



# TIMBER TENURES

in British Columbia

Managing Public Forests in the Public Interest

June 2012

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## Introduction

The British Columbia Ministry of Forests, Lands and Natural Resource Operations is the principal government agency responsible for B.C.'s public forest. The Ministry's objective is to protect, manage and conserve B.C.'s diverse forest resources on an environmental, economically and socially sustainable basis.

### SECTION ONE

#### About B.C.'s Public Forests

British Columbia is home to one of the largest public forests on earth. With a total landbase of 95 million hectares (235 million acres), nearly two-thirds—some 60 million hectares—is forested. Only 5 per cent of the landbase is privately owned—meaning that most of the forests belong to the people of British Columbia through the provincial government.

Public ownership allows the B.C. government to manage the land base in keeping with the environmental, social and economic interests of British Columbians. The government manages the public forests through laws that enable the use of the forest, while ensuring its long-term sustainability.

About 10 per cent of B.C.'s forests are protected areas. Overall decisions about how public land is used and managed are made through strategic land use planning processes. The Forests, Lands and Natural Resource Operations authorizes the use of public lands for activities such as logging and grazing. It also enacts legislation that requires all users of the forest to conserve forest values, including timber, biodiversity, water and soil quality and wildlife habitat.

Government also has a role in determining how and where harvesting takes place, and how much harvesting occurs. B.C.'s approach to forest management ensures that all forest values are considered and that there are opportunities for First Nations and public involvement.

#### What Is Tenure?

Tenure is the mechanism by which the government transfers specific rights to use Crown, or public, forest and resources to others. Private forest companies, communities and individuals gain the right to harvest timber in public forests through tenure agreements with the provincial government.

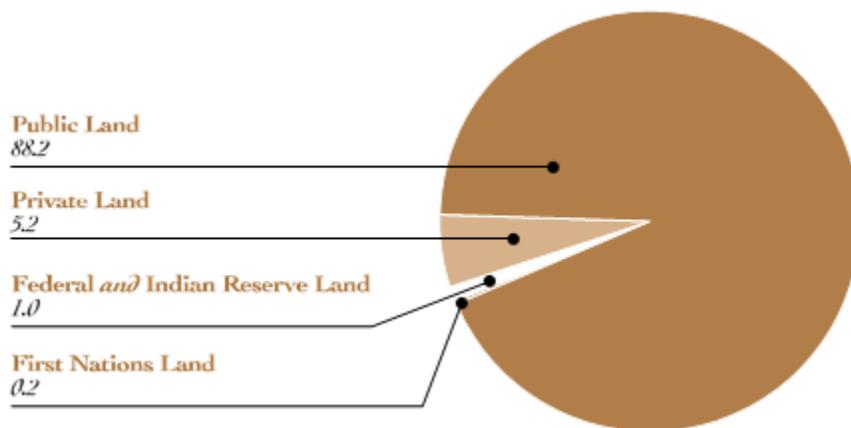
A timber tenure can take the form of an agreement, licence or permit. Each is a legally binding contract that provides the contract holder with specific rights to use public forests over a specific period of time, in exchange

for meeting government objectives, including forest management obligations and the payment of fees including stumpage.

Over a dozen forms of tenure have been developed to reflect forest uses, from timber harvesting and road building, to ranching. This diversity in tenures also reflects the needs and interests of tenure holders, whether they are large or small operators, First Nations, communities or individuals.

Tenures also vary in their duration. Many of the large timber harvesting tenures are replaceable, providing forest companies with a long-term supply of timber. Other forms of tenure, such as free use permits or forestry licenses to cut, are for a one-time, single use.

The phrase “timber tenure system” refers to the collection of legislation, regulations, contractual agreements, permits, and government policies that define and constrain the use of public forest resources, primarily timber



*Above:* Proportion of public and private lands in British Columbia

## Rights and Obligations

The rights, obligations, and responsibilities for each tenure are established in provincial legislation, regulation and policy. Additional requirements may also be included in each individual agreement, licence or permit.

