

The Offer of a Community Forest for MIEDS  
Information, Evaluation, Options for Decision and Next  
Steps

**EXECUTIVE SUMMARY**

Prepared for MIEDS Directors

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## **Executive Summary**

This Executive Summary provides a relatively short summary of a complex situation for the MIEDS directors. More detail on each of the points raised in this Summary is provided in the Full Report.

### **The Offer in Front of MIEDS**

The commitment to offer MIEDS a Community Forest is precisely defined. It is not likely to change in any significant way under the current expectation and management direction in MOFLNRO and BCTS. The offer is outlined in 5 separate documents sent to MIEDS between 2010 and 2013. These are described in Section 2.1 in the Full Report.

The offer has the 3 basic and essential parts.

- The tenure – It is an area-based tenure, called a Community Forest Agreement (CFA) that will be awarded in a direct award to MIEDS. Under the Forest Act legislation, a CFA is the only form of forestry tenure that can be directly awarded to MIEDS. An area-based tenure means an exclusive right to manage and use a defined geographical area of land. A volume-based tenure only conveys a right to harvest a defined volume of timber.
- The anticipated area and volume – The area identified for the CFA will be a specific, mapped geographical area, or areas, large enough to support an annual harvest of 80,000 m<sup>3</sup> based on current forest inventory and management practices. The specific locations are currently being identified.
- Partnership with BC Timber Sales (BCTS) – There is a requirement that 100% of the timber volume harvested from this tenure must be managed in partnership with BCTS to support market pricing related to the Softwood Lumber Agreement (SLA) between the United States and Canada.

These are the three basic elements of the offer. They are unlikely to change, but many details remain to be discussed and worked out.

### **The Legislation**

The award of a CFA is governed by sections of the Forest Act and the Community Tenures Regulation. These are identified and described in Section 2.2 in the full report.

## **Delegated Decision Maker**

The authority to offer and award a CFA has been delegated to the Regional Executive Director (ED) of Ministry of Forests, Lands and Natural Resource Operations (MoFLNRO) in Nanaimo, Sharon Hadway. She is familiar with Haida Gwaii through her position on the Haida Gwaii Management Council. With this delegation she can make most, if not all, of the decisions related to the CFA. However, since the terms of the offer have been so clearly communicated, the Regional ED has said she has little latitude to deviate from those conditions. Any substantial changes from the existing offer will require going back to the Minister.

## **The Tenure**

The tenure will be a Community Forest Agreement. This is a geographically defined, spatially explicit, mapped area or group of areas. It is not a volume-based tenure in any way. A CFA will be a separate and distinct forest management unit on Haida Gwaii and gives MIEDS exclusive rights to manage that land area and to carry out timber harvesting and other activities (recreational infrastructure or restoration projects, for example) within that area.

It has an initial term of 25 years and is the only kind of tenure that can be directly awarded to MIEDS. MIEDS is required to prepare a management plan for the area, and based on the forest inventory and the management objectives set out in the plan, MIEDS will propose an AAC for approval.

## **The Area, Location and Volume**

The CFA is expected to be approximately 30,000 to 35,000 ha in size<sup>1</sup>, or roughly equivalent to the entire area of the Tlell River watershed. This area will be large enough to support a harvest volume of 80,000 m<sup>3</sup>. This volume is equivalent to an annual harvest of approximately 200 ha per year or about 10 cutblocks per year.<sup>2</sup> It is approximately 8.5% of the AAC on Haida Gwaii.

The locations for the CFA are being worked on now by MoFLNRO staff and will be available soon. The areas will likely be similar to the areas shown on an earlier map. The CFA will include some or all of several discrete blocks – a large area along the highway

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<sup>1</sup> This is a rough estimate, based on information about the size of an area required to provide the target 80,000 m<sup>3</sup>.

<sup>2</sup> These estimates are based on an average Haida Gwaii harvest of 400 m<sup>3</sup> per hectare, and an average cutblock size of 20 ha.

from Masset to Port Clements, a smaller area near Tlell, an area above Queen Charlotte and in the Honna, Tarundl and Slatechuck areas, an area near Skidegate Lake, an area south of Cumshewa Inlet/Moresby Camp and possibly more remote areas in Rennell Sound or Sewell Inlet.

