

## **Towards Sustainable Private Woodlots in Alberta**

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## 1. Introduction

The situation of private woodlots in Alberta, long ignored by government, the forest industry and the public, was suddenly brought into the spotlight in 1993-1994 when a tightening timber supply in British Columbia and Montana, coupled with high timber prices, resulted in the clear-cutting and export of unusually high volumes of timber from private lands.<sup>1</sup> The highly visible signs of this timber rush were caravans of logging trucks carrying heavy loads of coniferous timber across the Alberta border. The negative economic and ecological consequences of this hemorrhage of timber to neighbouring jurisdictions, associated with problems of illegal logging on adjoining Crown lands, poor logging practices and heavy use of public roads and highways, led to requests by the public, the forest industry and local governments for provincial controls over private logging. Reluctant to interfere with private property rights, the provincial government merely imposed controls on the scaling and transportation of timber, preferring to promote awareness and education amongst woodlot owners. In contrast, certain local governments reacted against abusive clear-cutting by regulating logging practices on private lands and, further, a group of concerned woodlot owners formed the Woodlot Association of Alberta.

This paper provides an update in regard to the situation of private woodlots in the province, outlines the applicable legislative and tax regime, and underlines the need for a concerted effort on the part of government departments to actively promote sustainable management of private woodlots. At a time when issues of forest sustainability are being widely debated in international, national and provincial fora, this paper is aimed at drawing attention to the particular situation of private woodlots in Alberta as well as furthering discussion in regard to policy and legal tools which could enhance woodlot conservation and sustainable management.<sup>2</sup>

## 2. Overview of Private Woodlot Resources

In Alberta, private woodlots are located in the settled, agricultural area of the province known as the White Area, with a predominance of productive woodlots along the parkland/forest transition zone in central Alberta and in the Peace Region of Northern Alberta. Due to a general lack of interest in the forest resource in the White Area, adequate statistical information on woodlots, woodlot owners and harvesting or management activities has long been unavailable and no comprehensive inventory of forest resources in the White Area (both private and public) has as yet been completed.

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1 The timber rush affected not only private woodlots, but also Indian reserves and Metis settlements. This article focuses on the situation of private woodlots.

2 Discussion of the issues facing woodlot owners and of potential approaches to woodlot management was initiated at a Woodlot Policy Forum convened in the Fall of 1996 by the Woodlot Association of Alberta. The four background documents commissioned for purposes of discussion during the forum provide useful information and have been relied upon to prepare this Occasional Paper.

Both Alberta Agriculture and Alberta Environmental Protection have provided estimates of private forest land in Alberta, with the latter having contributed such estimates for input into the National Forestry Database. According to these calculations, private forests in Alberta cover 1.5 million ha (4% of total forest land), with timber-productive forests being estimated at 1.2 million ha (6.1% of timber-productive accessible forest land).<sup>3</sup>

In 1994, the Prairie Farm Rehabilitation Administration (PFRA) spearheaded a joint initiative to begin a White Zone Vegetation Inventory. In addition to the contribution of Agriculture Canada, the Canadian Forest Service, Alberta Agriculture Food and Rural Development and Alberta Environmental Protection as well as one forest company, Alberta Pacific Forest Industries Inc., have provided funding. The recently created Woodlot Association of Alberta has also been involved in the inventory effort. The White Zone Vegetation Inventory, to be completed in 1997, will identify all forested areas greater than 10 acres (4 ha) and provide information on stand composition, tree height, density and site moisture levels. The data will be available in both standard paper map and in a format accessible by geographic information system (GIS). Information collected by Alberta Environmental Protection under the Alberta Vegetation Inventory, notably in the parkland/forest transition area in central Alberta, is being incorporated in the White Zone inventory.<sup>4</sup>

Despite the assertion in a recent provincial publication that “most of the timber [in the White Area] grows on private lands”,<sup>5</sup> the White Area also contains significant public woodlands. In 1988, an Alberta Agriculture Land Base Study estimated the amount of unimproved woodland in the White Area at approximately 2.9 million ha. If, as noted above, 1.5 million ha of these woodlands are in private ownership, approximately half of all woodlands in the White Area would be public lands. A large percentage of these lands is held under agricultural dispositions such as grazing leases and the Crown retains ownership of the land and the right to dispose of commercial timber resources by means of timber permits. The problems arising from the allocation and management of timber on public lands in the White Area vary from those affecting private woodlot management and warrant a separate study. Nevertheless, the existence of extensive public woodlands in the White Area cannot be ignored when alternative policy options for the sustainable development of private woodlots are being considered.

The number of woodlot owners in Alberta is currently estimated at 12,000. Recent surveys indicate that over half of them are farmers/ranchers, and that the vast majority live in rural locations (84%) and within five miles of their woodlots. The average size of properties owned by woodlot owners has been estimated at 676 acres (273 ha), although the percentage of smaller properties (less than 320 acres (129 ha)) is high (75%), and approximately 19% of owned lands are forested. The size of treed land

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3 Ezra Consulting Limited, *A Profile of the Private Woodlot Industry in Alberta*, Submitted to the Prairie Farm Rehabilitation Administration (PFRA) (Red Deer, AB: 31 March 1996) Table 1.