The key statute governing timber tenures is the Forest Act. This Act sets out the forms of agreement under which Crown timber can be issued to other interests. It describes each form of tenure through aspects like duration, the rights and obligations of the holder, and how the tenure will be administered.

The Range Act establishes the rights to use or improve public range for grazing or cutting hay through a variety of licences and permits.

Tenure holders must also comply with Acts and regulations that govern sustainable timber harvesting activities, including logging, road building and reforestation such as the Forest and Range Practices Act, introduced in 2002.

Other relevant provincial statutes that are important to timber tenure holders include the Land Act, Heritage Conservation Act, and the Wildlife Act. Other levels of government may also have requirements that B.C. tenure holders must comply with, for example, the federal Fisheries Act and Species at Risk Act.

## **Key Aspects of Timber Tenures**

### **Volume-based vs. Area-Based**

Volume-based tenures grant licensees the right to harvest a certain amount of timber within a specified Timber Supply Area (TSA), allowing several licensees to operate in the same management unit. Area-Based tenures grant the licensee virtually exclusive rights to harvest timber within a specified area.

### **Replaceable vs. non replaceable**

Replaceable tenures generally have terms ranging from 20 to 25 years, providing licensees with the long-term security to invest in business planning, forest management, and manufacturing. Every 5 to 10 years, the licence may be updated or replaced to reflect current government policy. Non-replaceable tenures are granted for a fixed term to achieve specific goals.

### **Major forms of tenure**

The Forest Act defines some licences as “major” forms. These include; forest, tree farm, and timber licences, as well as some timber sale licences and forestry licences to cut. Typically, the major forms convey more rights, and more obligations for planning, reforestation and road building.

## SECTION TWO

# The History of the B.C. Timber Tenure System

British Columbia's vast and diverse forests are at the heart of B.C.'s history and its current way of life. For thousands of years, aboriginal peoples have relied on the forest environment that has provided shelter, clothing, food, tools, economic opportunities, medicine and spiritual sustenance. Today, B.C.'s forests are renowned for their ecological values, their scenic beauty and their importance to the economy.

British Columbia's timber tenure system has been developed over the past 140 years, progressing through distinct eras during which governments directed the use of public forest in accordance with their values. While timber tenures were created in the 19th century solely to fuel economic expansion, they have since evolved to reflect new values, such as sustainable forest management.

### **Pioneer Era: 1800s–1911**

From its founding as a Crown colony until the early 1900s, government's focus was on attracting labour and capital to develop virtually untouched timber resources. From the early 1800s until 1865, Crown grants were the only means of allocating timber to potential users. Early grants were fee simple, with no restrictions on land or timber use. Much of the private land that exists today was granted during this period, including most of the private lands of southeastern Vancouver Island. These were granted in 1884 to railway entrepreneurs.

The 1865 Land Ordinance established the policy of granting rights to harvest timber without alienating the land from the Crown—the basis of today's tenure system that preserves public ownership. In 1884, the Timber Act introduced the first stumpage fees, the price licensees pay for harvesting public timber.

### **Early Regulation and the Founding of an Industry: 1912–1946**

In 1912, the first Forest Act was introduced, which established a system of “forest reserves,” areas officially designated for timber harvesting. The new Forest Act also created a Forest Service to administer the reserves, protect them from forest fires, promote their commercial use and collect government revenues.

The Act also established a new form of tenure called the timber sale licence, which granted a one-time right to harvest a specific stand.

A period of rapid industrial expansion followed, together with continuous technological change and competition over timber resources.

By 1943, the forest industry had expanded to the limits of its timber supply under existing tenures, and sought greater access to Crown timber. In response, the government appointed the Sloan Royal Commission to analyze the tenure system.

At the same time, there was a growing awareness among foresters for the need to manage timber supply for the long term.

