Complaint Investigation

Government Enforcement of Old Tree Harvesting on a Quadra Island Woodlot

JUNE 2022

FPB/IRC/244

Forest Practices Board

BC'S INDEPENDENT WATCHDOG FOR SOUND FOREST & RANGE PRACTICES

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Introduction

The Complaint

In the spring of 2020, a Quadra Island resident (the complainant) noticed that old trees had been harvested in woodlot licence W2031. The complainant believed that the woodlot licensee was not permitted to harvest old trees, therefore filed a complaint with the Compliance and Enforcement Branch (CEB) of the Ministry of Forests in the spring of 2021.

CEB looked into the matter and found that the licensee had harvested the old trees legally. When the complainant learned this, he filed a complaint with the Forest Practices Board on February 14, 2022, asserting that government enforcement was inappropriate.

The complainant would like the woodlot licensee to stop harvesting old-growth trees, the district manager to cancel the woodlot licence, and a research forest to be established in the area.

OLD TREES AND OLD-GROWTH FORESTS

The ecology of old-growth forests is complex and highly variable across sites and forest ecosystems. People often use 'old-growth forest' interchangeably with 'old forest', or 'old seral forest'. When we refer to old-growth forests in this report, we mean stands[1] in BC's coastal forests that are older than 250 years, structurally complex with large old living trees, and that have large dead snags, fallen dead trees and multi-layered canopies. Government has set objectives for old-growth forests at the stand and landscape[2] levels rather than at the scale of single trees. In this report, we will refer to old trees and old-growth forests separately.

This complaint raises issues about the management of individual old trees on public land. Although the complainant is concerned with the cutting of 'old-growth trees', we will refer to old trees in this report instead. While individual old trees may have important cultural, aesthetic or ecological values, they are generally not protected as individual trees. But there are circumstances under which legislation protects individual old trees. The *Heritage Conservation Act* protects culturally modified trees that Indigenous Peoples altered before 1846. The *Forest and Range Practices Act's Special Tree Protection Regulation* requires the protection and reporting of trees that meet certain criteria with respect to tree species, location, and diameter. Although tree age is not a criterion, the diameter requirements imply that the trees are old.

Background

Quadra Island is located just off the eastern coast of Vancouver Island, within the Campbell River Forest District. The island lies within the traditional territories of the Klahoose First Nation, K'ómoks First Nation, Tla'amin Nation, We Wai Kum First Nation, Wei Wai Kai Nation and the Homalco (Xwemalhkwu) First Nation.

Logging with oxen started on Quadra Island in the late 19th century, and railway logging began in the 1920s. Soon after, several large wildfires burned much of the island's forests. By the late twentieth century, tree farm licence[3] 47 covered most of the public forests on Quadra Island. As the tree farm licence changed hands, government took back land and used it to create provincial parks and woodlot licences. The island is home to 11 woodlot licences that cover an area of about 6200 hectares (Figure 1).

[1] A community of trees sufficiently uniform in species composition, age, arrangement, and condition to be distinguishable as a group from the forest or other growth on the adjoining area, and thus forming a silviculture or management entity. From: Ministry of Forests and Range, Glossary of Forestry Terms in British Columbia, March 2008.

[2] Landscape level refers to a watershed, or series of interacting watersheds or other natural biophysical (ecological) units, within the larger land and resource management planning areas. This term is used for conservation planning and is not associated with visual landscape management and viewscape management. From: Ministry of Forests and Range, Glossary of Forestry Terms in British Columbia, March 2008.

[3] An area-based tenure agreement, entered into under the Forest Act (Part 3 Division 6), that issues the rights to harvest an allowable annual cut in a specified area, and outlines responsibilities for forest management. With a term of 25 years, this licence is replaceable every 5–10 years. From: B.C. Ministry of Forests and Range, Glossary of Forestry Terms in British Columbia, 2008, Victoria, B.C.

Wildfires in the early twentieth century and past logging are the reason few old-growth forests and old trees exist on Quadra Island today. The island's community values the remaining old-growth forests and old trees. In the 1990s, several interest groups formed the Quadra Island Forest Resources Committee. It developed the "Quadra Plan", consisting of commitments that it expected forest licensees to make to obtain community support to operate on the island. One commitment was to exclude old-growth forests and old trees from harvesting. The Quadra Plan is not legally binding, but it explains why the complainant believes that harvesting old-growth forests and old trees is not permitted.