The areas will certainly include a diversity of valuable cedar, hemlock and spruce, and areas of second-growth forest as well as some important recreational, cultural, watershed and viewscape values. It is a relatively large CFA - the 2<sup>nd</sup> largest on the coast and in terms of volume expected to be cut and the 3<sup>rd</sup> largest in area.

### **The Partnership with BCTS**

The third requirement - the partnership with BCTS - is the most complicated part of the offer and the least clear at this point. The legal basis is new and thus, there are no precedents. There are also no good examples of such an arrangement for comparison.

The government intention for “partnership” is being set out in documents being developed by BCTS and MoFLNRO with input from the BC Community Forest Association (BCCFA). The stated intention is to be flexible and to set out the details of “partnership” in Memoranda of Understanding that will be negotiated for each tenure. The current objective is “to keep the legislation, regulation, and policies to a minimum to allow for flexibility in these agreements, so that many details are left up to negotiation”. “No two MoUs are exactly the same, as all circumstances are different.”<sup>3</sup>

The partnership with MIEDS will almost certainly involve 100% of the volume for the full term of the tenure. There is very little latitude to even discuss this. A sunset clause to bring the partnership to an end at a set time is also very unlikely. It may be possible to introduce a provision to review the partnership at the time of renewal of the tenure in ten years.

The draft government documents are clear that the intention is to provide flexibility in negotiating the details in an MoU specific to MIEDS. Until there is a process to really sit down and discuss and negotiate the MoU with BCTS, it will be very difficult to know exactly what partnership really means.

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<sup>3</sup> Quotes from a draft document prepared by MoFLNRO and BCTS “Reduced Volume Condition (RVC) Licence Guidance”

## **The Potential Benefits of Partnership**

The following potential benefits are discussed in more detail in Section 3.4 in the Full Report:

- There is a significant amount of potential revenue.
- The CFA is a relatively low risk, low investment, and low annual cost opportunity for the MIEDS communities and there are minimal needs for employees, staff or consultants retained by MIEDS in a partnership with BCTS.
- MIEDS has an opportunity to determine both the annual revenues and the costs by participating in the management decisions.
- BCTS would collect the revenues from timber sales and pay the development costs. This avoids risks to MIEDS associated with non-payment or delayed payment on sales and large contracts.
- MIEDS has some control over where harvesting occurs and under what type of management guidelines because MIEDS sets the actual level of harvest, and other things in a Management Plan, to be approved by the Regional ED.
- MIEDS has access to the expertise, experience, and management systems of BCTS in managing all development work related to valuing and selling timber, silviculture, administration etc.
- There is an opportunity for certification of MIEDS choice, or to join BCTS existing SFI certification.
- MIEDS, or local contractors can provide some management services on contract back to BCTS if desired.

## **The Potential Limitations of Partnership**

There are also some potential limitations associated with the partnership relative to the opportunities in other Community Forests in BC that do not have a partnership requirement. All of these limitations relate to the opportunities to support long-term local manufacturing and business development or local work opportunities. However, it appears that most of these could be discussed and negotiated with BCTS and some of them might be mitigated or resolved at least to some degree in a Memorandum of Understanding (MoU). They are also discussed in more detail in the Full Report.

- Services will be procured by BCTS following normal provincial procurement policy related to competition and lowest qualified bidders. This may limit opportunities for locally-based contractors or to support long-term local business development or local work opportunities.
- Sales are sold to the highest bidder in a competitive process. This may limit opportunities to seek to direct supply to local manufacturers, value added, or very small local craft/artisan etc or to support or stimulate their development.
- The size of sales might be determined by efficiency or external parameters, such as barging requirements – not the capacity or needs of local manufacturers.
- MIEDS might not be allowed to bid on its own wood. Therefore, there would not be an opportunity to log and own the wood for resale on a log yard or other local sale.
- MIEDS could not enter long-term wood supply agreements with local mills.

