

**MINISTRY OF FORESTS AND RANGE
BRITISH COLUMBIA FOREST SERVICE
BRIEFING NOTE**

File: 19700-25/TFL 23, 19040-20/1194, 10185-20/Pope & Talbot

I PREPARED FOR:

The Honourable Pat Bell, Minister – **FOR DECISION**
(as prepared by RTEB, **CLIFF 111872, XREF 115756**)

II ISSUE:

**Removal of the Private Land Owned by Pope & Talbot Ltd. from
Tree Farm Licence 23 Held by International Forest Products Ltd.**

III SUMMARY:

In June 2007, Pope & Talbot Ltd. (P&T), holders of Tree Farm Licence (TFL) 23, requested the removal of certain private lands from the TFL. Subsequently, P&T moved into receivership and TFL 23 was bought by Interfor.

Under Section 39.1 of the *Forest Act* (Act), it is the minister's discretion to remove private lands from the TFL when requested by the licensee. In recent years, the minister has approved similar requests for the deletion of private land from TFLs after due consideration of the potential social and economic benefits and the absence of significant adverse forest management implications.

The ministry has conducted extensive First Nation (FN) and public consultation regarding the removal of these private lands and has concluded that the forest management concerns associated with this deletion can be largely mitigated. If removed from a TFL, the private land will no longer be subject to the TFL agreement, the *Forest Act* or *Forest and Range Practices Act*. However, the private lands will remain subject to the *Drinking Water Protection Act*, *Heritage Conservation Act*, and the *Fisheries Act* (Federal). In addition, history indicates that the majority of private lands removed from TFLs have remained in managed forest land tax status, and therefore, subject to the *Private Forest Land Management Act*.

To meet concerns that have been raised through the consultation process, the Receiver for P&T has agreed to:

- retain in the TFL certain private lands that are important for Caribou movement. These lands were transferred to Interfor with the transfer of the TFL; and,
- provide road access through the establishment of statutory rights of way through 22 land parcels, inside and outside of the TFL. This includes assured access across the Oatscott property to a FN reserve. These rights of way are all now completed and registered against titles with the exception of 12 which are signed by MFR and pending registration. Those already registered are all over non-TFL private lands which P&T or the receiver has already sold.

In addition, the Receiver for P&T has agreed to the following, contingent on the private land being removed from the TFL:

- ensure continued access to valuable gravel sources on private land through provisions in the purchase and sales agreements;
- ensure continued access to, and use of, log dumps through provisions in the purchase and sales agreements;

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- an option for the Crown to purchase for \$1 the important Eagle Bay recreation area (9 hectares in area); (estimated land value \$425,000)
- provide \$4,150,000, to pay to identified local Arrow/Boundary suppliers and logging contractors whose primary business emanated from woodlands operations of P&T. This includes a number of small operators on the coast who were involved in moving wood and PRT who supplied seedlings to the TFL's. Local suppliers to P&T's non-woodlands operations and non-local woodland suppliers are not captured by the receiver's proposal outlined above. As a result, these suppliers will not receive any payment should the land deletions proceed;
- provide \$211,000 to pay back surety bonds provided to P&T by contractors within the Arrow/Boundary; and
- donate \$50,000 to the Nakusp Community Forest.

It should also be noted that, contingent on the successful issuance of a foreshore lease required for the Needles log dump, the Receiver has agreed to sell the Oatscott property to government for \$1.00 (original asking price was \$495,000).

As P&T is bankrupt, the funds from the sales of the private lands would be used to pay secured then unsecured creditors. Contractors, suppliers and workers are generally unsecured creditors. Other than the amount identified above, it is unclear how much funding, if any, will be available for unsecured creditors.

The benefit associated with the deletion of the private lands include the social and economic benefits outlined in the concessions agreed to by the Receiver for P&T as well as potential benefits from subsequent development of some of the lands.

IV BACKGROUND:

TFL 23 is located primarily in the Arrow Boundary Forest District with a northern portion located in the Columbia Forest District.

In their letter dated June 5, 2007, P&T as the then holder of TFL 23 requested the minister's approval to remove the "majority" of the private land from TFL 23. This included all private land within the TFL, with the exception of District Lot (DL) 5069 (approximately 71 hectares). The total area of private land involved in the original request was approximately 4542 hectares.