4 Personal communication with Gary Bank, District Manager, Prairie Farm Rehabilitation Administration (4 June 1997).

5 Alberta Environmental Protection, *The Status of Alberta's Timber Supply* (Edmonton: May 1996) at 4.

varies greatly, with a majority of woodlots being between 21-80 acres (8-32 ha).<sup>6</sup>

In the past few years, estimates of timber harvests from private lands have been compiled by Alberta Environmental Protection. From 1991 to 1994, timber harvests were in the order of 1 million m<sup>3</sup>. However, for 1994-1995, harvests were estimated at 2.3 million m<sup>3</sup> (by comparison, 15.1 million m<sup>3</sup> of timber were cut on Crown lands),<sup>7</sup> with a significant proportion of coniferous timber being exported outside of the province due to the higher prices offered by mills in British Columbia and Montana. Prices for standing timber vary widely, from a low price of \$2-3/m<sup>3</sup> for aspen to over \$60/m<sup>3</sup> for quality spruce. Based on record prices for private coniferous wood and record volumes of timber harvesting in 1994-1995, the total estimated value of private timber has been set at \$233 million. Assuming that all of the stumpage and 2/3 of the logging and hauling costs were spent in Alberta, approximately \$218 million of this value would have accrued to Alberta's economy. Additional economic benefits accruing from the value of shipments and direct employment are substantial.<sup>8</sup>

### 3. Legal Regime Applicable to Private Woodlots

In Alberta, the growing, harvesting and sale of timber on public woodlands is regulated under the provincial *Forests Act*.<sup>9</sup> The Act specifically applies to forest land defined as “public land intermittently covered with forest growth” and to Crown timber defined as “timber grown on public land, except timber harvested pursuant to a timber disposition”.<sup>10</sup> As a result, the harvesting and sale of timber on private lands is not subject to provincial *forest* legislation. In particular, restrictions on the export of Crown timber<sup>11</sup> do not apply to timber harvested on private lands and the only limitations imposed on private woodlot owners under forest regulations relate to the transportation of coniferous timber on public roads. Nevertheless, the potential damage from timber harvesting and transportation to specific resources, such as soil or water, is regulated under various statutes, namely the federal *Fisheries Act*,<sup>12</sup> which protects “water frequented by fish”, and the provincial *Soil Conservation Act*,<sup>13</sup> *Forest Prairie and Protection Act*<sup>14</sup> and *Water Act*.<sup>15</sup> Finally, in the past three years, certain municipalities

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6 Richard C. Rounds, Bradley Milne & Joan M. Rollheiser, *Towards Defining a Woodlot Management Program for the Prairie Provinces* (Brandon: The Rural Development Institute, Brandon University, RDI Report Series 1995-3, 1995) at 58-63.

7 *The Status of Alberta's Timber Supply*, *supra* note 5 at 5.

8 These estimates of the economic value of the woodlot industry are provided in *A Profile of the Private Woodlot Industry in Alberta*, *supra* note 3 at 8-11.

9 R.S.A. 1980, c. F-16.

10 Sections 1(d) and (c).

11 Section 31 of the *Forests Act* prohibits the transportation of logs, trees or wood chips, except dry pulpwood or Christmas tress, from any forest land to any destination outside Alberta, except with Ministerial authorization.

12 R.S.C. 1985, c. F-14.

13 S.A. 1988, c. S-19.1.

14 R.S.A. 1980, c. F-14.

15 S.A. 1996, c. W-3.5.

have utilized their land-use planning powers under the *Municipal Government Act*<sup>16</sup> to control harvesting operations on private woodlots. These various legislative and regulatory controls are described below.

### **3.1 The Federal Fisheries Act**

The *Fisheries Act* protects fish habitat in “Canadian fisheries waters”, defined as including “all waters in the fishing zones of Canada, all waters in the territorial sea of Canada and all internal waters of Canada”. Its fish habitat protection and pollution prevention provisions have had far-reaching effects on a whole range of activities performed both on public and private lands. Section 35(1) sets out the general rule that “No person shall carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat”, unless authorized by the Minister or by regulation as per section 35(2). Section 36(3) prohibits “the deposit of a deleterious substance of any type in water frequented by fish” unless authorized by regulation. Contravention of sections 35(1) and 36(3) is an offence leading to possible court conviction and punishable of fines of up to \$1,000,000 for a first offence.

The Act is enforced provincially by Fish and Wildlife Officers with Alberta Environmental Protection. It appears, however, that enforcement is inadequate since over the past few years no offences have been charged for contravention of the above sections as a result of poor logging practices on private lands. The effectiveness of the fish habitat protection provisions is therefore questionable.

### **3.2 Provincial Legislative Controls**

As its name indicates, the *Soil Conservation Act* is intended to prevent soil loss or deterioration. Section 3 requires every landholder to take appropriate measures to prevent soil loss or deterioration and to stop soil loss or deterioration from continuing. Officers responsible for enforcing the Act (agricultural fieldmen or soil conservation officers) can serve on landholders a notice directing that preventive or remedial measures be taken. If the landholder does not comply with the notice, the officer can enter on the land and carry out remedial work, with expenses being charged to the landholder. Contravention of the Act is an offence punishable by a fine of up to \$5,000.

The *Forest Prairie and Protection Act* applies to “all land within Alberta”, with the exception of land within the boundaries of a village, town, new town or city or federal land. The Act is enforced by forest officers from Alberta Environmental Protection or, within the boundaries of municipal districts, by fire guardians appointed by council. The Act enables the council of a municipal district or forest officers, when they find on any land conditions that in their opinion “constitute a fire hazard endangering life or property”, to order the owner or the person in control of the land to reduce or remove

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16 S.A. 1994, c. M-26.1.

the fire hazard within a specified time and as prescribed in the order. In the event that the order is not carried out, the work can be performed by council or forest officers and all expenses incurred in performing the work must be reimbursed by the owner. Forest officers are entitled to enter on any land without a warrant to discharge their duties. The Act also contains provisions with respect to fire fighting obligations. In addition, section 28 authorizes the Minister to carry out control measures on any land for the prevention and control of tree pest infestations. Contraventions of the Act are offences punishable with small fines of a maximum of \$1,000.