### **Sustained Yield and Industrial Growth: 1947–1978**

The Sloan Commission's recommendations led to major changes in the tenure system, including amendments to the Forest Act in 1947. Key amongst the changes was the establishment of forest management units that would be managed for a long-term sustained yield of timber, through the use of a regulated harvest rate.



*Above:* Archival photograph of Gilley Lumber Company in Burnaby  
Courtesy of BC Archives

The Public Sustained Yield Unit was the predecessor of today's Timber Supply Area. The second type of management unit was the Forest Management Licence, a new form of tenure and the forerunner to today's Tree Farm Licence.

Public Sustained Yield Units were managed by the Forest Service with harvests shared among several operators, chiefly through the use of a new form of tenure, the Timber Sale Harvesting Licences. These licences were the first long-term, volume-based timber tenures.

The other new form of tenure, the Forest Management Licence, also gave companies long-term harvest rights, but with a critical difference – these were Area-Based, not volume-based. This provided a single licensee with exclusive rights and responsibilities over a specific area. These licences were only issued on the condition that companies who held the tenure invested in processing facilities and took on forest management obligations, such as reforestation.

In the late 1960s, pulpwood harvesting area agreements were introduced to provide a secure fibre supply to support large investments in pulp mills.

## **Integrated Forest Management: 1978–1988**

In 1976, British Columbia's fourth Royal Commission of Inquiry delivered its report. Many of these recommendations were implemented in a new Forest Act and a Ministry of Forests Act in 1978.

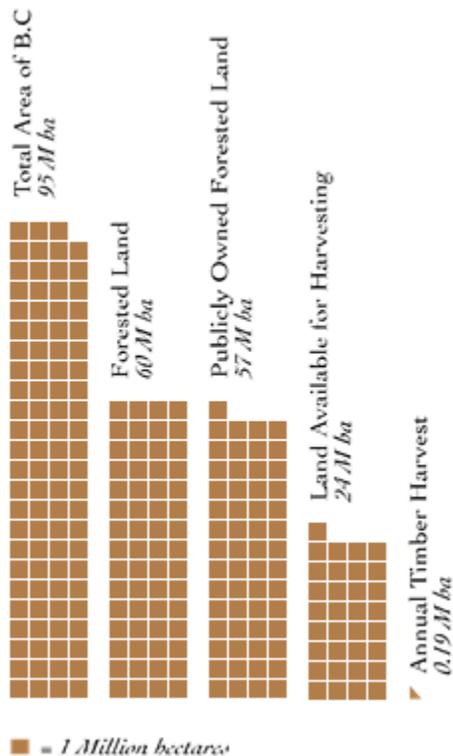
The changes led to more streamlined administration and new forms of tenure aimed at diversifying the forest industry. The more than 88 Public Sustained Yield Units were consolidated and redefined into 33 Timber Supply Areas. As well, a new process for determining the allowable annual cut was implemented for these new TSAs.

Existing tenure was overhauled; old licences were replaced or converted, and new forms of licence were introduced. Notable among these new forms were timber sale licences and non-replaceable forest licences developed expressly for small business loggers and owners of small sawmills and independent manufacturing facilities. Awards of tenure were made both on economic and social criteria, such as job creation.

Forest management obligations continued to grow. Several major forms of tenure required licence holders to carry out basic silviculture activities after harvesting, primarily reforestation. Licence holders were required to plant ecologically suitable and commercially valuable trees and to continue to manage the young forest until the trees were well established.

The era also saw an increased level of public involvement in forestry issues. The public was provided with opportunities to review and participate in AAC determinations, and in tenure management and working plans.

## Provincial “Netdown” of landbase to timber Harvesting Landbase



## Sustainable Management: 1988–present

The concept of sustainable development was first given prominence by the 1987 United Nations Brundtland Commission. It emphasized the interdependence of environmental integrity and economic development in meeting the needs of current society and future generations.

