

The Offer of a Community Forest for MIEDS

Information, Evaluation, Options for Decision and Next
Steps

FULL REPORT

A report prepared for MIEDS Directors

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1.0 Introduction

This report presents Directors of the Misty Islands Economic Development Society (MIEDS) with information related to the offer of a Community Forest dating back to 2010.

As requested by MIEDS, there is a short Executive Summary intended to provide an overview for MIEDS directors. The longer Full Report provides considerable additional information to guide future work on the CFA.

Both reports includes information about:

- The specific terms of the offer and the relevant legislation;
- An analysis of the potential benefits and limitations of the offer and the required “partnership” with BC Timber Sales;
- Projections about the potential revenues and costs;
- A description of the aspirations and perspectives of MIEDS communities, government and CHN;
- The current status of the offer;
- Four potential options for MIEDS in relation to the offer, with one recommended option;
- A description of five next steps if the recommended option is selected; and,
- Additional information related to non-timber revenue, governance structure, the Softwood Lumber Agreement, other alternatives that were not pursued, and sources of expert assistance for MIEDS

The information provided in the reports is based on consultation with, and documents provided by:

- All five MIEDS directors;
- MIEDS staff;
- Elected leaders in Masset, Port Clements and Queen Charlotte;
- Representatives of MoFLNRO, Haida Gwaii district office;
- Representatives of MoFLNRO, Nanaimo regional office;
- A representatives of BCTS, Haida Gwaii office;
- Representatives of BCTS, Chinook Business Unit Office in Chilliwack;
- Representatives of the Council of the Haida Nation;
- A representative of Taan Forest Products;
- Representatives of the BC Community Forest Association;
- Representatives of the Community Forests in Port Alberni, Whistler (Cheakamus), Pemberton, Port McNeill (North Island), and Lake Cowichan; and,
- Professional forestry consultants with experience in community forests.

The offer of a Community Forest to MIEDS is a very complicated situation involving a lot of complex forestry legislation, policies, terminology, and politics. There were a variety of mis-understandings among the MIEDS directors and other important community leaders at the outset. There are still many unknowns. This report is an attempt to provide clarity about the details of the offer, the benefits and limitations, and the current status.

The next steps for MIEDS are not linear, and many things depend on each other. There are options. It is clear that the offer from the government involves a large forest area of valuable resources (timber and non-timber) and is a very significant opportunity for the MIEDS communities and Haida Gwaii. It warrants serious attention and discussion. Completing the process will require a considerable amount of learning and work on the part of MIEDS directors, some financial resources and some difficult decisions. Some sustained energy and enthusiasm to champion the acquisition of a community forest is also required.

2.0 History and Background

2.1 The Commitment to Offer a Community Forest to MIEDS

Discussions of a community forest for Haida Gwaii go back to the 1990's¹. The current offer began in 2010.²

There are four key letters that outline the current government commitment to offer a Community Forest to the 5 non-Haida “communities” represented by MIEDS. These are as follows:

- July 27, 2010. Letter from Pat Bell, former Minister of Forests and Range to Travis Glasman, former ED, MIEDS.
- February 27, 2012. Letter from Jim Snetsinger, former ADM/Chief Forester to Heather Hornoi, former EDO, MIEDS.
- November 21, 2013. Letter from Sharon Hadway, Regional Executive Director, Ministry of Forests, Lands and Natural Resource Operations, to Evan Putterill,

¹ A consultant, Robin Clark prepared a feasibility study for the Islands Community Stability Initiative (ICSI) in 1998.

² There are two briefing notes – from Heather Adel, August 7, 2014 and Cameron Bell, January 16, 2015 that provide some detailed notes on the chronology of events from 2010 to 2015.

former Chair, MIEDS.

- June 10, 2014. Letter from Tom Jensen, former ADM Minister of Forests, Lands and Natural Resource Operations to Heather Adel, former EDO, MIEDS.

In addition, there is one other document that is important. It is a memorandum from the current Minister of Forests, Lands and Natural Resource Operations that formally establishes the allocation of the 80,000 m³ from the Haida Gwaii TSA 25 for “community forest agreements (BCTS partnership)”.

- Memorandum from Honorable Steve Thompson, Minister of Forests, Lands and Natural Resource Operations to Tom Jensen, ADM and Doug Stewart, Director, re Volume Allocation for the Queen Charlotte Timber Supply Area, undated, September 2013.

Collectively, these documents identify the 3 basic and essential parts of this commitment to offer a Community Forest:

- 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, based on current forest inventory and management practices, be a specific, mapped geographical area, or areas, large enough to support an annual harvest of 80,000 m³. The area is expected to be approximately 30,000 – 35,000 ha.³ The specific locations are currently being identified.
- Partnership with BC Timber Sales (BCTS) – There is a requirement that all 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. More information about each of these

³ This is a rough estimate, based on information about the size of an area required to provide the target 80,000 m³.

three key parts is provided in Section 3.0.