Woodlot licence W2031 covers 715 hectares on northeastern Quadra Island. Before being awarded the woodlot licence in 2010, the licensee prepared a draft woodlot licence plan (WLP) and a draft management plan. The licensee made the WLP available for public review and comment. This is required under section 17 of the Woodlot Licence Planning and Practices Regulation (WLPPR).

During the public review and comment period, the complainant shared concerns with the licensee over old trees at risk of harvesting on the woodlot licence. The complainant requested that the licensee set aside all old trees in the woodlot. In response, the licensee referred to a map in the WLP that shows where it set aside the existing old-growth forests in three wildlife tree retention areas.[4] The WLP map shows them as areas where harvesting will be avoided (Figure 2). The licensee referred to those three areas as 'Biodiversity Reserves' in the WLP[5]. These wildlife tree retention areas cover an area of 27.1 hectares, of which 5.1 hectares contain stands older than 250 years.[6] The remaining 12 hectares mainly contain trees that are older than 70 years. The licensee added them to the wildlife tree retention areas to support the recruitment of old-growth stands in the future.

There are also individual old trees scattered throughout the woodlot licence, and the licensee anticipated that they might need to harvest some of them for access or safety reasons during road building or logging. In their WLP, the licensee committed to assessing options for keeping single old trees on a site-specific basis. Furthermore, the licensee may designate an old tree as a wildlife tree if it meets certain criteria. For clarification, the WLP does not prohibit the licensee from harvesting an individual old tree that was not designated as a wildlife tree. At the same time, the WLP sets out conditions under which the licensee may harvest a wildlife tree.

In late 2010, the district manager awarded woodlot licence W2031 to the current licensee. The district manager also approved the WLP and the management plan. Both documents have guided the licensee's activities since.

In 2019, the licensee built a road to access new cutblocks in the northwestern part of the woodlot licence. During road building, the licensee encountered scattered old trees which were removed to either provide space for the road or for safety reasons.

In early 2020, while hiking in the woodlot, the complainant discovered stumps and logs from recently harvested old trees. The complainant counted rings of the remnants of ten trees, took pictures, and sent a letter of concern to CEB, which passed the letter on to the Campbell River Forest District office. The district staff planned a site visit with the woodlot licensee and complainant. The site visit was subsequently cancelled because of travel restrictions due to the coronavirus disease (COVID-19) pandemic.

In May 2021, the complainant revisited the area to find the stumps of the old trees again. In June 2021, the complainant submitted a complaint to CEB alleging that the WLP prohibited the licensee from harvesting old trees.

CEB looked into the complaint and told the complainant in June 2021 that the harvesting complied with legal requirements. Dissatisfied with that outcome, the complainant filed this complaint with the Forest Practices Board on February 14, 2022.

[4] In WLPPR, a wildlife tree retention area is an area for the retention of wildlife trees specified in a WLP.
[5] See WLP section Areas Where Timber Harvesting Will Be Avoided.
[6] This information is based on the forest cover information, which the government provides. It is available via the Data Catalogue as the Vegetation Resources Inventory layer.