This idea significantly influenced B.C.’s management of its lands. Starting in the early 1990s, B.C. launched stakeholder-based land use planning to determine how public lands should be used, including which areas should be protected, and which should be available for resource development and other uses. The province also committed to negotiate Aboriginal land claims and established a policy to consult with First Nations on land-use decisions that could infringe on Aboriginal rights and title.

In 1992, a new process for determining the AAC was established with the Timber Supply Review, which required assessments to be conducted every five years. In 1995, the Forest Practices Code of British Columbia Act established new environmental standards for commercial forestry activities.

During this period, governments invested millions of dollars in reforestation and land base rehabilitation.

In 2003, the government introduced the Forestry Revitalization Plan, a comprehensive set of reforms aimed at diversifying the forest sector and increasing the economic competitiveness of B.C.’s forest industry.

The key strategy was timber reallocation, whereby the province’s largest licensees were required to return about 20 per cent of their replaceable logging rights to the Crown. About half of this volume

was earmarked to be sold at competitive auction, intended to increase the portion of timber available on open markets, and to provide a benchmark to determine the stumpage rates applied to all Crown timber. The other half was to be redistributed to First Nations and small tenure holders, including community forests and woodlots.

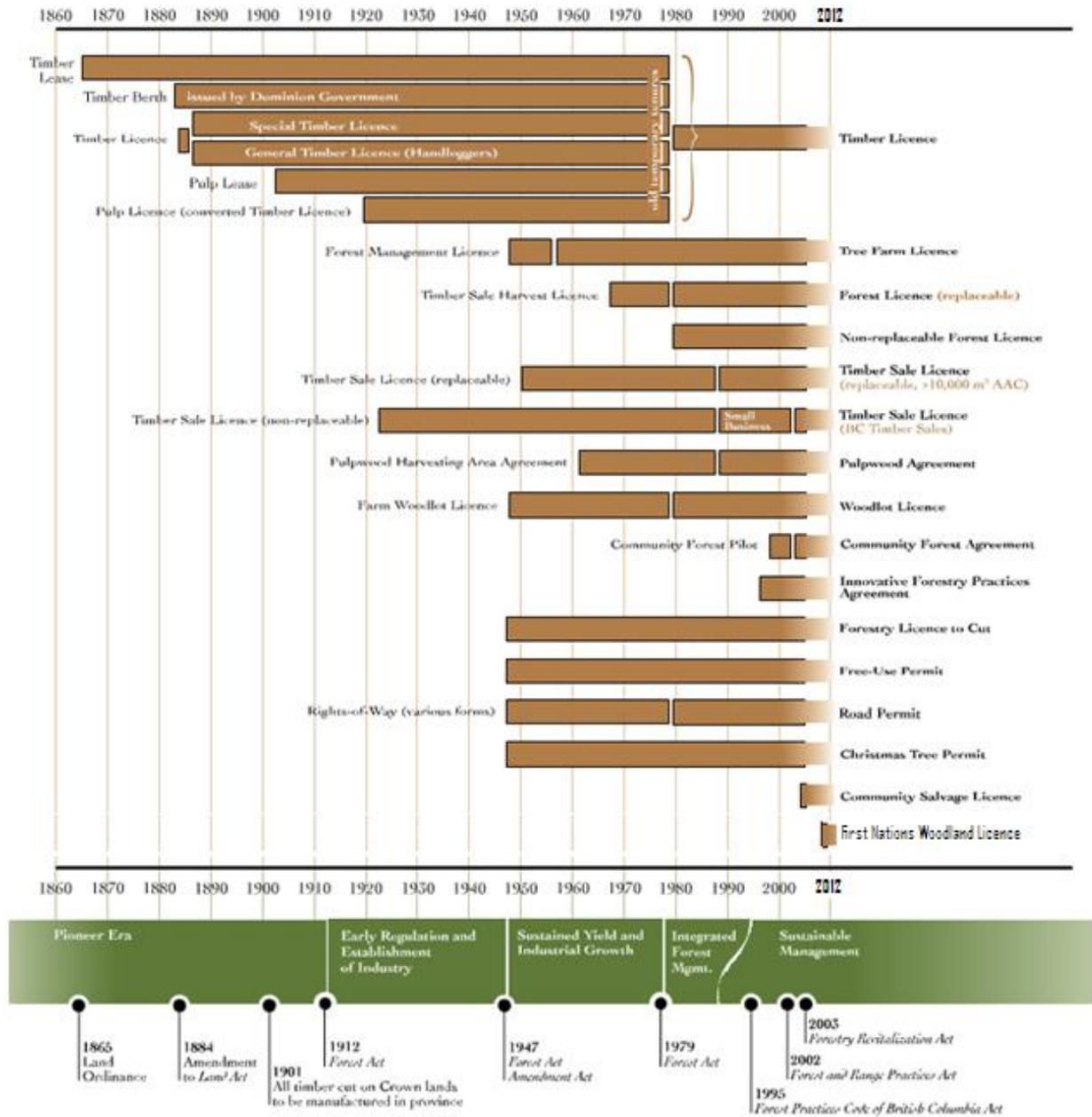
Government also deregulated various aspects of the tenure system. Rules that required licensees to process timber at specific mills were eliminated. Cut control rules were adjusted: minimum cut controls that required logging during poor markets were eliminated, while maximum cut controls were maintained. Rules around subdivision and transfer were simplified to allow licensees greater flexibility in business decisions.