2.1 The Legislation under Which a Community Forest Can Be Awarded

The key parts of the Forest Act and the Community Tenures Regulation that regulate this process and the next steps are as follows:

- Forest Act, Section 43.51 describes the circumstances for a “direct award of community forest agreements”. Subsection (b) of 43.51 establishes “prescribed circumstances” for award of a CFA.
- Forest Act, Section 43(3) provides details about a CFA. It establishes the term (not less than 25 years); a defined area of land; the exclusive right to the holder to harvest timber and potentially other forest products; payments to government; the submission of management plans for approval; audits and public consultation.
- Forest Act, Section 43.3(g.3) establishes the basis for a “partnership agreement”. This amendment to the Act came into effect in July 2016 following passage of Bill 12. It says “the Minister may require that the amount of timber available to the holder of a community forest agreement be reduced by a specified amount of timber for a specified period of time for the purpose of entering into one or more BCTS licences”. As per the offer from Minister Bell and allocation by Minister Thompson, this provision will be applied to 100% of the volume in a MIEDS CFA.
- Community Tenures Regulation, Section 6(1) requires an invitation to apply and establishes the basis for an invitation to apply.
- Community Tenures Regulation Section 3(c) describes all the information that must be in an application for a CFA that follows the invitation. Subsections (i) through (vi) require a business plan and market analysis, a description of the legal entity and the governance model, financial projections, a management plan with a proposed annual allowable cut, indications of public support and other things that have to be in an application.

2.2 Delegation of Authority by the Minister

The Act and Regulations refer to “the Minister”. However, the Minister has delegated the authority to offer and award a CFA to the Regional Executive Director (ED) of Ministry of Forests, Lands and Natural Resource Operations (MoFLNRO), in this case to Sharon Hadway in Nanaimo. She is familiar with Haida Gwaii through her position on the Haida Gwaii Management Council and 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.

3.0 Additional Details Related to the Offer

3.1 The Tenure

- A CFA is an area-based tenure – a geographically defined, spatially explicit, mapped area. It is akin to a Tree Farm Licence, a Wood Lot Licence or a First Nations Woodland Licence. It is not a volume-based tenure in any way.⁴
- It gives MIEDS, the tenure holder, 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. 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, to set an AAC for approval.
- It is a long-term tenure – for an initial term of 25 years, and replaceable with another long-term tenure. It is replaced, meaning it is renewed every 10 years.
- The CFA will be removed from TSA 25, so it will be managed as a separate management unit, again akin to a TFL.
- This area-based tenure is the only tenure that can be direct awarded to MIEDS.

3.2 The Area, Location, and Volume

- The CFA is expected to be approximately 30,000 to 35,000 ha in size, with approximately 20,000 ha of timber harvesting land base (THLB)⁵ based on a

⁴ The differences between area-based and volume-based tenures are significant. In an area-based tenure, a tenure holder manages a defined area of land over a long-term. In a volume-based tenure, a tenure holder receives a volume of timber to cut, in short-term or long-term licences but has much less ability to manage land or make management decisions beyond how to harvest the assigned volume. MIEDS received 3 volume-based tenures in the past 5 years. MIEDS has now been offered an area-based tenure.

⁵ THLB lands are those that are expected to be available to be harvested at some time. The THLB area required is determined by the established volume of 80,000 m³. In addition there will be lands within the CFA that are excluded from harvest for various reasons. These are called Non-THLB. The gross area of the CFA will include both THLB and non-THLB.

target volume of 80,000 m³.⁶

- The area of 30,000 to 35,000 ha is roughly equivalent to the entire area of the Tlell River watershed. A volume of 80,000 m³ per year will support an annual harvest of approximately 200 ha per year or about 10 cutblocks per year.⁷ It is approximately 8.5% of the AAC on Haida Gwaii.
- The locations for the CFA are being worked on now by MoFLNRO staff.
- The likely areas will include some or all of several discrete blocks – a large area along the highway 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. MIEDS could request consultation and input into the identification of these locations for the CFA.
- The area 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.
- This is a large CFA. There are 14 CFA's in coastal BC. The MIEDS CFA will be the 2nd largest on the coast and more than twice as large as the next biggest in terms of volume expected to be cut.⁸ It would be the 3rd largest in area.⁹ Most CFAs that are close to communities are in the order of only 2000 to 10,000 ha with AACs of 15,000 m³ to 30,000 m³. The MIEDS CFA is much larger than average.

3.3 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 details of the partnership will be

⁶ These are estimates of the averages. There is a large range of both volumes per ha and block size.

⁷ These estimates are based on an average Haida Gwaii harvest of 400 m³ per hectare, and an average cutblock size of 20 ha.

⁸ The biggest in volume on the coast is the Klahoose CFA in Kingcome Inlet at 115,000 m³. The next largest are 30,000 m³ in both the Bella Coola CFA and the Cascade Lower Canyon CFA near Hope and Yale.

