crown land is nearby, which means it's unlikely to happen on Galiano. In the absence of a tangible benefit, Galiano taxpayers must wonder why they are subsidizing the twenty-five owners of Managed Forest land on the island.

Proposed amending bylaws for Galiano would embrace the PMFL

When the Private Managed Forest Land legislation was introduced, the Union of BC Municipalities expressed concerns about the infringement of the legislation on local authority for community planning. The Islands Trust expressed similar concerns. They were right to be worried. "A local government must not adopt a bylaw ... that would have the effect of restricting, directly or indirectly, a forest management activity." (PMFL Act, s. 21) PMFL Regulations, passed by Order in Council, specifically define a wide range of industrial, commercial, and residential activities as "forest management activities". The PMFL Act would seem to exempt one class of landowner from local bylaws, disenfranchising the community. Decisions that once had to be run by local authorities and subjected to public hearings are now vested in the hands of the PMFL Council.

Where local governments did not have bylaws regulating forestry, the PMFL regulations now apply, and the communities no longer have a say in forestry activities. Galiano is different. Because of the community's long dialogue on the fate of its forestlands after MacMillan-Bloedel abandoned its Galiano tree farm to the real estate market over 15 years ago, successive local trust committees have had the opportunity to craft and refine bylaws to define the nature of forestry on the island.

In keeping with Trust Policies, Galiano's current Official Community Plan establishes Development Permit Areas for forestry activities near riparian areas and limits cutting and removal of timber to no more than 12 cubic meters per hectare from any lot in any three-year period. Though not as strict as some would like, the current bylaws do aim to ensure true sustainable forestry on the island. Similarly, Galiano's current bylaws allow residential use of the forest zone through site-specific rezoning in which community concerns are aired at public hearing. Since these local bylaws under the Islands Trust pre-dated the PMFL legislation, they still hold sway.

That could soon change.

At its regular meeting earlier this month, the Galiano Local Trust Committee gave first reading to two bylaws that would effect sweeping changes to the island's forestlands. The careful process of site-specific rezoning and measured development would be replaced by a process that focuses on applicants' needs but fails to address the wider needs of the community. Ninety-six forest lots, ranging in size from just over three hectares to 87 hectares, would be eligible for residential use without further conditions, other than a "sustainable forestry" covenant yet to be devised. And the 54 lots in Managed Forest would not even require this covenant. With Galiano's current forest protections nullified on Managed Forest land, the PMFL legislation would then come into force. Owners could practice industrial forestry, including clearcutting, herbicide use, pesticide use, road building, blasting, and soil and aggregate removal, all subsidized by the Galiano taxpayers.

There's a deeper issue at play here. For more than 30 years now the people of these islands and of BC in general have depended on the Islands Trust Act, and especially on its 'preserve and protect' Object, to manage this unique area with care and grace. And it's not as if the Islands Trust Act doesn't have authority. Back in the 90s when Galiano's current forestry bylaws were challenged, Madam Justice Southin, in among the reasons for her decision to uphold the bylaws, noted that the Object of the Islands Trust "is not a mere piety"; "preserve and protect" truly does mean something. But the Islands Trust is in the end the sum of its people, the various trustees elected to their fiduciary responsibility to the Trust. There must be a strength and integrity there too. Does the recent Provincial PMFL legislation, with its aim of private benefit, somehow trump long-standing Provincial Islands Trust legislation, with its aim the protection of a vulnerable group of islands for the public good? It does if a trustee allows that it does and doesn't take a stand on the side of the Trust.