In 2002, the Forest and Range Practices Act was introduced to govern forestry operations. Its results-based framework was intended to reduce government and industry costs through a streamlined approval process, and to encourage innovative forest practices on the part of forest managers and licensees.



*Above:* Harvesting designed to mimic natural patterns of disturbance on Broughton Island

## Evolution of Timber Tenures in British Columbia



## SECTION THREE

# Forms of Tenure Agreement

TABLE : Key Attributes of British Columbia's Timber Tenures

Disposition of Timber by Government

Tenures	Area or volume	Resource rights	Duration	Major responsibilities
Timber Licence	Area	Grants exclusive right to harvest timber in a specified area.	No longer being issued. Existing licences have variable terms and may be extended.	Operational planning, road building, reforestation, stumpage payments.
Tree Farm Licence	Area	Grants virtually exclusive right to harvest timber and manage forests in a specified area. May include private land.	Term is 25 years, replaceable every 5-10 years.	Strategic and operational planning, inventories, reforestation, stumpage payments, obligation to use logging contractors for a portion of the volume harvested each year (exceptions may apply).
Forest Licence	Volume	Grants the right to harvest an AAC in specified TSA or TFL area. May be competitively or directly awarded.	Up to 20 years. May be replaceable every 5-10 years, or non-replaceable.	Operational planning, road building, reforestation, stumpage payments. May be required to use logging contractors for all or part of the volume harvested.
Pulpwood Agreement	Volume	Grants a conditional right to harvest "pulp quality timber," where other sources are insufficient or uneconomic.	Up to 25 years. No longer being issued	Operational planning, obligation to maintain a pulp timber processing facility, obligation to purchase wood residue and pulp logs produced in the pulpwood area, reforestation, stumpage payments.

Timber Sale Licence	Volume and Area	Grant the right to harvest a volume of timber in a specified area or purchase logs. Issued only by BC Timber Sales via competitive auction.	Up to 4 years, non-replaceable. Existing replaceable TSLs must be converted at the end of their term.	Operational planning in limited cases, stumpage payments. Obligated to operate in accordance with certification bodies
Woodlot Licence	Area	Grants exclusive right to harvest an AAC and manage forests in a specified area. May include private land. May be competitively or directly awarded.	Up to 20 years. Most are replaceable every 10 years	Strategic and operational planning, inventories, reforestation, stumpage payments.
Community Forest Agreement	Area	Grants exclusive right to a First Nation, municipality, regional district or society to harvest an AAC in a specific area. May include private or reserve land. May include right to harvest, manage, and charge fees for botanical forest products and other products. May be competitively or directly awarded.	Not less than 25 and not more than 99-years; replaceable every 10 years.	Strategic and operational planning, inventories, reforestation, stumpage payments.
Community Salvage Licence	Volume and Area	Provides communities the right to remove timber that is dead, damaged, diseased, windthrown, or left over from logging, from a specified area.	Up to 5 years.	Operational planning, reforestation in some cases, stumpage payments.
Licence to Cut (Occupant)	Area	Grants the right to harvest and/or remove Crown timber. The Occupant form is issued only to a land owner/ occupier.	Up to 5 years.	Reforestation may be required, stumpage payments.
Licence to Cut (Master)	Area	Authorizes harvesting under cutting permits in all or part of a forest district.	Up to 5 years.	Reforestation may be required, stumpage payments.