⁹ The largest in area are Klahoose (160,000 ha), Bella Coola (80,000 ha), and Cheakamus (30,000), all in special circumstances.

worked in a Memorandum of Understanding (MOU) that will be negotiated between BCTS and MIEDS. Until there is a direct and detailed discussion with BCTS, it will be very difficult to know exactly what partnership really means.

- The legal basis is new – It was brought in with the amended Section 43.3(g.3) of the Forest Act through Bill 12 in June 2016. The licences that will be affected by the Bill 12 amendment are being called “Reduced Volume Condition Licences” (RVCLs) – because there will be a condition that reduces the volume by an amount that will be assigned for a partnership with BCTS. They are all area-based, not volume-based, licences.
- A Regulation will be enacted this fall (likely in September) to set the revenue sharing agreement at a 50/50 share of net revenue, but this will not likely provide any other details about partnership and will not prescribe details about how the 50/50 share will be determined or managed.
- 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) for the group of RVCLs created by the Bill 12 amendment. 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. As stated in the policy guidance being drafted, 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.”¹⁰
- Despite the commitment to flexibility in negotiating an MoU, it seems clear that for the MIEDS CFA, the partnership will 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.
- There are no real precedents and no good examples of how this will work. There are no similar requirements in any of the 56 existing Community Forests in BC. The only similar situation involves an offer of a CFA made to the municipality of Lake Cowichan and the Pachedaht First Nation.¹¹ However, that CFA is

¹⁰ Quotes from a draft document prepared by MoFLNRO and BCTS “Reduced Volume Condition (RVC) Licence Guidance”.

¹¹ The Qul:yit CFA in Lake Cowichan, offered by the Minister in March 2016.

primarily a conversion of a long-standing volume-based tenure, and only about 30% of the volume will be in “partnership”. It involves a volume of only 7000m³ to 8000 m³ per year, so is not a good example.

- The North Island Community Forest Limited Partnership, involving Port Hardy, Port McNeill and Port Alice is referred to by BCTS and MoFLNRO as a potential model. It is a voluntary partnership, not post-Bill 12. This CFA has an AAC of only 10,400 m³ per year, and therefore only logs 2 blocks in a 5 year period. The first block was logged in a partnership with BCTS, much like the three sales for MIEDS on Haida Gwaii, but the second block was directly managed by the CFA with no involvement of BCTS. It is not a very helpful example either.

3.4 Potential Benefits and Limitations of the Partnership Requirement

The CFA and the partnership with BCTS potentially bring a number of significant benefits to the MIEDS:

- There is a significant amount of potential revenue. At 80,000 m³ a year, BCTS estimates that a realistic estimate of the potential annual revenue to MIEDS could be in range of \$200,000 to \$500,000 per year. This is dependent on many factors including the timber market, the type (species and grade) of timber put up for sale, the volume actually sold, the limitations on bidders, potential tariffs imposed and other factors. See Section 3.5 for more details. Revenue can be used to fund community projects within the forest area, or on unrelated projects.
- The CFA is a relatively low risk, low investment, and low annual cost opportunity for the MIEDS communities. There are minimal needs for employees, staff or consultants retained by MIEDS in a partnership with BCTS. There are some initial expenses – application, and management plan – and some annual expenses related to the tenure but overall costs could be controlled by MIEDS and can be relatively low compared to revenues. See Section 3.5 for more details.
- BCTS would collect 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.
- The CFA provides MIEDS with some control over where harvesting occurs and under what type of management guidelines. MIEDS sets the actual level of harvest, and other things because MIEDS is the tenure holder and is responsible for preparing the Management Plan, to be approved by the Regional ED. Details would be established in an MoU. Control of the CFA could be an important basis

for moving forward with parts of a Forest Strategy as supported by many community members in a Forum in April 2015.

- The partnership provides 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.
- There is an opportunity for MIEDS, or local contractors to provide some management services on contract back to BCTS if desired.

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. These generally relate to restrictions on local employment in forest management and the availability of wood to support or stimulate the growth of local manufacturing. These are potential limitations on what are often seen as some of the fundamental purposes of a CFA.

- 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. However, this could be mitigated if contracts were specific to the MIEDS CFA, not the wider BCTS Chinook Business Unit which involves 3 forest districts.
- 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. This might be mitigated through decisions to limit sales to bidders that have manufacturing facilities (called Cat 2 sales) or negotiating to exempt very small sales from competitive requirements.
- The size of sales might be determined by efficiency or external parameters, such as bargaining requirements – not the capacity or needs of local manufacturers. This might be addressed in an MoU.
- 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. There may be opportunities to address this limitation.

- MIEDS could not enter long-term wood supply agreements with local mills.
- There may be others limitations that are unknown at this point.

BCTS (Chinook Business Unit) provided an outline of what they currently expect MIEDS would be able to do in a partnership, and what BCTS would do. MIEDS would be responsible for the Management Plan, including proposing an AAC, and, with BCTS, would be responsible for long- and short-term planning including decisions about harvesting strategies, species and age class mixes, road systems, etc, and input into contract procurements strategies and decisions.

BCTS would look after all aspects of operational planning and development, road access, the sale and administration of harvesting, and silviculture, including award and administration of contracts to carry out the work.