In October 2007, P&T submitted an information package (copy attached) which provides general information regarding resource management with respect to watersheds; wildlife habitat; old-growth management areas (OGMA); visual management areas; recreation areas; tenure management; allowable annual cut (AAC) impacts; and FNs whose asserted traditional territories overlap the TFL 23 area. This information package was made available for review to FNs upon request. Please refer to the information package for the list and location of private lands proposed for removal from TFL 23, and for additional background information regarding topics discussed in this briefing note.

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On December 17, 2007, P&T indicated that DL 770 (approximately 130 hectares) was withdrawn from the list of properties to be removed from TFL 23 to protect mountain caribou habitat. Also, P&T agreed to donate approximately 9 hectares of private land from within DL 860 to the Crown subject to the timely approval of Schedule "A" land removals from TFL 23. (See Recreation heading below.) Consequently, the original area of the request was reduced to approximately 4,341 hectares. Hereafter in this briefing note references to "private land" mean all private land associated with TFL 23, except DLs 5069 and 770.

P&T's private lands on TFL 23 represent one of the largest remaining private land holdings within the TFLs of the province. (Refer to Appendix 1 for a summary of private lands remaining in TFLs.) In recent years, government has agreed to amend the boundaries of several TFLs to remove all private lands. Each of these decisions gave consideration to the different and unique circumstances pertaining to each request.

Values and circumstances considered ranged from the social, economic and environmental benefits associated with the lands being managed as forest land within the TFL to the social and economic benefits that may accrue as a result of deleting the lands from the TFLs. These later benefits could include the social and economic benefits related to some of the lands being used for a higher and better use such as commercial recreation development, rural housing, recreation property development, or other such development. History has shown that the vast majority of lands removed from TFLs in recent years (97 % +) remains as managed forest land with the benefits that accrue from that ongoing use.

P&T is bankrupt and is liquidating all of its assets under Court proceedings. P&T has sold its principal wood assets in the Southern Interior Forest Region (including TFLs 23 and 8, FL A18969 and FLC A81250, and sawmills at Castlegar and Grand Forks) to Interfor, and its principal wood assets in the Northern Interior Forest Region (including FL A77955 and the sawmill at Fort St. James) to Conifex Inc. The Receiver for P&T has also sold its pulp assets (including the Harmac pulp mill and the Mackenzie pulp mill). P&T has either sold or is in the process of selling its private land holdings. The sale of TFL 23 to Interfor did not include the private land other than DL 770, which was retained in the TFL for caribou habitat.

If the minister does not agree to amend the boundaries of the TFL to remove the private land, P&T will remain the owner of the private land which will then remain associated with the TFL. Before Interfor purchased the TFL there was covenants placed on the properties that state that P&T will not sell the properties without removing them from the TFL or without the minister's consent. The covenants also state that both Interfor and P&T will not conduct forestry operations without the consent of the other party.

In October 2007, P&T put a total of 35 parcels (64 lots) of land for sale, the majority of which are "Schedule A" lands within TFL 23. However, the sale of these lands is subject to them being removed from the TFL. P&T inadvertently transferred one of the parcels subject to TFL 23 (DL 7045) to a third party prior to receiving the minister's consent. P&T confirmed that the parcel was transferred in error as part of a transaction including other parcels not included in the TFL. P&T promptly took steps to have the parcel transferred back. This transaction constituted a breach of Section 54.7 of the *Forest Act*.

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The minister reviewed this transaction and decided to not cancel the TFL as provided for under Section 54.7.

Ministry staff conducted extensive consultation in an effort to clearly document the forest management implications and other potential consequences of the deletion request. The consultations included:

- Ministry of Forests and Range
- Ministry of Environment
- Ministry of Transportation and Infrastructure
- Ministry of Tourism, Culture and the Arts
- Ministry of Agriculture and Lands
- Ministry of Aboriginal Relations and Reconciliation
- Affected First Nations
- Local government
- General Public

Additional information regarding these consultations is contained in the attached table.

