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## BC Forestry Revitalization Trust

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### Report of the Trustee as of March 31, 2013

#### General

In June 2003 the province of British Columbia established the BC Forestry Revitalization Trust (BCFRT) and funded it with \$75,000,000. The mandate of the BCFRT was to provide mitigation to forest workers and replaceable contractors that were negatively impacted by timber reallocations resulting from the Forestry Revitalization Act (FRA).

In April 2004 the province appointed Eric van Soeren as Trustee. Shortly after that he appointed a seven member Advisory Board, as required by the Trust Deed. That Board developed draft Forest Worker Mitigation Guidelines and Contractor Mitigation Guidelines.

Utilizing the best estimates of industry, seniority estimates obtained from the IWA pension plan, seniority estimates obtained from contractor industry associations, and the proposed guidelines, the Trustee determined that the BCFRT likely required approximately \$50,000,000 more than what was available in the BCFRT accounts, plus what the BCFRT was likely to earn in interest while holding mitigation funds in trust.

The Trustee and the Advisory Board approached the province and received a commitment for the additional funds, so the BCFRT Advisory Board finalized the Contractor Mitigation Guidelines and the Forest Worker Mitigation Guidelines. The Guidelines, as well as extensive supporting documentation, are posted on the BCFRT website at [www.bcfrt.com](http://www.bcfrt.com).

#### Roll over of the BCFRT

The original BCFRT was slated to terminate effective June 30, 2008. However, for a variety of reasons it was not possible to mitigate all the eligible beneficiaries of the BCFRT by then. Further, estimates at that time suggested that even once all the existing beneficiaries received mitigation, there would still be funds left in the BCFRT. Therefore, it was agreed by the Trustee, the Province and the Advisory Board that the BCFRT should be extended, the group of potential beneficiaries be expanded, and the Trustee be given limited discretion to deem that individuals who would not otherwise be eligible beneficiaries of the BCFRT be included. The Minister of Forests and Range and the Trustee signed a new Declaration of Trust, and all assets and obligations of the BCFRT were assumed by the new BCFRT II. A copy of the Declaration of Trust that created the BCFRT II is posted on the BCFRT website. The new trust was essentially a rollover of the original BCFRT, but with slightly expanded beneficiaries and no fixed termination date. Beneficiaries were still limited to forest workers and replaceable contractors, but it also allowed for mitigation to be made available to forest

workers and replaceable contractors that might be negatively affected by other Provincial Government land use decisions that limit logging.

As of the end of 2011 all the workers and contractors had received the initial mitigation for which they were eligible based on the contractor and worker mitigation guidelines. However, there were outstanding issues with respect to income taxes assessed to contractors that had received mitigation payments from the BCFRT and the BCFRT II. For purposes of the report I will refer to both the original BCFRT and the BCFRT II as the BCFRT.

### **Contractor Income Tax Liability**

There has been uncertainty about the liability for income taxes payable on mitigation amounts received by replaceable contractors from the BCFRT. The position of the four logging contractor associations in BC is that the amounts should have been received tax free, either because they were a windfall payment, or because they were amounts received from a personal trust. Others took the position that the amounts received as a result of the loss of some or all of a replaceable contract should be treated as a capital gain. The Canada Revenue Agency (CRA) took the position that all such amounts were to be taxed as income.

The BCFRT, the Loggers for Fair Taxation, the Minister of Forests, Lands and Natural Resource Operations, and the Premier of BC, worked on this problem for approximately four years. As a result, the Province of BC and the Advisory Board of the BCFRT agreed to increase the contractor mitigation payments received by replaceable contractors by an amount equal to the income taxes actually paid or payable on the amounts previously disbursed. In order to facilitate that payment, the three previous BCFRT accounts were rolled into one new Contractor Mitigation Account early in 2012.

During the last quarter of 2011 letters were sent out to all contractors that received Contractor Mitigation funds from the BCFRT. They were invited to apply for extra mitigation in the event that they had paid or been assessed and not yet paid taxes on the amount(s) received. 202 contractors (approximately 76%) responded. Of those, 8 declined to proceed because they had no taxable income in the year(s) they received BCFRT Contractor mitigation amounts. The other 24% are deemed to have accepted the payments as received and will not be considered for a refund of any taxes paid on the contractor mitigation amounts received. In most cases it is likely they were not taxable in the year of receipt of those funds, and would therefore not have received a refund in any case.