BCTS Chilliwack agrees that the current provincial direction on partnership stresses flexibility and negotiation and that all the details can be discussed. They agree that having a CFA as a stand-alone tenure, outside the TSA, creates different situation for contract procurement than they administer in the management of the TSA operations in three forest districts in their Chinook Business Unit.

The key point is that until there is a process to really sit down and discuss and negotiate the MoU, none of the important details can really be clearly known as certain. It is expected there will be some flexibility and room to negotiate.

3.5 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.

The 3 timber sales¹² offered under the interim FLTC and NRFL arrangements provide a rough indication of potential revenues. They totaled 125,000 m³ over a 5 year period. In total, they delivered \$599,649 to MIEDS or an average of approximately \$4/m³ over the three sales.

However the range was large. The first sale in 2013 earned only \$26,347, or 76 cents/m³. The second sale, in 2014, was restricted to Cat 2 bidders and earned \$70,775, or \$2.05/m³. The final sale, in 2015 was open to all categories of bidders and caught a

¹² These were all volume-based licences within TSA 25.

favorable market. It returned \$502,526 or \$8.97/m³ to MIEDS, almost 12 times more per m³ sold than the first sale. The first two sales were the same volume; the third was a bit larger. The methods for determining the return to MIEDS was different from the first sale to the other two, and will be different than the 50/50 share in a partnership agreement so a direct comparison is difficult, but these three sales do indicate the volatility and range of possible revenues per cubic metre sold in different conditions.

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.

As a rough guide, BCTS estimates that 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.

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 those CFA, Board members carry out an oversight and decision-making function, often as volunteers, and leave most of the work to consultants. In a BCTS 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 – liability insurance, directors' remuneration or certification costs for example – and MIEDS would be wise to have at least a part-time consulting forester and a part-time book-keeper administrator. Decisions to maintain roads throughout the CFA, for example, could become expensive. 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. More intervention and more direct control will cost more; turning all responsibilities over to BCTS will mean lower costs. 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 of the Regulation 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.

3.6 Potential Additional Revenue Benefits

There are two other potential non-forest sector revenues from a CFA to consider – one direct, in the form of carbon credits for sale, and the second, indirect, through stimulating other sectors.

A CFA gives MIEDS the responsibility for preparing a forest management plan and for proposing an annual allowable cut (AAC) for approval that reflects the management objectives of MIEDS on the community forest area. The management plan will identify areas that should be removed from the harvest land base (for example, culturally or recreationally important sites, community watersheds or highly visible areas). The AAC can be reduced to reflect protection of those types of values.

In the Cheakamus CFA¹³, the geographical area was identified based on a target volume of 40,000 m³. However, when the management plan was prepared, about 15,000 ha of the total 33,000 ha in the CFA was removed from the cut to protect recreational values and viewscape values. The AAC was reduced to 20,000 m³. This “gap” or reduction from the projected harvest volume to the actual AAC in a management plan is not uncommon¹⁴. Thus, the Cheakamus CFA became eligible for carbon credits and became the first CFA to successfully sell those carbon credits. It found many interested buyers including the province, the municipality, businesses and even individuals. Although the cost to reach the point of selling credits was approximately \$250,000, Cheakamus CFA now makes more revenue from selling the carbon credits than it does from logging in the CFA.

Section 43.3 (c) (ii) states that a CFA holder may be given the right to manage and charge fees for botanical forest products and other prescribed products. No community forest has sold rights to use botanicals (including mushrooms) but Cheakamus is successfully selling carbon credits resulting from their management of the CFA. MIEDS could make a similar case in regard to the watersheds behind Queen Charlotte, and potentially other

¹³ The Cheakamus CFA is in the Whistler area and is a joint venture partnership between the Resort Municipality of Whistler, the Squamish First Nation and the Lil’Wat First Nation.

¹⁴ Port Alberni, and North Island have had similar reductions from projected to actual AAC.

sites, and could similarly seek the benefits of selling carbon credits associated with parts of the community forest that are excluded from harvest. This does reduce the AAC and the volume of timber that is available to sell, so it reduces the timber revenues. The CHN and Taan have experience with the sale of carbon credits on Haida Gwaii.

The second potential non-timber revenue arising from control of the forest management plan could derive from the development of recreational infrastructure. The management plan could identify areas for recreational infrastructure – bike trails or nature walks, for example. The funds to invest in these could come from the revenues from timber harvesting. These type of infrastructure developments in turn could be used by local businesses to expand the tourism and adventure opportunities on Haida Gwaii.

3.7 Addressing the Potential Limitations of Partnership

As noted above in Section 3.3, there is no clear guidance about what must be in a partnership agreement. The policies currently being developed indicate that there will be some flexibility to negotiate with BCTS and to seek to develop an MoU specific to MIEDS that addresses at least some of the potential limitations identified.

Two points are important in this regard.