V DISCUSSION:

In assessing the public interest, there are several factors to consider in this decision, including the following:

Legislation Relevant to the Boundary or Area Change

Under Section 39.1 of the *Forest Act*, the minister may change the boundary or area of a TFL with the consent of its holder. The discretion of the minister under Section 39.1 includes changing the boundary or area of the TFL with the consent of its holder by:

- (a) adding private land of the holder of the tree farm licence to the area of the licence, or
- (b) removing private land from the area of the licence.

There is no guidance in the Act, regulations or policy regarding the considerations to be made associated with deletions of private land from TFLs. In recent years, government has approved similar requests for the deletion of private land from TFLs in recognition of the social and economic benefits resulting from viable business activity, and where there are no significant adverse forest management implications.

Forest Management

If removed from a TFL, the private land will no longer be subject to the TFL agreement, the *Forest Act* or *Forest and Range Practices Act*. However, other provincial and federal legislation, such as *Drinking Water Protection Act*, *Heritage Conservation Act*, and the *Fisheries Act* (Federal) would continue to apply.

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Once removed from the TFL, the private lands may be covered by the *Private Managed Forest Land Act* (PMFLA) if the owner applies to the Private Managed Forest Land Council. The incentive for making this application is a reduced property tax rate for the property. While the PMFLA does establish objectives for key environmental values, it is less rigorous as compared to the regime created by the *Forest and Range Practices Act*, the *Forest Act* and the TFL document. Consequently, removing the private lands from TFL 23 would mean that these lands would be less regulated in terms of forest management. This does not necessarily mean that the lands would be managed to a lower standard, but if they were, government would not be able to take action under FRPA. The Private Managed Forest Land Council estimates that in excess of 97 percent of the private lands deleted from TFLs in recent years are still covered by the *Private Managed Forest Land Act*. See the attached table that summarizes resource management requirements on private land inside a TFL, under the PMFLA, outside the PMFLA and tools available to local governments.

Effects on the AAC

The following table describes the estimated effect on the THLB* and AAC of TFL 23 should the private land be removed:

Total AAC of TFL 23 (m³)	Estimation of AAC Attributable to Private Land (m³)	Total TFL 23 THLB (ha)	Estimation of Private Land THLB (ha)	Estimated Reduction to THLB and the AAC of the TFL (%)
680 000	13 500	164 107	3 304	2.0

*THLB is Timber Harvesting Land Base

If the private land is removed from TFL 23, the deputy chief forester may apply an administrative adjustment to the AAC in the range presented in the table above. The reduction would likely be effective on the date the land was removed and the AAC for the year would be prorated accordingly.

The deputy chief forester will consider all management factors, including reduced land base resulting from the removal of the private land in the next timber supply analysis for TFL 23, which is due on or before September 1, 2009.

Community Watersheds and Water Points of Diversion

According to the P&T information package, there are approximately 5,282 hectares of community watershed within the TFL 23 area, of which 759 hectares are within P&T's private land. There is a single Water Point of Diversion within TFL 23 that is located within P&T private land. The licensee is Ministry of Transportation and Infrastructure and this Water Point of Diversion is for public facilities purposes.

The *Drinking Water Protection Act* will continue to apply if the private land is removed from the TFL; consequently, no issues are anticipated.

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Wildlife Habitat and Ungulate Winter Ranges

Some of the private lands proposed for removal from TFL 23 are either ungulate winter ranges (UWR) for moose and mule deer, or important wildlife habitat and/or movement corridors for caribou. The attached information package includes maps that show the locations of UWR and caribou priority areas within TFL 23 including their private lands.

DL 770 was owned by P&T inside TFL 23 and contains some important caribou movement corridors. After this was raised with P&T, they agreed to delete DL 770, East 1/2 and West 1/2 from the list of properties proposed for removal from TFL 23. Subsequently, DL 770 was included in the property sold to Interfor with the TFL.

Moose and mule deer UWR within TFL 23 cover approximately 3,674 hectares. Some of the P&T private lands overlap the UWR. The private parcels are generally small in relation to the size of the UWR resource polygons, but the relative values are high. However, the Government Action Regulation order and forest cover constraints were calculated with exclusion of the private lands. Consequently, it is anticipated that there will be a minimal impact on moose and mule deer UWRs resulting from the removal of private land from TFL 23.