Two points may be important in addressing the limitations.

First, the CFA is a discrete management unit, entirely on Haida Gwaii. Thus contracts for work might be let for this Haida Gwaii CFA unit not the larger unit managed by BCTS. This could remove some of the disadvantages placed on locally resident businesses and individuals and create some advantages.

Second, BCTS would not carry out the work itself. Thus, under the scenario above, it could potentially enter an agreement through a competitive bid process with another local entity, Taan Forest Products or others, for example, to provide some of the services currently provided to BCTS on the island by off-island contractors. This might address a significant interest and concern of the CHN.

### **The Potential Revenues and Costs**

Potential revenues and costs are very difficult to project and depend on many factors. A detailed financial assessment is not possible.

In a CFA, the revenue share with BCTS will be set out in Regulation and is expected to be a 50/50 share of the net revenue earned. The annual revenues will be highly dependent on the market, the species and grades of timber put up for sale, the location of the sales, the volume actually sold, the limitations on bidders, any tariffs imposed by the USA and

other factors. For example, the MIEDS revenues from the 3 timber sales offered under the interim FLTC and NRFL arrangements averaged approximately \$4/m<sup>3</sup> over the three sales but the range was huge. The third sale made almost 12 times more per m<sup>3</sup> sold than the first sale.

As a rough guide, BCTS estimates that the average revenue to MIEDS from timber sales under the 50/50 formula in a partnership agreement could be in the range of \$200,000 to \$500,000 annually, with lower revenue in some years and higher in others. MIEDS will not be forced to sell sales that lose money, and will have some control and input into how much of what species and grades it chooses to sell in a given year. Much more detailed analysis would be required to provide a better estimate, but it would still be very dependent on many unknown factors and the decisions made by MIEDS as the CFA manager.

There may also be an opportunity to sell carbon credits for not harvesting some areas within the CFA. The Cheakamus Community Forest in the Whistler area already does this and the revenue from carbon exceeds the direct revenue from logging.

The costs of managing the CFA will depend on how much effort MIEDS chooses to put into management of the CFA but could be minimal. Many CFA operate with no staff and no assets, and MIEDS could be similar. In a partnership BCTS and the consultants it retained would look after a substantial amount of the work. All of this operating cost would be covered by BCTS and subtracted from the gross revenue from a timber sale to determine the 50/50 share of revenue.

There are some limited annual costs and MIEDS would be wise to have at least a part-time consulting forester and a part-time book-keeper administrator. But, as with revenue, MIEDS would be able to make decisions that would control most costs and in many ways, annual costs would depend on how much involvement and direction MIEDS wanted to put into management. The estimated costs would be likely be less than \$50,000 per year.

There are one-time start-up costs associated with developing the governance model, establishing the legal entity, and preparing the business plan and the management plan and other documents to meet the requirements for an application.

Objectives are also very important. Some community forests are managed to provide significant revenue to the community shareholders and do so; others are managed to provide a wide range of social and local employment benefits and seek to only break even. Much depends on the community objectives and the decisions made.

## **Aspirations of the MIEDS communities**

Despite differences expressed, all communities share the following general aspirations for the Community Forest:

- To make use of an opportunity for significant revenue that can be used for community infrastructure or other purposes.
- To minimize risks and investment needs related to obtaining this revenue.
- To gain more local community control over forest operations.
- To demonstrate a strong commitment to local values to use resources sustainably and with cultural sensitivity.
- To have an opportunity to improve recreational opportunities.
- To maximize local employment in forest operations.
- To make a regular flow of wood available for small local mills and value-added, possibly through a log sort or direct sales program.
- To provide for building capacity and training opportunities for local residents and businesses.
- To bring forest management into a larger economic development strategy.
- To provide an opportunity to enter partnerships with the Haida Nation.
- To do local management for local benefit.