First, the CFA is a discrete management unit, entirely on Haida Gwaii. It will not be part of TSA 25, even though BCTS would play a part in the management of it. Since it is a discrete management unit, contracts for layout and management of harvesting, and for silviculture and a variety of other contracts could be let for the management unit. This effectively removes some of the disadvantages placed on locally resident businesses and individuals when those contracts are issued for the much larger Chinook Business Unit as a whole. Contracting out work on the basis of the CFA management unit would, in some ways, create an advantage favouring local bidders, and the MoU could establish procedures to facilitate this.

Second, BCTS would not carry out the work itself. Thus, under the scenario above, it could likely 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 could be cost-effective and supportive of local businesses and are in place in other community forests. This option might address a significant interest of the CHN.

3.7 Governance Requirements

A CFA requires a formal, clearly-described, governance structure and a properly

constituted legal entity to receive and manage the tenure. This must be part of an application for a CFA. The current structure of MIEDS with a board of municipal politicians is not considered ideal.

Experts consulted during this project stress the importance of an arms-length board composed of community members¹⁵ who have the time and interest and some knowledge to carry out the responsibilities. They stress that finding committed and knowledgeable Board members with an absence of conflicts of interest is very important for a successful CFA Board but is a very difficult task to accomplish in small communities.

A range of governance models exist and the existing community forests in BC are managed under a number of these models. Some are co-operatives; some are corporations and some are partnerships. These models set out different ways to address such things as taxation, decision-making efficiency and stability, community consultation, accountability, capacity for conflict resolution and conflict of interest. Establishment of a legal entity and a governance structure is an important consideration for MIEDS.

The BCCFA publication, “The Community Forestry Guidebook II - Effective Governance and Forest Management”, 2012 includes a lengthy chapter on legal structures and governance models for community forests and sets out seven options. However, the community forest individuals consulted in this project all strongly recommended that MIEDS form a limited partnership. Expertise is available from the BCCFA to assist MIEDS to do this. They stress that expensive legal advice is likely not necessary.

A second decision for MIEDS involves the future distribution of revenues from a CFA. There are also different approaches to this question. Some community forest organizations retain the proceeds from forest management within the CFA entity for re-investment in the forest. Others distribute any annual profits, or a portion of them to the shareholders or partners to spend as they choose. A third model involves another board, separate and independent of the CFA board, which receives an annual sum of money from the CFA, then calls for proposals and makes awards to deserving applicants of their choice. MIEDS may wish to make a decision in this regard as well.

3.8 The Softwood Lumber Agreement

The basis for the requirement for a 100% partnership with BCTS is rooted in the US - Canada Softwood Lumber Agreement (SLA) and government decisions in 2002. Legislation in 2003 increased the BCTS share of the provincial AAC to 20%. The government then established that this 20% would be used to satisfy requirements to

¹⁵ Some Community Forest boards pay their Directors; others rely entirely on volunteer Directors.

demonstrate that there is a market pricing system (MPS) for timber in BC. US economists, experts and government determined that this 20% of the AAC was required to statistically support the data gathered to support MPS. BCTS argues that they are required to maintain this 20%. They are already slightly below 20% (18.8%) on Haida Gwaii, and there are downward pressures elsewhere on the coast. They insist they need to maintain the 80,000 m³ offered to MIEDS within this MPS in order to meet obligations under the SLA. If it were to be removed from BCTS the volume controlled by BCTS on Haida Gwaii would drop to 12%.

The SLA expired in October 2015, and is nearing the end of its one-year extension. The future is very unclear. Nevertheless, BCTS and the province are very firm in their belief that BCTS must continue to try to meet its commitment to deliver 20% of its volume in ways that deliver data to support the Market Pricing System. They are firm that they cannot reduce the volume from Haida Gwaii that they directly manage any further.

Several people consulted strongly suggested that MIEDS should challenge the numbers presented by BCTS and the fundamental underpinnings of the requirement for the 20%. They point out that there is no legal basis for this 20% threshold. BCTS manages many TSAs below 20% and lowering the % on Haida Gwaii would have little impact provincially. They suggest that MIEDS should reject the 100% partnership with BCTS on Haida Gwaii and ask for an unencumbered CFA, like all the other existing CFA in the province.

Based on consultations, challenging or changing the requirement for a partnership is likely a non-starter for the government, especially for the Regional ED and BCTS staff because of the explicit directions on this from the Minister and the implications for a contentious international agreement. They strongly advise that MIEDS should not seek to challenge or fundamentally alter this requirement.

4.0 Positions, Perspectives and Aspirations

4.1 The MIEDS Communities' Aspirations

There are different understandings and mis-understandings among the MIEDS directors about the actual offer of a community forest and what it involves. There are also different degrees of interest and different priorities. All communities are interested in an opportunity for revenue. Port Clements, with more engagement in the forest industry, is more interested in the management opportunities and the opportunity to control harvesting on a land area and to affect management objectives, than Masset or Queen Charlotte. Those two communities appear more concerned about not taking on major responsibilities or taking on a major risk of losing money or having to make major

investments. Queen Charlotte wants more accurate data and detailed financial analysis before making decisions. Both Queen Charlotte and Masset said they have little expertise or direct involvement in forestry. Masset is frustrated with the long and complex process. Port Clements is unwilling to enter a relationship with Taan Forest Products. All communities are accepting of a BCTS partnership and of the need for market pricing at least to some degree.