Old-Growth Management Areas

OGMAs have been established throughout TFL 23. Approximately 219 hectares of P&T's private land were designated as OGMA, e.g. DL 811, Shelter Bay lot. The area of Shelter Bay, approximately 2,239 hectares in size, is entirely within ICHmw3 subzone, and within Intermediate Emphasis Biodiversity Option subzone as per the Biodiversity Guidebook. The required contribution for this subzone is 13 percent of the area. As the OGMA within this private lot represents only 9.78 percent of the total area of this lot, the Crown land portion within the OGMA is greater than the 13 percent target. As a result, the OGMAs will be well represented despite the reduction in total area under OGMA.

Access

P&T and MFR have negotiated access through a total of 22 P&T land parcels owned by P&T. Five of these parcels are inside TFL 23; the other 18 are outside the TFL. MFR staff and P&T have agreed to a public use access across DL 2719, which provides access to the extinguished Indian Reserve Arrow Lake No. 8. There is also a right for MFR to purchase the right of way area within this land parcel for \$1 legal registration of statutory rights of way (SRW) will be submitted for registration for both public and forestry use for DL 2719 only. For the remaining parcels, a SRW over 10 parcels has already been registered and a further 12 are to be registered for industrial use only. The estimated value of the total negotiated access is between \$418,000 and \$528,000.

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Additionally, access to the Shelter Bay dump site has been assured through a long-term lease/purchase arrangement negotiated between Interfor and the prospective purchaser of the private land. This access is critical to Interfor's operations and flow of pulpwood to Mercer in Castlegar.

First Nations

TFL 23 overlaps with the asserted traditional territories of 11 FNs and 2 tribal councils. The 60-day consultation process was initiated in June 2007, and was concluded on December 15, 2007. However, the process was extended pending receipt of the P&T information package and to deal with several FNs concerns and their requests for meetings and additional information. The Southern Interior Forest Region's FN section had provided responses to questions and concerns throughout the consultation process. Consultation has been completed and the regional executive director, Southern Interior Forest Region is satisfied that the government's legal obligation regarding FN consultation, relevant to this proposed decision, has been met.

The communication table contained within the consultation summary outlines the consultation process with FNs. The information regarding aboriginal interests and concerns, along with conclusions and recommendations for the minister to consider are provided in the final sections of the enclosed FN consultation summary. Also enclosed is an addendum to the consultation summary that includes additional comments deemed appropriate to this decision in consideration of recent court decisions.

In consideration of the FNs aboriginal interests raised during the consultation process, secure access was negotiated through the Oatscott property to an isolated FN reserve, Arrow Lake No. 8. Additionally, contingent on the issuance of a foreshore lease for the Needles log dump, the Receiver has agreed to sell the Oatscott property to the Crown for \$1.00 (the original asking price was (\$495,000)).

Recreation

Recreation areas exist throughout TFL 23; however, only one recreational area is located within P&T's private land. This undesignated recreation site known as Eagle Bay campsite is within DL 860, and is a well-known and popular site. The site has been jointly managed by the MFR, P&T, and most recently, the Ministry of Tourism, Culture and the Arts (MTCA) as well as P&T predecessors over the past 2-3 decades.

Following discussion involving MTCA, MFR and P&T regarding the future of the recreation site, on December 11, 2007, P&T informed MFR of their intention to donate to the Crown a portion (approximately 9 hectares) of DL 860 on which the Eagle Bay campsite is located. This was followed by a request that a covenant be placed on the property restricting it to recreational use only; MTCA is prepared to accept this covenant. The transfer of the 9 hectares would occur as an option for the Crown to purchase the property for a nominal fee, conditional on the approval to remove the private land from TFL 23. The value of the parcel, with the covenant in place, is estimated to be \$425,000. The Crown (MTCA) would be responsible for the cost of surveying the parcel (estimated at \$30,000) and associated costs of subdividing and transferring the property.

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Research Installations

There is one permanent sample plot that is located within P&T's private land (DL 860). Removal of private land from TFL 23 may eliminate this sample plot from a sample plan for the province; however, this is not viewed as a major concern, since there are other similar sample plots in the area.

Log Exports

All Crown timber and timber from private land Crown granted after 1906 is subject to log processing requirements under the *Forest Act*. While associated with a TFL, all private land is subject to those requirements despite when it was Crown granted. There are also federal restrictions on log exports, which apply to land granted pre-1906 and, while they employ essentially the same surplus tests as the province, the process has less steps and does not apply provincial export fees, which in the Interior are \$1.00/m³.