## **Aspirations of the Council of the Haida Nation**

The Council of the Haida Nation is interested in the concept of a community forest for MIEDS and is ready to discuss and offer support in principle for a community forest. The CHN's position is that nothing has changed for them since 2015. Their support expressed in a draft Memorandum of Understanding between the CHN and MIEDS in September 2015 still stands.

The CHN has expressed a desire to participate in initiatives on Haida Gwaii that bring forest management under more local control and offer benefits to all communities and the CFA is part of this bigger picture.

## **A Window of Opportunity**

The 2010 offer is very specific and initiated a process potentially leading to a CFA for MIEDS. However in legal terms, the process has not yet even formally begun. Since late 2015, communications between the various parties have been stalled.

A window of opportunity is now open. All parties consulted during this process expressed an interest and willingness to come together soon to work on moving forward with a CFA. The key issues that led to this stalled process have been, or are now being, addressed.

The legislation that allowed the three interim sales to be delivered for MIEDS can no longer be used and there is no further legal avenues to allow any more interim sales for MIEDS. The interim stream of revenue has ended. This creates an incentive for MIEDS as well.

### **Four Options for MIEDS**

The 2010 offer has three specific elements and is still the offer on the table. While there appears to be little or no opportunity to change these three fundamental parts, there is an opportunity to negotiate the details and to address potential limitations. There are four options open to MIEDS over the coming months. More detail on these options is in Section 6.0 of the Full Report

**Option 1. Abandon the effort to secure a Community Forest.** MIEDS could choose this option if the Board feels it is too complicated, too difficult or too risky or not satisfactory in terms of community aspirations and not likely to change.

**Option 2. Continue with the current process to fully explore opportunities to negotiate and complete an application for a CFA within the terms offered.** This Option allows MIEDS to see the final proposed area for a CFA, to negotiate extensively with BCTS, to seek CHN support and to better understand the various costs and the financial and non-financial benefits involved.

**Option 3. Reject the current offer.** MIEDS could seek some fundamental changes to the offer from the Minister through a political process.

**Option 4. Delay.** MIEDS could delay a response to see if the upcoming election, potential changes to the Softwood Lumber agreement, or other factors might allow MIEDS to change the offer.

Option 2 is recommended. It provides an approach that can seek to achieve the MIEDS community aspirations and that keeps the opportunity to achieve the benefits alive and available, while MIEDS negotiates to see if it is possible to address the potential limitations and concerns.

The relative costs, benefits and opportunities will not be clear until there is significantly more information and understanding. Proceeding with Option 2 does not foreclose moving to the other Options - 1, 3 or 4 - after there is significantly more information and clarity than at present, if the offer turns out not to be acceptable to MIEDS.

## **The Next Steps in the Process**

If MIEDS selects Option 2, the next step in the process is a formal invitation from the Regional ED to MIEDS to apply for a CFA. Then, once there is an invitation to apply, MIEDS will need to prepare a formal detailed application. This will take time.

In the meantime, five steps or tasks are necessary. They are all intertwined as part of the process of moving forward. They involve different parties – government (BCTS and MoFLNRO), MIEDS, CHN and possibly others. MIEDS can be active and influential in moving all of them forward.

## **The Five Immediate Tasks**

1. MoFLNRO needs to identify an area that is large enough to support a projected annual volume of 80,000 m<sup>3</sup> and acceptable to the Regional ED. This work is underway and MIEDS could seek to participate in this process.
2. MoFLNRO needs to discuss and formally consult with the CHN prior to being in a position to offer MIEDS a CFA. MIEDS should re-start discussions with the CHN and could encourage MoFLNRO to start a dialogue with the CHN.
3. MIEDS needs to develop a strategic vision for a CFA with a well-defined, realistic set of priorities and objectives in order to enter a negotiation with BCTS.
4. MIEDS will need to agree on a governance structure for an entity that will apply for, receive and ultimately manage a CFA.
5. MIEDS will need to engage with BCTS to explore and negotiate the arrangements that can be agreed in a Memorandum of Understanding. This negotiation could be very detailed and complex involving significant engagement by MIEDS. It is important to also keep the CHN informed.