The recently enacted *Water Act*, the purpose of which is “to support and promote the conservation and management of water”, makes it an offence to commence or continue an activity which may affect water, except under an approval or as authorized by the Act.<sup>17</sup> The term “activity” is broadly defined and includes, in particular, “maintaining, removing or disturbing ground, vegetation or other material, or carrying out any undertaking [ . . . ] in or on any land, water or water body” in such a way as to alter the flow or level of water, change its location or flow, or cause siltation of water or the erosion of any bed or shore of a water body.<sup>18</sup> The Director and inspectors appointed by the Minister may issue water management orders to prevent or remedy adverse effects on the aquatic environment, human health, property or public safety and the Director may also issue enforcement orders. Inspectors and investigators are given broad ranging powers to enter any place to administer and ensure compliance with the Act or any order made under the Act. Fines of up to \$100,000 may be imposed on individuals for contravention of the above-discussed provision.

The last type of provincial regulatory control imposed on woodlot owners involved in timber harvesting activities affects not the operations carried out in connection with the actual logging of trees, but rather their transportation on public roads. Under the *Timber Management Regulation*,<sup>19</sup> a permit is required to haul coniferous trees or logs exceeding 2.2 metres in length, harvested from private lands, Indian reserves and Metis settlements. The timber transported must be measured and the volume recorded, and failure to provide the required transportation records can result in penalties of \$50 to \$500 for a first offence. The primary motivation of the provincial government in implementing these measures has been to trace the place of origin of the timber cut, in an attempt to curtail illegal logging on Crown lands.

The effectiveness of the above legislative and regulatory controls is directly proportional to the number of inspectors and officers available at the provincial and local levels to monitor activities on private lands. It appears that inspections *in situ* of potential damage to soil and water resulting from logging activities on private lands are extremely rare and fines are seldom, if at all, imposed for environmental offences. With provincial cut-backs reducing the workforce, government's ability to monitor and prevent local infractions inevitably decreases.

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17 Sections 142(1)(h) and 142(2)(f).

18 Section 1(1)(b).

19 Alta. Reg. 60/73 as am. by Alta. Reg. 296/95, ss. 111.1-120.

### 3.3 Municipal Regulation

Municipal controls over harvesting operations on privately owned lands have been implemented for a number of years in other Canadian provinces, most notably in Quebec. In Alberta, municipal governments were goaded into action by the pace and intensity of timber cutting on private woodlots in 1994-1995. The first municipal controls over logging on private lands were imposed by the Municipal District of Pincher Creek in 1994. Only a few other municipal authorities have since developed their own models of logging controls on private lands.<sup>20</sup> By contrast with federal and provincial environmental provisions, which take a punitive approach to environmental damage, municipal regulatory controls take a preventive approach by setting certain parameters within which logging activities may be conducted, in an attempt to prevent environmental harm.

The powers to control logging activities on private lands are found in the *Municipal Government Act*.<sup>21</sup> The Act enables municipalities to pass land use bylaws for the purpose of dividing municipalities into districts, prescribing permitted and discretionary uses within each district, and controlling developments by way of permits. The Act defines “development” as including building activities as well as changes in land use or in the intensity of land use,<sup>22</sup> and any development requires the issuance of a development permit which may be granted with or without conditions. Clear-cutting of a woodlot is considered a change in land use (i.e., a development), and certain municipalities have requested woodlot owners undertaking commercial logging in designated districts to obtain a development permit. Applications for a logging operation must normally be accompanied by a harvesting plan prepared by a Registered Professional Forester (RPF) and operations must conform to certain conditions with respect to water and soil protection and reclamation. For instance, in the Town of Canmore,<sup>23</sup> logging or a logging operation is defined as “the cutting of trees where the contiguous cut area is greater than 500 m<sup>2</sup> or where the merchantable timber being cut on the parcel contains over 25m<sup>3</sup> of gross wood volume”. The harvesting plan must be prepared in accordance with the operating ground rules applicable on Crown lands under the provincial *Forests Act*.<sup>24</sup> In the Municipal District of Bighorn No. 8,<sup>25</sup> logging in designated areas identified in the municipal plan requires a development permit when it will result in the removal of harvestable timber over an area greater than 10% of the size of the parcel to be logged. Logging is defined as “the removal or cutting of logs from

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20 These include, in addition to the Municipal District of Pincher Creek, the Municipality of Crowsnest Pass, the Municipal District of Bighorn No. 8, and the Town of Canmore.

21 S.A. 1994, c. M-26.1, Division 5. This new statute incorporates and repeals the former *Planning Act*, R.S.A. 1980, c. P-9.

22 Section 616(b)(iii): “development” means . . . (iv) a change of use of land or a building or an act done in relation to land or a building that results in or is likely to result in a change in the use of the land or building.

23 Town of Canmore, By-law No. 35(Z)96 amending Land Use By-law No. 18 (1986).

24 Alberta Environmental Protection, Land and Forest Services, *Alberta Timber Harvest Planning and Operating Ground Rules* (Edmonton: 1994).

25 Municipal District of Bighorn No. 8, By-law No. 64/94 amending the General Municipal Plan, 1992, and By-law No. 65-Z/94 amending Land Use By-law No. 11 (1988).

harvestable timber for commercial purposes, either by selective, strip or clear-cutting practices". The application for the permit must be accompanied by a harvesting plan prepared by a RPF which is consistent with the provincial ground rules, and conditions may be attached to the permit.

The initiative of the Municipality of Pincher Creek was hailed by various groups as progressive and, at the time, attracted much interest from municipal governments, both within and outside Alberta, confronted with similar issues of woodlot clear-cutting. Nevertheless, controversy has surrounded municipal logging controls and opposition from various interest groups to a perceived assault on property rights has been intense. In the Fall of 1995, in the face of such opposition, the Municipality of Pincher Creek rescinded its logging guidelines stipulating conditions under which logging could be carried out. A development permit is still required to log on private lands; however, logging conditions may no longer be attached to the permit.