Forestry Licence to Cut	Volume	Grants the right to harvest and/or remove timber from specified areas. Types are designed to meet different purposes, such as small scale salvage, small commercial purposes (firewood, fence posts), etc. May be competitively or directly awarded.	Up to 5 years.	Operational planning (if major licence or if issued under a Pulpwood Agreement), stumpage payments, reforestation where clearcuts larger than 1 hectare.
Free use Permit ( non commercial)	Volume	Issues right to harvest up to 50 m3 of timber for non-commercial purposes (e.g., firewood); or for a traditional and cultural activity.	Up to 5 years – depending on the use.	Terms/conditions as indicated in permit.
Christmas Tree Permit	Area	Authorizes an individual to grow and/or harvest Christmas trees (commercial).	Up to 10 years; replaceable every 5 years.	Terms/conditions as indicated in permit, stumpage payments.
Road Permit	Area	Authorizes the construction of a road or maintenance of an existing road on Crown land; may include the right to harvest timber, and manage/ use adjacent sand, gravel pits, rock quarries.	Until released by district manager or Timber Sales manager.	Terms/conditions as indicated in permit, stumpage payments.

<p>First Nations Woodland Licence</p>	<p>Area</p>	<p>May only be awarded to a First Nation or it's representative if an agreement exists between the First Nation and government respecting treaty-related measures, interim measures or economic measures (direct award). Grants the exclusive rights to harvest timber in a specified area. May include private or reserve land. May give to its holder the right to harvest, manage and charge fees for botanical forest products and other prescribed products</p>	<p>Not less than 25 and not more than 99 years; replaceable every 10 years.</p>	<p>Strategic and operational planning, inventories, reforestation, stumpage payments.</p>
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*Left:* An Interior log dump site

## **SECTION FOUR**

# **Tenure Administration**

## **Tenure Application and Award**

Government may issue timber tenures on a competitive basis, or in certain cases, on a direct award basis.

### **Competitive Bid**

From time to time, new tenure opportunities may become available. For example, new tenures have been created in order to manage the increased level of harvesting required due to the mountain pine beetle infestation.

Forms of tenure issued on a competitive basis include Timber Sale Licences issued by BC Timber Sales. Eligibility for these licences is restricted, and applicants must include an offer to pay to the government stumpage and other fees on all merchantable timber, plus a bonus offer or bonus bid. The tenure is awarded to the highest bidder.

Other forms of tenure that are awarded competitively include Forest Licences and Woodlot Licences. These tenure opportunities are advertised by government, which invites applications from interested parties. The tenure is awarded to the applicant with the highest qualifying bid or proposal.

### **Direct Award**

In some cases, a timber tenure may be awarded without advertising or inviting applications. Direct awards are issued to First Nations for interim measures purposes. They are also issued in specific instances, for example, to facilitate oil and gas exploration and for small scale salvage.

Tenure forms that may be directly awarded include a Forest Licence, Community Forest Licence, Community Salvage Licence, Woodlot Licence, First Nations Woodland Licence or a Forestry Licence to Cut.