To date the Canada Revenue Agency (CRA) has processed and made determinations of the incremental income tax impact of the receipt of Contractor Mitigation Funds for 190 of the 194 contractors that responded and wanted to proceed with a determination of their eligibility for a refund. The CRA is in the process of determining how much tax was assessed on the amounts received for the 4 remaining contractors that applied. In addition, 6 of the contractors that received determination letters have disputed the amount of incremental tax the CRA has determined they paid, or were assessed but have not yet paid, as a result of mitigation amounts received from the BCFRT. The CRA is reviewing those files.

The most recent information I have from the CRA is that the balance of the income tax refund determinations will be forthcoming in the second quarter of 2013.

Another part of the negotiated arrangement called for Federal and Provincial Orders in Council to deem income tax refund amounts received from the BCFRT to be tax free, and to deem that there will be a remission on interest and penalties on previously unpaid taxes related to the original contractor mitigation amounts. The required provincial Order in Council was filed on November 7, 2012. The matching required Federal Order in Council was filed on January 16, 2013. As a result, the BCFRT was able to start making disbursements in the first quarter of 2013

**Account Balances as at March 31, 2013**

**Account Balances**

2011 Contractor Mitigation Account	\$6,204,138
Administration Account	0
Contractor Mitigation Account	0
Forest Worker Mitigation Account	<u>0</u>
<b>Total market value of BCFRT accounts</b>	<b>\$6,204,138</b>

**Distributions to Beneficiaries to date**

Contractor Mitigation	\$70,748,591
Contractor Income Tax Refunds	\$1,438,127
Forest Worker Mitigation	\$43,079,279
Transferred to the Coast Sustainability Trust	<u>\$2,767,714</u>
<b>Total Distributions to Beneficiaries</b>	<b>\$118,033,711</b>

**Total available funds plus distributions** **\$124,237,849**

**Administration Account**

When the BCFRT was created, \$5,000,000 was allocated to administration. Most of the administration expenses of the BCFRT were covered by the interest earned on the Administration Account balance, so the initial principal was reduced by approximately \$560,000. The Administration Account balance of approximately \$4,440,000 was transferred to the new 2011 Contractor Income Tax Relief Account in January 2012.

**Contractor Mitigation Account**

The BCFRT provided contractor mitigation related to 317 affected contracts to 267 different contractors for a total cost to the BCFRT of \$70,748,591. All replaceable contractors that were affected by the implementation of the FRA received the full mitigation for which they were eligible under the Contractor Mitigation Guidelines. The balance of approximately \$744,000 in the Contractor Mitigation Account was transferred to the new 2011 Contractor Mitigation Account in January 2012.

## **Forest Worker Mitigation Account**

The BCFRT provided funding for the severance of 848 workers negatively affected by the FRA, for a total cost to the BCFRT of \$43,079,279. All employees known to have been affected by the FRA received their BCFRT supported severance. The balance of approximately \$2,525,000 in the Forest Worker Mitigation Account was transferred to the new 2011 Contractor Mitigation Account in January 2012.

### **Mitigation of the Negative Impacts of Ecosystem Based Management on Haida Gwaii.**

During a February 2011 BCFRT Advisory Board meeting it was agreed that the BCFRT would cost share with the Coast Sustainability Trust (CST) to provide mitigation to workers and replaceable contractors that were impacted by the implementation of Ecosystem Based Management (EBM) on Haida Gwaii. The formulas used to determine the amount of mitigation were the same as used in the earlier BCFRT mitigation payments. Payments have been made through the CST, with the BCFRT providing half the required funds.

As of March 31, 2013, \$2,767,714 has been transferred to the CST to provide matching funds for worker and contractor mitigation. Also as of March 31, 2013, all 35 affected workers and 10 of 11 affected contractors have received all their mitigation amounts.

### **Adequacy of Funds**

The final cost of making contractors whole for income taxes assessed and paid or assessed and still not paid on the contractor mitigation amounts they received is still not known. The best estimate at this time is approximately \$9.0 million. The agreement with the province is that all existing funds in the BCFRT accounts will be first applied to compensate the contractors for taxes paid or payable. Once the BCFRT funds are depleted, the province will replenish the BCFRT as required to meet the additional obligations to the contractors and the administration costs of the Trust. The best estimate at this time is that the province will be asked to provide an additional \$1.5 Million to the BCFRT to allow it to meet this obligation.

### **Looking Ahead**

The second quarter of 2013 will likely include the following activity:

1. The Trustee will continue to work with the CRA on the final 10 outstanding contractors to determine whether a tax refund or payment of taxes on their behalf by the BCFRT is forthcoming.
2. Where agreement is achieved, the trustee will enter into funding agreements with the relevant contractors and either pay them directly or, at their direction, pay the amount owing directly to the CRA or some combination of the above.

Eric van Soeren, Trustee