Despite requests and the sharing of a preliminary document prepared by Port Clements, only two directors presented anything in writing related to community aspirations.

Based on interviews and discussions, it appears that despite the expressed differences, all communities share the following general aspirations.

- 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. Queen Charlotte wants to be involved in discussions related to any forestry development in the watersheds above the community. Port Clements would like more control over layout, and control over the level of cedar harvest.
- 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.

These are generally shared without major disagreement, but do not appear to be set down in any detail anywhere and there is no clear sense of the relative priorities. At this point there is no common vision or detailed set of objectives that will establish the priorities and guide MIEDS in going forward to evaluate a major opportunity or to enter into a negotiation with BCTS. There is also no great enthusiasm or real champion emerging to do so. Without that single agreed statement of aspirations, and a champion, MIEDS will have difficulty presenting a clear case to BCTS.

4.2 BCTS and MoFLNRO Perspectives

BCTS is ready to re-engage with MIEDS. They believe there are significant benefits in the partnership agreement and that they have a competent and experienced staff that can offer considerable assistance to MIEDS. They feel the partnership through 3 timber sales to date has worked well. They are interested in maintaining an office on Haida Gwaii (5 jobs) and they see the partnership as a key part of their ability to do that.

BCTS' position is that 100% of the annual volume harvested from the CFA must support market pricing and must be managed through a "partnership" with BCTS. They say there is no latitude to negotiate on the concept and basis for this partnership, and a very low likelihood of any opportunity to negotiate for anything less than 100%. But consistent with provincial direction, they are ready to discuss and negotiate details of a partnership and to seek to resolve any specific concerns raised by MIEDS.

MoFLNRO is the decision-making agency and will allow BCTS and MIEDS to negotiate a Memorandum of Understanding. Their main concern has been with the geographical areas that will be permanently removed from TSA 25 and therefore not available to any of the other licencees in future. The map showing an area for a CFA prompted a vigorous opposition from existing tenure holders – Husby and Jones. However, those tenure holders were reacting to the large size and the removal of an area from TSA 25 where they also have interests in future operations. They acknowledge that it is a ministerial direction, and the Regional ED of MoFLNRO has now directed staff to again prepare a map, which will likely involve a similar area.

Both BCTS and MoFLNRO had heard indications that the CHN was likely to be opposed to a community forest and state that opposition based on title would stop the process. However, both have expressed willingness to re-engage with MIEDS and the CHN now that previous obstacles have been removed and to open discussions about what is needed and what can be done to "land this CFA".

4.3 Council of the Haida Nation Aspirations

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 to alter their position since 2015. The Tsilquot'in (Williams) decision and the re-activation of the title case in the Supreme Court have not changed their position of conditional support that was expressed in a draft

Memorandum of Understanding between the CHN and MIEDS in September 2015.¹⁶

The draft MoU states:

“Therefore, the Council of the Haida Nation supports the development of a Community Forest founded on the principles outline in this Memorandum of Understanding and the Parties commit to cooperatively work towards the establishment of a Community Forest on Haida Gwaii.”

This statement of conditional support occurred after a legal opinion was delivered to the CHN, and the MoU is written to be consistent with the legal opinion. The CHN stands by that statement of conditional support.

The draft MoU outlined seven principles for establishment of a Community Forest. Most of these are not contentious. One states that “The Community Forest will be managed by the Communities to support local opportunities to access timber and value-added wood product manufacturing.” This one may be difficult because of the limitations that may be inherent in the partnership with BCTS.

The draft MoU also contains 11 considerations for implementation. Three of these considerations also run into the potential limitations created by the partnership with BCTS. One refers to an operational manager or forest manager working on behalf of the Haida Nation and a general partnership between the manager and the CFA legal entity. A second states that this operational manager is charged with administering forest operations. The third states that the CFA legal entity determines the end-use of the timber.

The CHN has expressed concern about any BCTS involvement in the community forest and has serious concerns about the whole rationale and need for a partnership agreement. Discussions with the CHN based on good information and a better understanding of the actual realities of a partnership agreement will be required. Because the CFA is a separate management unit (as explained in Section 3.7) it may be possible to find a way in negotiation with BCTS to address these positions from the CHN. 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. They may be interested in joint ventures involving forest tenures in the future.

¹⁶ This is the date in the footer in the document. However it appears to be a draft from December 2015 and reflects several drafts worked on by staff of CHN and MIEDS. This document is marked CONFIDENTIAL.

The CHN is also concerned about the potential position of the two Band Councils, since at this point their forestry tenures are only small woodlots, not the larger tenures like a CFA or the Taan Forest Licence to Cut (FLTC) that is being converted to a First Nations Wood Land Licence, which is similar to a community forest.