## **Tenure Transfer, Consolidation or subdivision**

Existing licensees may initiate the transfer, subdivision or consolidation of some forms of tenure. With respect to transfers, the Ministry of Forests, Lands and Natural Resource Operations must be notified in advance. In the case of transfers of certain larger licences, the Minister is able to review the proposal to assess its impact on competition in standing timber, log or chip markets. If it is determined that these markets would be unduly restricted, the transfer may not be allowed to proceed.

In a consolidation, one or more licences held by one party are joined in a single licence. Subdivision involves the division of a single licence into one or more smaller ones.

Government must consolidate or subdivide a licence upon request unless it is determined that forest management would be compromised.

### **Conversion**

Over time, the government may introduce new forms of tenure and retire older forms of tenure. For example, Timber Licences were implemented in 1978 under the Forest Act to replace an array of existing temporary tenures.

In such cases, government may invite the holders of older tenure forms to apply for new forms of tenure when their agreement expires. This process in effect “converts” the form of tenure, although the new form of tenure may carry different rights and responsibilities than the previous form.

The replaceable Timber Sale Licence is one form of tenure that has undergone significant change over

the years. As of March 2005, existing licences were converted or added to other existing forms of tenure. Existing Timber Sale Licences that were issued under the former Small Business Enterprise Program/ Small Business Forest Enterprise Program were always non-replaceable and expire at the end of their term.

Today, non-replaceable Timber Sale Licences are issued only by BC Timber Sales.

## **BC Timber Sales**

BC Timber Sales is a division of the Ministry of Forests, Lands and Natural Resource Operations that develops timber sale licenses for competitive auction.

In turn, these auctions provide a reference point for costs and pricing of all timber harvested from public land in British Columbia. That is, the price paid for timber through a Timber Sale Licence is used to measure the market value of the timber. This value is then used to calculate the stumpage fees paid on public timber harvested under other forms of tenure.

## **Forest Practices**

The Forest and Range Practices Act (FRPA) and its regulations govern activities including planning, road building, logging, reforestation and grazing. Its predecessor was the Forest Practices Code of B.C. Act.

Under FRPA, government can set objectives for sustaining forest values—biodiversity, cultural heritage, forage, fish, recreation, resource features, soils, timber, visual quality, water and wildlife. FRPA also enables government to set new objectives for localized values including visual quality, lake and stream sides, and recreation values. Ongoing monitoring and enforcement is carried out to ensure objectives are met.

Before conducting any operations, all major timber licensees and BC Timber Sales must complete a Forest Stewardship Plan. Woodlot holders must prepare a Woodlot Licence Plan. These plans must outline how the licensees will address the provincial objectives.

Before submitting a plan to government for approval, licensees must make it available for public review and comment. As well, licensees must make reasonable efforts to discuss the plan with First Nations groups potentially affected. Government must approve the plan if its content meets legal requirements, its results and/or strategies are consistent with government legal objectives, it is consistent with the terms of the tenure, and the decision maker is satisfied regarding the adequacy of public and First Nations consultation.

Once a plan is approved, the licensee must prepare site plans that describe how it will meet government objectives in specific sites where logging, road building or silvicultural activities are proposed. These plans must be available to the public upon request. In most cases, licensees are required to obtain Cutting Permits and Road Permits before work begins.

A number of licensees operate under separate regulations that allow development of alternative forest management approaches, such as those designed to increase timber supply.

## **First Nations Consultation and Accommodation**

Aboriginal people in British Columbia, with some exceptions, have not entered into treaties or otherwise agreed to cede title to the Crown for lands that comprise their asserted traditional territories.

Existing Aboriginal and treaty rights were recognized in Canada's Constitution in 1982. The courts have recognized asserted Aboriginal rights and title (Aboriginal interests) in legal proceedings.

Consultation and, where appropriate, accommodation of Aboriginal interests is now part of the common law as established by Calder, Delgamuukw, Haida, Taku and other legal decisions.

British Columbia has developed initiatives to increase the involvement of First Nations in the forest industry. For example, interim measures like Forest and Range Agreements provide forest tenure and revenue sharing opportunities.