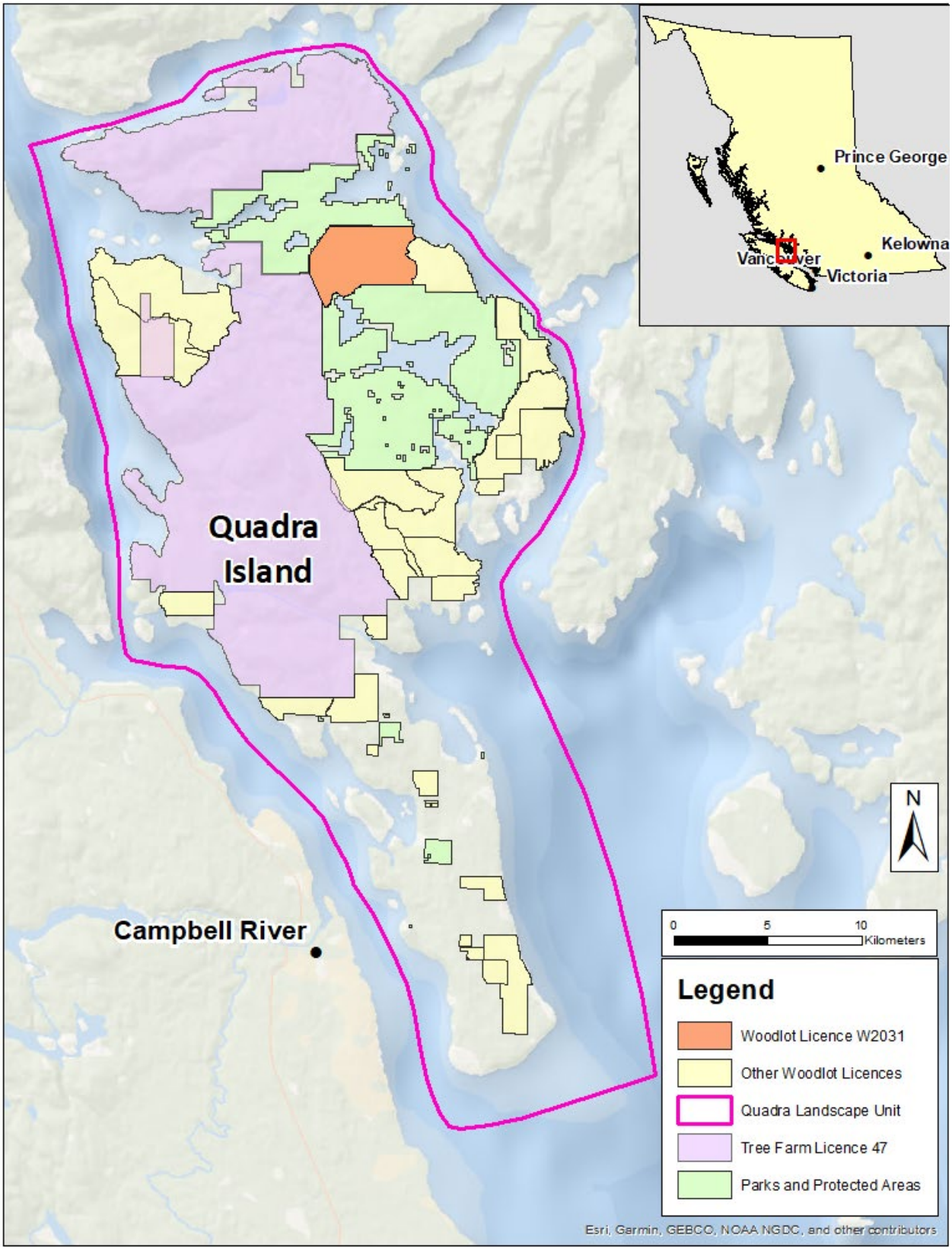

Figure 1. Quadra Island, its woodlots, Tree Farm Licence 47, parks and protected areas, and the Quadra landscape unit.