## 4. Taxation of Private Woodlots

The issue of taxation of private woodlots has been debated for many years and recommendations for tax reforms have been submitted to governments on several occasions.<sup>26</sup> Taxation policies regarding both income and property taxes can act as an incentive or disincentive to sustainable woodlot management. Curtis has observed that:

Despite existing federal government policies and the obvious need to encourage the stewardship of this important national resource, taxation policies have been a long-standing irritant in the woodlot sector, often acting as a disincentive for forest management and investment or encouraging activities that are not sustainable. Taxation policies have frequently been cited as one of the most important policy areas that could be used to provide incentives for forest management on woodlots.<sup>27</sup>

The following sub-sections provide an overview of current federal and provincial tax provisions applicable to woodlot owners in Alberta.

### 4.1 Federal Income Tax Provisions

Canada's *Income Tax Act*<sup>28</sup> does not recognize woodlot owners as a distinct group of taxpayers. Indeed, the Act makes no specific reference to woodlots or woodlot owners and the taxation regime is outlined in various interpretation bulletins, information circulars and other releases and publications issued by Revenue Canada. This has resulted in complex, ambiguous and inconsistent approaches to taxation of woodlot

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26 See for instance, Canada, House of Commons, *Forests of Canada: The Federal Role*, Report of the Standing Committee on Forestry and Fisheries (Ottawa: Queen's Printer for Canada, November 1990) Recommendation No. 24(ii) at 128.

27 David Curtis, *Tax Reform for Private Woodlot Owners in Canada: Executive Summary* (Ottawa: Canadian Forestry Association, May 1992) at 9.

28 R.S.C. 1985 (5th Supp.), c. 1.

owners, with some woodlot owners being considered as engaged in farming while others are deemed to be carrying on logging, depending on whether or not they have farm income or are considered to be in the business of farming. Most woodlot owners are currently treated as part-time farmers, without benefitting from the preferential tax treatment offered farmers (e.g., cash basis of filing income, \$500,000 capital gains exemption, provision for loss carry-forward). In addition, the sale of standing timber tends to be treated as a source of income rather than a disposition of capital, although a one-time receipt of revenue from timber cutting is treated as a capital disposition. As a result, woodlot owners tend to liquidate their timber in a single cut in order to benefit from the capital gains exemption, rather than manage it on a sustainable basis.

Curtis concludes that:

The overall effect of the complexity of the current rules has been to stifle expenditures on woodlot management, and encourage a need and a reliance by woodlot owners on government incentive programs for forest management. Incentive programs have arisen to fulfil the role of encouraging woodlot management activities in large part because other mechanisms such as tax policies have failed to do so.<sup>29</sup>

Eight recommendations for tax reform have been suggested, the first being to create a new category or status for woodlot owners.<sup>30</sup> In order to qualify as a “woodlot manager” and be entitled to receive various tax benefits as outlined in the other seven recommendations, an owner would be required to prepare a woodlot management plan in accordance with good forestry practices. Specific requirements regarding the contents of the management plan would be developed by provincial governments. Such favourable tax treatment for “managed woodlots” is already offered by a few provincial governments in the area of property taxes.

## **4.2 Provincial and Municipal Taxes**

In addition to property taxes, various provincial and municipal taxes, including fuel taxes and machinery and equipment taxes, may be levied on woodlot owners. As is the case with income tax provisions, provincial taxation schemes often fail to provide woodlot owners with tax benefits similar to those enjoyed by farmers. For instance, while farmers receive tax reductions for marked fuel used in farming operations, woodlot owners do not receive those same benefits. The following paragraphs focus on property taxes having the strongest influence on the willingness or ability of woodlot owners to manage their woodlots. Specific concerns are in regard to the assessment of property, tax rates and the availability of special rebates or exemptions.

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29 Curtis, *supra* note 27 at 11.

30 Curtis, *ibid.* These recommendations have been endorsed by the Canadian Federation of Woodlot Owners and brought forward by the House of Commons Standing Committee on Natural Resources for federal review (Canada, House of Commons, *Canada: A model forest nation in the making*, Report of the Standing Committee on Natural Resources (Ottawa: Queen's Printer for Canada, June 1994) at 44).



In Alberta, prior to the *Municipal Government Act* which came into force in 1995, most woodlots were assessed on the basis of their agricultural productivity rather than on their fair market value. The new Act introduced three classifications for taxation assessment: 1) residential; 2) non-residential; 3) farm land. Farm land, which is assessed at agricultural use value, is defined as land used for farming operations. In turn, farming operations are defined by regulation to mean the raising, production and sale of agricultural products and include:

- (i) horticulture, aviculture, apiculture and aquiculture,
- (ii) the production of livestock, and
- (iii) the planting, growing and sale of seed.<sup>31</sup>

Under this new assessment policy, woodlots are assessed at market value rather than agricultural use value since timber production or the collection of forest products are not defined as farming operations. The question of assessment can be of critical importance for those woodlots located near urban centres where their value for purposes of residential or commercial development may be significant. Only when woodlots are also “farmed” (e.g., grazed) can they benefit from the low assessment rate for farm lands. This policy, as a result, fosters the clearing of woodlots to ensure their classification as farm land. In addition, there are uncertainties as to whether municipalities include standing timber in property assessments, or whether trees are considered as growing crop and excluded from assessment.

Similar to the situation in regard to income tax at the federal level, the provincial property tax regime fails to acknowledge the importance of woodlot management and introduces uncertainty and inequities in the tax treatment of woodlots as opposed to farm lands. Disincentives in the current tax policies as applied to woodlots need to be eliminated while incentives should be devised in order to support sustainable use and management of private woodlots.

## **5. Sustaining the Woodlot Sector**

### ***5.1 Institutional and Policy Support***

In a background document prepared for a Woodlot Policy Conference convened in the Fall of 1996, Kirk Andries notes that establishing a woodlot policy/program in Alberta is conditional upon government's willingness to modify White Area agricultural policies which have traditionally encouraged the clearing of land and intensive agricultural development.<sup>32</sup>

Forest industry demands for timber from private woodlots, as well as the growth of

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31 *Standards of Assessment Regulation*, Alta. Reg. 365/94, s. 1(e).