Approximately 87 percent or 3795 hectares of the total 4341 hectares under application for removal from the TFL were Crown granted pre-1906. If the lands are deleted, logs from the private lands would be subject to the federal rather than provincial surplus testing.

Local Government General Public and Stakeholder Reaction

A number of local community representatives attended a conference call on November 1, 2007, with representatives from P&T to receive an update on the proposed removal of private land from TFL 23. Also, community representatives have been contacted by the regional executive director, Southern Interior Forest Region and provided with P&T's October 2007 information package that summarizes forest management issues relevant to this proposal. The information package was sent to the Regional District of Central Kootenay and the mayors of Nakusp, Revelstoke and Castlegar on December 17, 2007.

Additionally, local government representatives attended the public meetings held in Revelstoke, Nakusp and Castlegar in May 2008. These meetings were well attended by representatives of local business, forestry workers, contractors, unions, ENGOs and the general public. The basic feedback from these meetings was that the deletion should only proceed if there is a bonafide benefit to the local public in terms of payment of moneys owed to local workers, contractors and suppliers, continued access to valued sites, protection of heritage values and local economic benefits. Additionally, there was a call for same or better forest management, protection of important wildlife values and a reduced carbon footprint. There was some recognition of higher and better use than raising forest crops for some of the lands. However, the feedback clearly indicated that providing payment to secured creditors did not rank high. The full summary of perspectives is attached.

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Other Considerations:

To meet the concerns raised during the consultation process, the Receiver for P&T has committed to the following, should the minister agree to remove the private land from the TFL:

- provide \$4,150,000, to pay to identified local Arrow/Boundary suppliers and logging contractors whose primary business emanated from woodlands operations of P&T. Local suppliers to P&T's non-woodlands operations and non-local woodland suppliers are not captured by the receiver's proposal outlined above. As a result, these suppliers will not receive any payment should the land deletions proceed;
- provide \$211,000 to pay back surety bonds provided to P&T by contractors within the Arrow/Boundary; and
- donate \$50,000 to the Nakusp Community Forest.

In addition to the considerations documented above, the minister must also consider the *Ministry of Forests and Range Act* and any other factors considered relevant to this decision.

The value of the lands being requested for removal is assessed at approximately \$5.2 million if it remains within the TFL. Based on asking price and advice from real estate professionals, if removed from the TFL, the lands could reach a value of \$26-\$30 million assuming all the land was rezoned by local government and all the land was marketed for highest and best use.

As P&T is bankrupt, the funds from the sales of the private lands would be used to pay secured then unsecured creditors. Contractors, suppliers and workers are generally unsecured creditors. Other than the amount identified above, it is unclear how much funding, if any, would otherwise be available for unsecured creditors.

If the minister does not consent to the deletion of the private lands, there is a strong likelihood the Receiver will appeal to the Courts to order the deletion under the powers of CCAA.

The benefit associated with the deletion of the private lands include the social and economic benefits outlined in the concessions agreed to by the Receiver for P&T as well as potential benefits from subsequent development of some of the lands.

VI OPTIONS:

Option 1. Agree to amend the boundaries of TFL 23 to remove the private land from TFL 23.

Implications:

- May foster public opposition from local communities, environmental and FN groups.
- Would satisfy P&T and Interfor's request and allow the Receiver for P&T to sell the private land with most of the proceeds likely going to secured creditors.
- Benefits to specified unsecured creditors: \$4,150,000 will be paid to Arrow/Boundary suppliers and logging contractors whose primary business emanated from P&T.

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- \$211,000 will be paid to contractors that provided surety bonds to P&T.
- \$50,000 will be donated to the Nakusp Community Forest.
- Access through the private lands would be secured only where rights of way were negotiated.
- Continued access to valuable gravel sources on private land will be assured through provisions in the purchase and sales agreements.
- Continued access to and use of log dumps will be assured through provisions in the purchase and sales agreements.
- Eagle Bay recreation area would be transferred to the Crown.
- Forest management on the land will be less regulated as it will no longer be subject to the requirements of the *Forest Act*, FRPA and the TFL document.
- There will be 219 hectares less of OGMAs on the land base as a whole, and there may be a reduction in the percentage of remaining OGMAs on Crown land.
- May eliminate one permanent sample plot from a sample plan for the province.
- Ungulate Winter Range may be minimally affected.
- Forest management on most of the private forest land would likely be controlled by the *Private Managed Forest Land Act*.