5.0 Current Status of the CFA Offer – A Window of Opportunity

The letter from Minister Bell in 2010 made a very specific offer and initiated a process potentially leading to a CFA for MIEDS. However in legal terms, while the offer is clear, 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.

First, there was no legal mechanism to formally establish the “partnership” with BCTS that was required in the letter in 2010. This gap was addressed by the passage of Bill 12 in May 2016 that includes the amendment to Section 43.3 (g.3) of the Forest Act.

Second, MoFLNRO had heard strong reactions from other licencees in the Haida Gwaii TSA 25 and elected not to move forward with a map that showed proposed locations for a CFA. In August 2016, the Regional ED has directed MoFLNRO staff to prepare a suitable map showing acceptable locations and that work is underway.

Finally, MoFLNRO and BCTS had a concern that the position of the Council of the Haida Nation might have changed following the Tsilquot’in (Williams) decision in 2014 or the re-activation of the Haida Title Case in the Supreme Court in 2016. This is not the case – the position of the CHN is unchanged – and opportunities for MIEDS and especially the government to consult with the CHN about the CFA do exist.

Thus, the opportunity for moving forward exists at least for a period of time. The expected provincial election in May of 2017 may be an important factor. However, since the authority to make decisions is delegated, this process is expected to continue even after an election is called.

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.

6.0 Four Options for MIEDS

The 2010 offer from Minister Bell has three specific elements. This 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.

Option 1. Abandon the effort to secure a Community Forest. MIEDS could choose this option if the Board feels that the process of completing a negotiation appears to require too much time, effort, or expense on the part of the MIEDS board, or if the CHN will oppose the CFA. In addition the Board might feel that the terms and conditions of the 2010 offer are not satisfactory in terms of community aspirations, or too difficult to change. The Board might also feel that the establishment of a legal entity and recruitment of an independent Board to manage a CFA of this size is too difficult. For these types of reasons, several communities elsewhere in BC have taken this Option.

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. This approach would enable the details to be precisely defined and evaluated before a formal final decision to enter a CFA. It would accept that there are favourable benefits and seek to negotiate changes to what appear to be limitations. The amount of latitude for MoFLNRO or BCTS to negotiate favorable conditions for MIEDS in the partnership is unknown but guidance documents suggest that there will be flexibility in implementing a partnership that works for the local situation.

Option 3. Reject the current offer. MIEDS could choose this option if MIEDS is opposed to the “partnership”, or it becomes clear that the area being offered or the details of a partnership arrangement are not in line with MIEDS community aspirations or not supported by the CHN. MIEDS could advise MoFLNRO of the issues and approach the Minister of Forests, Lands and Natural Resource Operations to seek some fundamental changes to the offer from the Minister. In taking this Option, MIEDS would have to be prepared to provide some compelling reasons, find influential supporters for change and make significant political efforts. MIEDS would have to accept the inherent risks and the uncertain outcomes in seeking changes to an existing firm offer which appears to provide financial benefits.

Option 4. Delay. In this Option, MIEDS could delay a response to the current offer and await future developments to see if the requirements change. These developments might, for example, involve a change in government (in an election in May, 2017), changes to the Softwood Lumber agreement (expiring November 2016), the upcoming timber supply review (2017), or new business relationships with the Council of the Haida Nation that might allow MIEDS to participate in some volume-based tenures available to joint ventures with First Nation partners. This option carries the risk that the window of opportunity might close and the government interest in pursuing a CFA could disappear.

Recommended Approach: Option 2

Option 2 provides an approach to seek to achieve the MIEDS community aspirations. The 2010 offer from the government offers significant financial benefits, at low risk and low investment. An area-based tenure (CFA), removed from TSA 25, also provides MIEDS with some measure of control and influence on forestry operations on the islands, especially near the communities. MIEDS is responsible for the management plan for the area, and for proposing the AAC. A CFA offers future opportunities for partnerships with CHN enterprises if that is desired.

There will likely be concerns within MIEDS and from the CHN about the partnership with BCTS, and the extent to which that might limit the opportunities for local employment and local access to wood from the CFA to support local businesses. Selecting Option 2 keeps the opportunity to achieve the benefits alive and available while MIEDS negotiates to see if it is possible to address those potential limitations.

At this time, based on consultation with BCTS staff, and based on the draft guidance documents related to “partnership”, it appears that there will be some flexibility and opportunities to discuss these and other concerns. This negotiation may go some distance to addressing the likely concerns and finding reasonable solutions that can be incorporated into a formal Memorandum of Understanding between BCTS and MIEDS.

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 is not acceptable to MIEDS.

7.0 The Next Steps

Administratively and legally, 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 proceed to prepare a formal application. Both of these take time. Section 3 of the Community Tenures Regulation outlines the information required in an application including a business plan, a description of the governance model, financial projections, a management plan with a proposed annual allowable cut and other things.