32 Kirk Andries, *Towards an Alberta Woodlot Policy ) An Overview of Land Use Policies Affecting Woodlot Establishment*, A Discussion Paper, Woodlot Policy Conference, Edmonton, Alberta, 18-19 October 1996, at 6.

the Woodlot Association of Alberta created in 1995, demonstrate the economic potential of private woodlots and an increasing interest in their management. During the recent past, forest companies have purchased large tracts of private lands for the purpose of securing timber supplies and practising intensive silviculture, notably by planting fast-growing aspen species.<sup>33</sup> The ecological value of private woodlots for water, soil and wildlife conservation as well as their recreational and aesthetic value is unquestioned and has been recognized by the broad range of participants in the provincial Forest Conservation Strategy. Woodlot owners are equally aware of the environmental benefits provided by their woodlots and surveys of woodlot owners consistently indicate that they value their woodlots primarily for their non-timber values, with commercial timber production being a low priority.<sup>34</sup>

In the 1992 National Forest Strategy, the federal and provincial governments, including Alberta, set out a specific objective to “increase the environmental, economic, social and cultural benefits derived from private forests”.<sup>35</sup> To further this objective, commitments were made to, *inter alia*: a) cooperate with forest owners in instituting forest management programs striving to achieve a fair return for the owner while supporting a full range of forest values; b) encourage a private forest stewardship ethic “by expanding the skills and knowledge of private forest owners and recognizing and supporting models of best practices on private lands”; c) cooperate with landowners to increase the afforestation of marginal agricultural land on ecologically appropriate sites; and d) collaborate with private forest organizations to improve the information available on private forests. As documented below, at the present time there is unfortunately no woodlot program being implemented within Alberta Environmental Protection to provide private woodlot owners with the type of support envisioned in the National Forest Strategy. With the possible exception of the commitment to improve the information available on private forests (for which limited funding is still being provided) the provincial government is unwilling or unable to actively support woodlot management.

If adopted by government, the proposed Alberta Forest Conservation Strategy has the potential to contribute to the conservation and sustainable management of private woodlots. The Strategy, developed over a three year period with public input and

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- 33 The acquisition of private land by foreign companies and individuals is currently restricted under the *Foreign Ownership of Land Regulations*, Alta. Reg. 160/1979, pursuant to which “no ineligible person or foreign controlled corporation shall take or acquire, directly or indirectly, an interest in controlled land (private land)”. Up to two parcels of private land containing not more than 20 acres (8 ha) may be purchased, but the purchase of larger areas requires either an authorization by Order in Council or an exemption. Alberta Environmental Protection has received several requests for the purchase of significant areas of private land by foreign-owned forest companies, and a blanket exemption for purchases for “forest management” purposes has been requested. An interdepartmental committee has been established to investigate this possibility.
- 34 *Towards Defining a Woodlot Management Program for the Prairie Provinces*, *supra* note 6. The three most important reasons cited for owning or retaining forested land/woodlots in Alberta are for shelter and residence, wildlife habitat and soil and water conservation, and the three most important reasons for using forested land are for grazing livestock, recreation, and wildlife habitat (at 66).
- 35 Canadian Council of Forest Ministers, *Sustainable Forests: A Canadian Commitment* (Hull: March 1992) Strategic Direction 8 at 45.

recently submitted to the Minister of Environmental Protection and the provincial government for their consideration, “is a fulfilment of commitments made by the Government of Alberta under the National Forest Strategy”.<sup>36</sup> This document acknowledges that “private and public lands, particularly in the White Area of the province, have tremendous potential for management as sustainable woodlots” and recognizes that “increased government commitment to the sustainable long-term management of those forested lands, combined with an effective education and awareness program for private land-owners and interested parties, could provide the foundation for a successful woodlot program in Alberta”.<sup>37</sup> The government and municipalities have been challenged to adopt the policy objective of maintaining and enhancing the size of the forested landbase of the province. However, specific recommendations with respect to private forests are, for the most part, restricted to: a) the provision of advice to municipal governments, and b) the provision of education and information to landowners and field staff in agriculture. Further, the wood product industry is expected to participate with government in the development of a sustainable woodlot program.<sup>38</sup>

Adoption by government of the Forest Conservation Strategy would at long last ensure the recognition of the economic and ecological value of private woodlots. Nevertheless, in order to be effective, the provincial commitment towards enhancement and sustainable management of forested lands in the White Area will necessitate the implementation of concrete measures. At a minimum, government assistance for woodlot owners should be renewed and needed tax reforms implemented. In addition, the provincial government should establish an inter-departmental forum for the development of strategic policies directed towards maintaining and enhancing the forest landbase. The need for cooperation between Alberta Environmental Protection and Alberta Agriculture Food and Rural Development as joint managers of land in the White Area is particularly critical; however, the Departments of Municipal Affairs and Economic Development are also key players and should be involved in policy initiatives and programs which will enable the woodlot sector to fully develop.

Opinions as to the best means to be used to promote management of private forests on an economically and ecologically sustainable basis vary widely. The long-standing debate on the respective merits of the punitive or coercive approach versus the reward or incentive approach has been rekindled in the case of private woodlots in Alberta. The point of view of woodlot owners is expressed as follows by the President of the Canadian Federation of Woodlot Owners:

The most powerful force for improved forestry practices is the desire of most landowners to do their best to pass on their woodland to the next generation in at least as good a shape as they received it. The second most powerful (albeit more costly) tool is money. The least powerful, and most expensive tool of all, however, is government coercion. Yet that's where regulators seem to gravitate, despite the repeated evidence on both sides of the border that

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36 Alberta Forest Conservation Strategy, *A New Perspective on Sustaining Alberta's Forests*, Final Report of the Steering Committee (Edmonton: 7 May 1997) at iv.

37 *Ibid.* at 11.

38 *Ibid.* at 12.

regulations often do more harm than good.<sup>39</sup>

The solution may lie in a combination of financial and legal measures which provide incentives to woodlot owners to be the stewards of their own lands.