Option 2. Do not agree to amend the boundaries of TFL 23 to remove the private land from TFL 23.

Implications:

- If the minister does not consent to the deletion of the private lands, there is a strong likelihood the Receiver will appeal to the Courts to order the deletion under the powers of CCAA.
- Would severely limit the opportunity for the Receiver for P&T to sell the private land, which would mean less money available for creditors.
- All roads through the private land would remain available for industrial use.
- Some rights of way negotiated on P&T private land that are outside of the TFL private land may not be secured.
- The private land remains managed as part of TFL 23 and subject to the FRPA, the *Forest Act* and the licence document.
- There would be no impacts on moose and mule deer UWRs, OGMAs or research plots.
- Donation of Eagle Bay recreation site to the Crown would not occur.
- Social and economic benefits due to higher and better use would be foregone.
- \$4,361,000 would not be available to offset the losses incurred by the contractors associated with the TFL.

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- \$50,000 would not be donated to the Nakusp Community Forest.

VII RECOMMENDATION:

If the minister agrees to amend the boundaries of TFL 23 to remove the private land from TFL 23 (Option 1), please sign the attached instrument (two copies), and two letters to that effect (one to the Receiver and one to Interfor) and return the briefing note package to Resource Tenures and Engineering Branch who will forward the documents. If the private land is deleted from the TFL, the deputy chief forester will be requested to proceed with his subsequent decision regarding the AAC reduction to TFL 23.

If the minister chooses to not approve the deletions (Option 2), please sign the letter to that effect and return the entire briefing package to Resource Tenures and Engineering Branch for distribution.

VII COMMUNICATIONS PLAN ATTACHED:

Yes No

Original Approved by Pat Bell Oct. 9, 2008

APPROVED / NOT APPROVED Date
The Honourable Pat Bell
Minister of Forests and Range

Jim Langridge
Director
Resource Tenures and Engineering Branch
387-8300
October 8, 2008

Enclosure(s): Instrument Number 140 (2 originals)
Letters (3)
FN Consultation Summary and addendum
P&T Information Package
Summary of Public Meetings
Regulation of Private Forest Land Table
Additional Consultation Summary Table
Communication Plan

APPENDIX 1 – PRIVATE LAND WITHIN TFLS

TFL#	Licensee Name	Private Land (ha)
1	Coast Tshimshian Resources Limited Partnership	529
3	Springer Creek Forest Products Ltd.	0
5	West Fraser Mills Ltd.	331
6	Western Forest Products Ltd.	0
8	Pope and Talbot Ltd.	0
10	International Forest Products Ltd.	55
14	Tembec Industries Inc.	138
18	Canadian Forest Products Ltd.	0
19	Western Forest Products Ltd.	0
23	Pope & Talbot Ltd.	4613
25	Western Forest Products Ltd.	0
26	District of Mission	1216
30	Canadian Forest Products	737
33	Federated Cooperatives Ltd.	0
35	Weyerhaeuser Co. Ltd.	57
37	Western Forest Products Ltd.	4725
38	Northwest Squamish Forestry Limited Partnership	0
39	Western Forest Products Ltd.	0
41	West Fraser Mills Ltd.	0
42	Tanizul Timber Ltd.	1519
43	Scott Paper Ltd.	806
44	Western Forest Products Ltd.	0
45	International Forest Products Ltd.	720
46	Teal Cedar	0
47	TFL Forest Ltd.	905
48	Canadian Forest Products Ltd.	0
49	Tolko Industries Ltd.	807
52	West Fraser Mills Ltd.	0
53	Dunkley Lumber Ltd.	0
54	International Forest Products Ltd.	0
55	Louisiana – Pacific Canada Ltd.	0
56	Revelstoke Community Forest Corp.	0
57	Isaak Forest Resources	0
	Total private land currently in TFLs	17158
	Total private land remaining in TFLs if the private land is deleted from TFLs 23, excluding DL 5069 and 770.	12817