A website - <https://www.for.gov.bc.ca/hth/timber-tenures/community/process.htm> – and a 2009 government document “Community Forest Agreement (CFA) Application requirements (Direct Invitation to apply)” provide detailed guidance, but some of the material on the website and in the report are out of date and the document is being revised. This process can be quite onerous and expensive if not done properly.

Normally, the application and the supporting documents are prepared by a consultant or consultants. Several people contracted for this report said that while the amount of information in an application looks daunting and expensive, it can be done reasonably quickly and cheaply. There is expert help and advice available from the BC CFA and from existing CFAs, to assist with this process and to show ways to reduce the time and costs involved.

Practically, if MIEDS wishes to move forward on a CFA (Option 2) and to then prepare a formal application, there are **five task** that should happen in the short-term (fall of 2016). Two of these initial tasks involve work to be done by MoFLNRO. Three other tasks directly involve MIEDS and should be undertaken in parallel. These tasks are not linear. 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.

7.1 The Five Immediate Tasks

1. MoFLNRO needs to identify an area that is large enough to support a projected annual volume of 80,000 m³ and acceptable to the Regional ED. MoFLNRO staff have been directed to work on this and options are being prepared. A map showing area designated for CFA will be available shortly. 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 to ensure the CHN is aware of the status of the CFA and supportive of MIEDS

objectives and interests. MIEDS 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. Speaking with a single MIEDS voice that reflects all members of MIEDS will be key to a successful negotiation to meet objectives and priorities.
4. MIEDS will need to agree on a governance structure for an entity that will apply for, receive and ultimately manage a CFA. The current structure at MIEDS is not optimal for community forest management and a different governance model has been recommended. There are several potential models but experts in the field recommend a limited partnership. There is advice available to assist MIEDS with this.
5. MIEDS will need to engage with BCTS to explore and negotiate the arrangements that can be agreed in a Memorandum of Understanding. Any opportunity to re-negotiate the requirement that 100% of the volume in the CFA will be managed “in partnership” will be extremely limited. However, there may be flexibility to negotiate the details about how to implement the partnership within BCTS policy and guidelines while meeting community objectives. The guidelines currently being developed may be flexible enough to address at least some community concerns and issues. This negotiation could be very detailed and complex involving significant engagement by MIEDS. It is important to also keep the CHN informed.

8.0 Other Alternatives Considered

Early in this work, the emphasis was on seeking alternatives, especially those that might involve volume-based tenures since it was assumed that an area-based tenure might not be possible for MoFLNRO to deliver.

These alternatives included options for a Community Forest that involved a smaller area-based tenure removed from the TSA and volume-based tenures within the TSA to make up the volume commitment. Under these options, it was thought that the requirement that 100% of the volume would be managed by BCTS could potentially be reduced to some lower percentage. Various permutations involving different areas and volume and different degrees of partnerships with BCTS were discussed.

The option of a smaller CFA area-based tenure, and no volume-based tenure was also raised as a possible way to reduce the percentage to be managed in partnership with BCTS and limit the impact of the CFA on other tenures in the TSA.

The possibility to provide information to contribute to the market pricing system through data sharing agreements was also evaluated. Taan does have an agreement to share information, but this is very small scale and not working well.

These alternatives were all quickly put aside, as non-starters, as it became clear that:

- There is no legal basis for the government to offer MIEDS any volume-based tenures. All volume-based tenures require partnership with a First Nations entity in a majority position. Potentials for joint ventures were not explored.
- The only available avenue to directly award a community forest to MIEDS is an area-based CFA.
- The offer from the government is clear in five documents and is very unlikely to be changed.
- BCTS does not support obtaining data for market pricing through data sharing.
- The existing offer provides some attractive opportunities, and an opportunity to negotiate to address concerns.

While these alternatives are non-starters at present, they might provide a starting point to seek a new offer if MIEDS selected Option 3.

9.0 Sources of Expert Assistance for MIEDS

Many people are interested in this CFA and offered assistance to MIEDS.

Jennifer Gunter and Susan Mulkey both work for the BC Community Forest Association (BCCFA), of which MIEDS is a member. Both worked with Cameron Bell in the past and can be very helpful now in providing expert advice and assistance for MIEDS. The BCCFA is very interested in the situation here because of the potentially precedents that might be set in an MOU with BCTS and the implications. Jennifer has expertise with policies and procedures and legislation; Susan is the provincial authority on organizational governance structure, strategy and business development for community forests. She was the lead author on the BCCFA “The Community Forestry Guidebook II -Effective Governance and Forest Management” in 2012. BCCFA has penciled Haida Gwaii in as a potential stop on a tour they will do this fall.

Gordon Glover is a forestry consultant based in Port McNeill. He has been Chair of the

Board of Directors for the North Island Community Forest Limited Partnership (NICFLP) since the inception, and led their application process. NICLP is mentioned frequently by BCTS because they have a 100% partnership with BCTS on a voluntary basis. He is an expert on the application process, corporate structure options, liability pitfalls, taxation implications, etc. of the community forest business. He lived and worked in Sandspit for a time.

Staff and consultants in a variety of other community forests are also available for advice.