## **5.2 Financial Support**

From the perspective of the owners, financial assistance is the most effective means for governments to influence the behaviour of woodlot owners. Woodlot owners have long argued that government's subsidization of forest management costs on Crown lands and under-valuation of Crown timber distorts the competitive price available to woodlot owners and, in order to create a level-playing field, governments must contribute to the financing of forest management costs on private woodlots.<sup>40</sup> In the current climate of budgetary restraint, this suggestion may sound objectionable and unrealistic; however, the removal of disincentives and provision of incentives can be achieved at reasonable cost and that cost can be shared by various interested parties. The White Zone Vegetation Inventory discussed earlier provides an example of partnership in the funding of an initiative of critical importance to woodlot management.

### **5.2.1 Tax Reform**

A reform of the unfavourable property tax provisions described above would demonstrate the willingness of the government to recognize the value of woodlot management as an option for economic diversification. In addition to modifying the current biased assessment scheme, the potential of tax incentives to promote woodlot management or conservation should be further investigated. In Canada, several provinces (British Columbia, Manitoba, Ontario, Quebec, Nova Scotia) provide tax relief for woodlot owners who manage their woodlots or protect them for the long-term, either in the form of lower tax rates or rebates on property taxes. In all cases, the preferential tax treatment has been conditional upon the preparation of an approved forest management plan consistent with provincial guidelines. In British Columbia, forest land (either managed or unmanaged) is assessed at its value for the purpose of growing trees without taking into account the existence of trees on the land: once the trees are harvested, the property's assessed value is amended to include the value of the timber.<sup>41</sup> If classified as "managed land", forest land is taxed at a lower tax rate and benefits from a 50% reduction of property taxes. Landowners must prepare a forest management plan and adhere to good forestry practices in order to obtain "managed" status for their land.<sup>42</sup> Similarly in Quebec, proof of active management is required from

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39 Peter deMarsh, *Property Rights and Responsibilities: Two Sides of the Same Coin* (National Woodlands, January 1997) at 8.

40 See for instance, *Forests of Canada: The Federal Role*, *supra* note 26 at 123.

41 *Assessment Act*, R.S.B.C. 1979, c. 21, s. 29.

42 A Forest management Plan must be prepared if the property is over 100 ha in size. In the case of smaller properties, the application form to obtain managed forest class itself becomes the first five

“forest producers” before they can obtain a refund of real estate taxes of up to 85%.<sup>43</sup> In Ontario, the Managed Forest Tax Reduction Program offers woodlot owners who manage their lands a refund of up to 75% of their property taxes. This successful program, which had been discontinued in 1993 as a result of budgetary constraints, was reinstated in 1996. Ontario also offers a Conservation Land Tax Reduction Program to encourage the long-term protection and stewardship of classes of conservation land.

## 5.2.2 Funding Assistance

The dichotomy between policies and programs supporting forest conservation and management and those encouraging forest clearing for agricultural expansion, is best exemplified in the case of woodlots.

For a number of years, both the federal and provincial governments have attempted to influence management practices on private woodlots by providing financial incentives to woodlot owners. Until 1995, funding of private woodlands forestry was achieved through federal-provincial forestry agreements<sup>44</sup> and from 1992 to 1996, a total of \$100 million was expended by the federal government on private woodlot programs across Canada. These cost-shared programs offered financial and technical assistance to woodlot owners to prepare forest management plans, improve the productivity of their woodlot and woodlot infrastructure, and to generally enhance awareness and capability amongst small-scale woodland owners. In Alberta, one concrete outcome of these funding programs was the completion in 1993 of a Woodlot Management Guide for the Prairie Provinces.<sup>45</sup>

As a result of budgetary restrictions, the federal-provincial agreements programs were not renewed when they expired in 1995. Severe budgetary cuts at the provincial level have further jeopardized the financial assistance offered to the woodlot sector. In Alberta, limited provincial funding was available in 1996 to pursue some of the initiatives undertaken under cost-shared programs and to continue to offer educational material and technical advice to interested woodlot owners. In 1997, the woodlot program was discontinued entirely within Alberta Environmental Protection and the position of Coordinator of the Private Woodlot Program was eliminated at a time when woodlot owners are under pressure to sell or harvest their woodlots, and when the fledgling Woodlot Association of Alberta does not yet have the capability to provide technical and financial support to interested landowners. However, the Association has obtained some provincial funding to provide the extension services previously offered by the provincial government.

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year plan.

43 *Forest Act*, R.S.Q., c. F-4.1, ss. 120-123.

44 For an overview of these agreements, see Monique M. Ross, *Forest Management in Canada* (Calgary: Canadian Institute of Resources Law, 1995) at 210-217.

45 *Woodlot Management Guide for the Prairie Provinces*, produced by the Farm Woodlot Association of Saskatchewan (Meadow Lake, SK: 1993).

By contrast with forest policies, agricultural policies in the White Area have traditionally promoted agricultural expansion, occasionally at the expense of woodland preservation. As recently as 1985, two provincial programs were offering incentives to ranchers and farmers to clear public forest land for agricultural purposes; specifically, the Range Improvement Assistance Program, discontinued in 1995, provided subsidies to grazing lease holders for the expansion of pasture land,<sup>46</sup> and under the Accelerated Land Sales Program, forested areas identified for agricultural land expansion were sold by auction or tender.

Despite the fact that the economic value of wood land can no longer be discounted, as attested by the high prices fetched by private timber, the prevailing negative attitude towards woodlot management is only beginning to change. Woodlots continue to be cleared for pasture or crop production, with the wood being now sold rather than burned. Government agricultural programs could well contribute to a greater awareness of the economic potential of woodlots for a variety of values and provide opportunities to practice woodlot management wherever feasible. The soon-to-be-completed White Zone Vegetation Inventory will provide a much needed basis to make informed decisions as to the best economic use of forested lands.