## **Regulating the Harvest**

The province carefully regulates the amount of timber that may be harvested each year. The maximum amount of timber that may be harvested per year from a specified area of land is called the Allowable Annual Cut (AAC). A separate AAC is assigned to every management unit: Tree Farm Licences, Timber Supply Areas, Community Forest Agreements and Woodlot Licences.

The province's Chief Forester makes the AAC determinations for Tree Farm Licences and Timber Supply Areas. In making each determination, the Chief Forester considers technical reports, analyses and public input, as well as government's social and economic objectives. For example, the determination considers potential timber productivity, other forest resources, short- and long-term implications of alternate rates of harvest, impacts from fire and pests, and economic and social objectives.

The rationale for each of these determinations is explained in a statement available to the public. Determinations must be made every five years, although they may be postponed if significant change is considered unlikely. They may also be expedited if changes have occurred that substantially alter the timber supply outlook.

Once the AAC for a Timber Supply Area is determined, the volume is distributed or "apportioned" by the Ministry of Forests, Lands and Natural Resource Operations to the various forms of tenure that share rights to harvest Crown timber within the area.

For Community Forest Agreements and Woodlot Licences, the AAC is set at the district or regional level.

## **Payment to the Crown**

Forest sector activities contribute substantially to provincial revenues, which are used to provide public services like health care and education.

Tenure-related revenues include stumpage, annual rents, waste assessments. Other fees may be payable under specific licences or permits.

Stumpage is the price that must be paid to the provincial government for timber harvested from Crown land. The price is pre-determined and set by government using a calculation that reflects considerations such as market value, the species and quality of the wood and the cost of harvesting. Stumpage is usually adjusted quarterly to reflect changes in the markets for forest products.

In British Columbia, all timber (including private timber) that is harvested must be scaled and marked. Scaling involves the measuring of cut timber to determine its volume, quality or grade. Scalers are licensed and authorized to do this work by the Ministry of Forests, Lands and Natural Resource Operations under the Forest Act and the Scaling Regulation. The scale provides the data used to assess and invoice stumpage and account for harvested volumes.

## Glossary

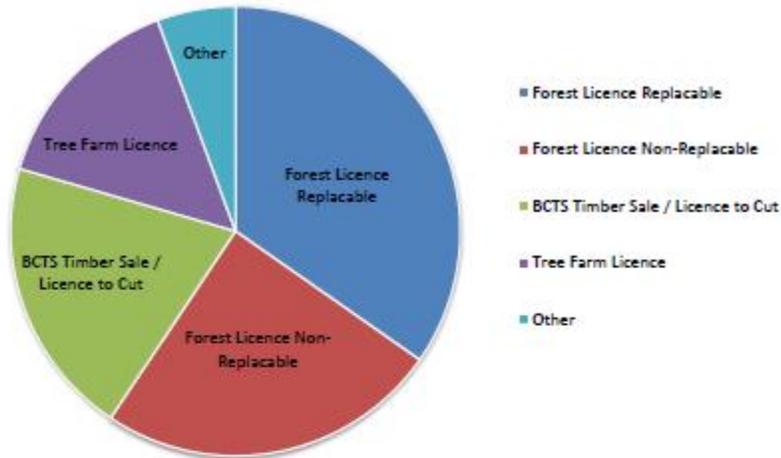
**Timber Supply:** The rate at which timber is made available for harvesting. It is the potential total availability of timber over time, shaped by social, economic, and environmental considerations.

**Allowable Annual Cut:** The rate of timber harvesting determined for an area under the *Forest Act*. The rate may be specified as a volume of timber, in cubic metres, that can be harvested each year.

**Stumpage:** The fee (per cubic metre)

that individuals and firms are required to pay to the government when they harvest Crown timber in British Columbia.

### Apportionment of Provincial Annual Allowable Cut



Above: Loading a logging truck in British Columbia's Interior