At the federal level, the adoption by farmers and ranchers of sustainable agricultural practices has been furthered by a Green Plan initiative, the Canada-Alberta Environmentally Sustainable Agreement (CAESA), which expired in 1997. Currently, Agriculture Canada offers funding to local municipalities for the purpose of encouraging sustainable agriculture and sustainable woodlot management could also well benefit from such a program.

A collaborative effort by provincial and federal departments is required in order to ensure that appropriate support is maintained for woodlot owners in these times of budgetary constraints. It appears that funding is more likely to be provided under agricultural programs rather than forestry programs, and private sector contributions are likely to be solicited, as has been the case with the White Zone Vegetation Inventory.

### **5.3 Legal Instruments Supportive of Woodlot Conservation and Management**

#### **5.3.1 Legal Controls over Forestry Practices**

The following analysis describes the pitfalls which are often associated with state

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46 Under this program, a range improvement plan was attached to the grazing lease, with a maximum of 40% of lease land subject to range improvement. Some of these plans were open-ended: if the clearing of trees had not been completed by the time the lease reached its term (10 years) and came up for renewal, the lease holder received an outstanding credit under the renewed lease. The implementation of range improvement programs on grazing leases has run into mounting public opposition, notably in the proximity of urban centres: see Vicki Barnett, "Forest 'clearcutting' feared" *The Calgary Herald* (23 May 1995) B1.

regulation of private property rights:

Legislation can have a major impact on management practices. The potential for regulation (regardless of whether intended, real or otherwise) will stimulate a response. The reaction is often swifter than the passage of the regulation and is often stimulated by misinformation and a lack of understanding. In view of the ability of the woodlot owner to respond rapidly to stimuli, at the mere whisper of regulation the chain saws start up. As an example, when tree removal regulation was discussed in the Fraser Valley, there was an immediate reaction in the woodlot sector, and entire properties were devastated in order to realize the capital in the timber before restrictions were imposed.<sup>47</sup>

Similar reactions have followed announcements at the provincial or municipal level of government controls over private woodlots in all provinces. In general, the use of coercive measures (regulations and fines) is perceived as an unjustified infringement on private property rights and therefore meets with determined resistance. Alberta is no exception to the rule.

Nevertheless, the opposition of woodlot owners to regulatory controls is not as absolute as it may first appear. Firstly, government controls are made more acceptable to landowners if they go hand-in-hand with incentives: for instance, woodlot owners are more likely to submit to the requirement of preparing a forest management plan in accordance with government requirements if, as noted earlier, they are rewarded by tax credits. Secondly, landowners may more readily accept and implement regulatory controls if they are involved in their promulgation. To cite again Peter deMarsh, the following conditions should apply to the drafting of effective regulations: "1) careful, meaningful consultation takes place with the woodland owning community; 2) the design of regulations is scientifically and operationally credible; 3) financial implications are clearly recognized and provision made for reasonable compensation; 4) the new regulations are enforceable."<sup>48</sup>

If the conditions of financial rewards and consultation are met, government controls such as those implemented at the municipal level can be effective in developing stewardship of private woodlots. Much can be gleaned from the experience of other Canadian provinces and the United States in regulating forestry practices on private woodlots.

### *5.3.2 Legal Tools to Enhance Access to Crown Timber: Forest Tenures*

Mention was made in the Introduction to this paper of the existence of tracts of public forest lands in the White Area. Commercial forest resources on these lands are managed by Alberta Environmental Protection under the *Forests Act*, with timber

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47 Peter Sanders, "The Role of Private Woodlot Owners in Sustainable Development: A View from British Columbia" in Natural Resources Canada, Canadian Forest Service, *Timber Supply in Canada ) Challenges and Choices*, Conference Proceedings (Ottawa: 1994) at 136.

48 deMarsh, *supra* note 39.

allocation taking place under a system of short term timber permits.<sup>49</sup> Commercial timber permits (CTP) are allocated for a term of one to five years by competitive sale, although the Minister also has discretion to sell them by direct sale. Local timber permits (LTP) are allocated for one year or less, normally for the harvesting of small quantities of timber for the personal use or the permit holder or for re-sale. In addition to the payment of timber dues on the timber cut, permit holders must pay the Crown a reforestation levy or reforest the land at their own cost and the deposit of a performance guarantee is required for the CTP. Even though CTP holders are required to submit an annual operating plan for approval before commencing the harvesting, the majority of management responsibilities on these lands remains with the Crown.

Two Canadian provinces (British Columbia and Quebec) offer woodlot owners longer term, more secure access to public woodlands in order to promote economic development by creating larger, economically viable management units. The British Columbia Woodlot Licence program aims specifically at providing opportunities for the development of small-scale forestry. Under the *Forest Act*,<sup>50</sup> a woodlot licence is allocated for a term of 15 years to private landowners or lease holders; up to 600 ha of Crown lands may be included in the case of the interior woodlot licence and up to 400 ha in the case of the coastal licence. The licence holder assumes management responsibility for both the public and the private component of the licence area and is required to submit for approval to a district manager a detailed forest management plan, including notably the proposed volumes of timber to be harvested annually in the licence area. Reforestation, road building and forest protection are the responsibility of the licensee.

In 1994, the government of British Columbia announced a two-fold increase in the scope of the program with the number of woodlot licences increasing from 500 to approximately 1,000.<sup>51</sup> In the past, the demand for the program has been high; however, the heavy regulatory and administrative burden imposed on licence holders, which has increased as a result of the adoption of the *Forest Practices Code Act*,<sup>52</sup> has tended to jeopardize the success of the program and has led some licensees to surrender their licences. The Code has been criticized: a) for imposing on small-scale operations blanket prescriptions designed for large-scale industrial forestry, including those aimed at management for timber production; b) for failing to provide flexibility; and c) for unnecessarily increasing paperwork. In 1991, a Ministry of Forests Woodlot Program Review recommended creating a separate regulatory category for woodlot licences in order to streamline its administration for the benefit of both the Forest Service and licensees. In point of fact, the Ministry appears to have regrettably moved in the opposite direction.<sup>53</sup>

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49 *Timber Management Regulations*, Alta. Reg. 60/73 as am. ss. 37-41 for commercial timber permits (CTP), and ss. 49-66 for local timber permits (LTP).

50 R.S.B.C. 1979, c. 140, ss. 41-44.

51 The current allowable annual cut (AAC) for the program is approximately 500,000 m<sup>3</sup>, less than 1% of the provincial AAC.

52 S.B.C. 1994, c. 41.

53 For a critical assessment of British Columbia's woodlot program, see Cheri Burda, "Square Pegs in Round Holes: Ecoforestry and the Public Woodlot Program" (1997) 12(3) *Int'l J. Ecoforestry* at 259.



A set of recommendations to alleviate the burdensome regulatory controls and provide a better mix of incentives and regulations has been proposed by the Boundary Woodlot Association. The objective is to encourage government to “create and foster a climate in British Columbia that is conducive to the acquisition, management, and retention of forested land”.<sup>54</sup> The proposed incentives include the allocation of environmental wood credits, administrative rewards, environmental product certification and annual performance awards to forestry operators achieving specific levels of excellence in their operations.

The pros and cons of implementing a woodlot licence program in Alberta similar to that in existence in British Columbia should be investigated. The B.C. experience vividly illustrates both the benefits of promoting the development of viable woodlot operations and of devolving to woodlot owners the responsibility for jointly managing public and private lands, and the problems and costs of imposing a rigid regulatory and administrative structure on small-scale operations. Quebec's experience with private or municipal management of public forests under forest management contracts<sup>55</sup> also provides useful information in this respect.

### *5.3.3 Legal Instruments to Promote Woodlot Conservation: Conservation Easements*

The existence in Ontario of tax provisions promoting long-term conservation of private lands has been mentioned earlier. Until 1996 in Alberta, landowners who sought to preserve the environmental value of their lands without donating them to the Crown or registered charities had few legal instruments at their disposal. However, recent legislative amendments now enable landowners to protect ecologically valuable private lands by means of conservation easements, and landowners have already taken advantage of these provisions.<sup>56</sup> Under the *Environmental Protection and Enhancement Act*,<sup>57</sup> any land owner may grant a conservation easement to a “qualified organization” for a) the protection, conservation and enhancement of the environment including biological diversity, b) the protection, conservation and enhancement of natural scenic or aesthetic values or, c) where consistent with either one of the above, recreational, open space, educational or research use. The conservation easement is an interest in land which runs with the land and it may be granted either for a fixed term or in perpetuity. The easement is enforceable by the grantee and the qualified organization, but may be modified or terminated in specific circumstances; noteworthy is the fact that the Minister is entitled to modify or terminate the conservation easement by order “in the public interest”.

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54 Fred Marshall, President, Boundary Woodlot Association, “Comments on the Proposed Forest Practices Code and Its Application to Private Lands” (3 January 1994); “Policy Proposals ) Incentives for Excellence in Forest Practices in B.C.” (7 April 1995).

55 *Forest Act*, R.S.Q., c. F-4.1, ss. 102-106.

56 See Vicki Barnett, “Cochrane Ranchland preserved” *The Calgary Herald* (22 November 1996).

57 S.A. 1992, c. E-13.3, ss. 22.1-22.3.

Landowners who donate interests in land to registered charities or to the federal or provincial Crown benefit from tax savings under the federal *Income Tax Act*.<sup>58</sup> At the time of the grant, the land owner who donates a conservation easement receives a tax receipt equal to the fair market value of the gift and becomes entitled to a tax credit which is then deducted from tax payable. Recent amendments to the Act enable individual landowners who donate a conservation easement to the Crown, a registered charity or a municipality, to allow up to 100% of the value of the tax receipt on which to base a tax credit.<sup>59</sup> In order to qualify for the tax savings, the conservation easement must fit certain criteria as “ecological gift”, as defined in the Act.

## 6. Conclusion

The above discussion focuses on government's role in private woodlot conservation and sustainable management. However, in order to achieve success, the development and implementation of policies, legislation and programs for the benefit of private woodlots must also include a broad range of interested parties. In the area of policy development, both at the national and provincial levels, broad-ranging consultation of representatives of woodlot owners, the forest industry, resource users, local governments and interest groups has now become a normal procedure. The benefits of consulting and collaborating with affected woodlot owners in the drafting of regulatory controls has been noted, and the negative consequences resulting from a failure to do so in British Columbia have also been mentioned. Woodlot owners associations throughout Canada have actively contributed to the development of recommendations to promote a more effective and equitable mix of controls and incentives for sustainable woodlot management. They can also play a major role in the delivery of government programs and, as is the case in eastern Canada, in the development of a stewardship ethic and the promotion of self-regulation amongst woodlot owners.

In view of the current budgetary constraints, it is unrealistic to expect governments to assume full responsibility for program development and implementation. The forest industry sector has the expertise and capability to assist in the development of a strong woodlot program and, as noted, the Alberta Forest Conservation Strategy advocates joint government-industry program development. One forest company is already contributing to the completion of the White Zone Vegetation Inventory, and technical assistance is being offered to woodlot owners by several companies who take an interest in the future of the woodlot sector. Joint initiatives involving various levels of governments, the woodlot sector, the forest industry and a range of conservation organizations will enhance the chances of success of any woodlot program development. The provincial government should assume a leadership role in this joint effort.

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58 R.S.C. 1970, c. I-5, s. 118.1.

59 For a discussion of legislative provisions and tax issues affecting conservation easements, see the series of articles by Arlene Kwasniak in *News Brief* (Edmonton: Environmental Law Centre) vol. 11, nos. 2 and 3 (1996) and vol. 12, no. 1 (1997).

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