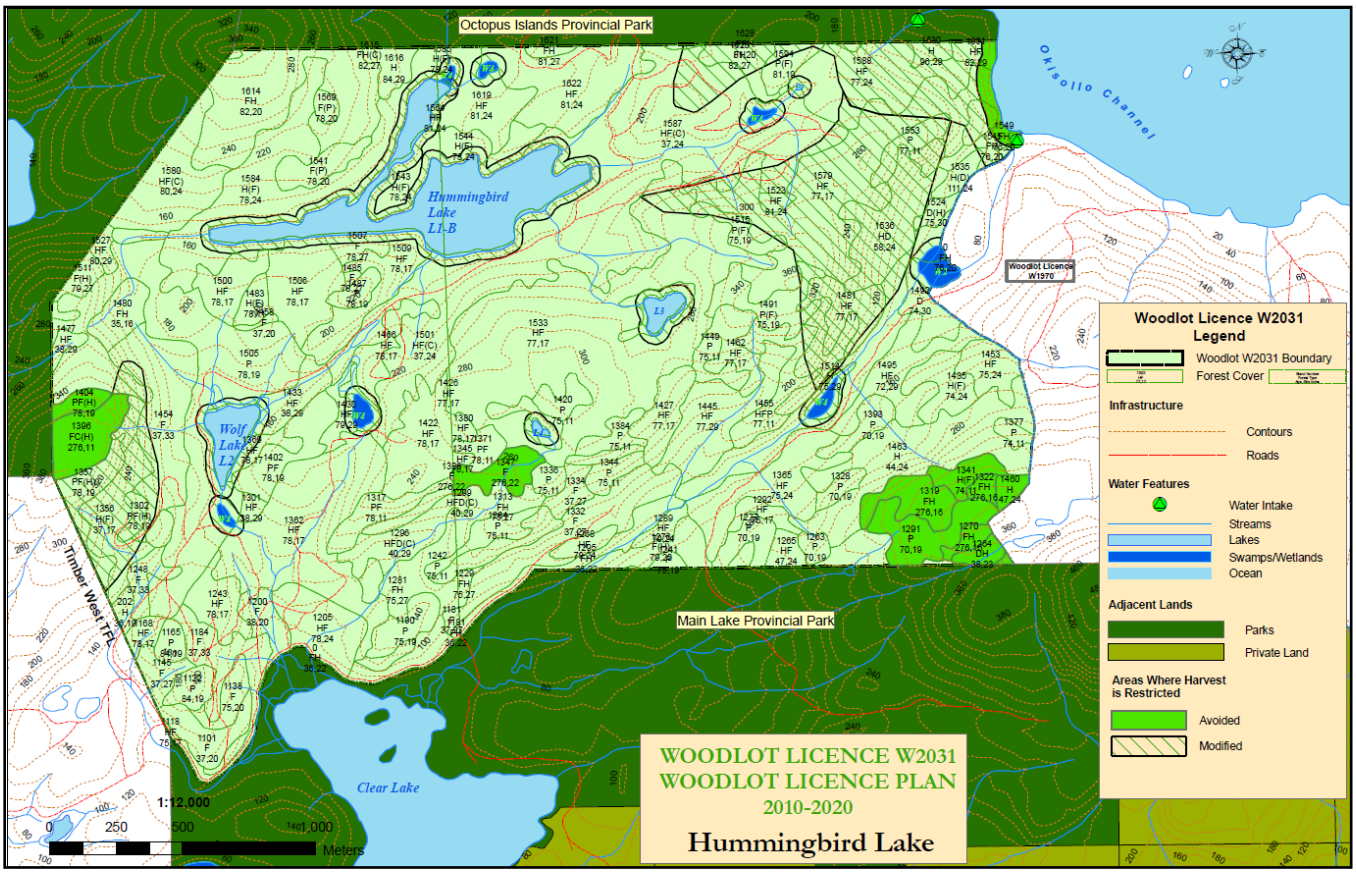

Figure 2. An overview map of woodlot licence W2031, taken from the WLP 2010-2020.

Legislation

Section 13 of the Forest and Range Practices Act (FRPA) states, in part, that a WLP must specify intended results and strategies in relation to objectives set by government. The woodlot licence is located within the special management zone 19 of the Vancouver Island Higher Level Plan Order, which sets out several government objectives. One of the objectives for special management zone 19 is to conserve biodiversity, which includes targets for mature seral[7] and old seral[8] forests.

Section 21 of FRPA requires a woodlot licensee to achieve the results and strategies specified in the WLP.

Section 53 of the WLPPR requires a woodlot licensee to not harvest timber in areas where the WLP states it will be avoided. It also requires a woodlot licensee to harvest timber in areas where the WLP indicates harvesting will be modified in accordance with the modifications described.

[7] Mature seral forest is 80 to 120 years old or older, depending on species and site conditions. The structure of mature seral forests generally includes canopies that vary vertically or horizontally, or both. The age and structure of the mature seral stage will vary significantly by forest type and from one biogeoclimatic zone to another. [adapted from *Vancouver Island Higher Level Plan Order*]

[8] Old seral forest is greater than 250 years old, containing live and dead (downed and standing) trees of various sizes, including large diameter trees, and of various tree species, including broad-leaved trees. The structure of old seral forest varies significantly by forest type and from one biogeoclimatic zone to another. [adapted from *Vancouver Island Higher Level Plan Order*]

Investigation Results

In this investigation, we considered whether the licensee complied with legal requirements when it harvested old trees in the woodlot licence. Next, we examined whether government enforcement was appropriate.

1. Did the licensee comply with legal requirements when it harvested old trees in the woodlot?

Section 13 of FRPA

Section 13 of FRPA deals with the content requirements of a WLP. A WLP must specify results or strategies in relation to government objectives. An example for a government objective could be to maintain stand structures and forest attributes associated with old-growth forests by retaining a specific proportion of a forest area. However, section 13(3) of FRPA exempts a woodlot licensee from following government's objectives for retaining old-growth forests. In the circumstances of this investigation, section 13(3) exempts the licensee from specifying objectives in their WLP for retaining old-growth forests set out in the Vancouver Island Land Use Plan (VILUP) Higher Level Plan Order.

When members of the BC Legislative Assembly first debated FRPA, the Minister of Forests discussed the exemptions in section 13(3) of FRPA. The Minister explained that it is not practical to regulate old-growth forests on the small scale of a woodlot licence. Instead, government regulates old-growth forest management at the landscape level. For the Quadra landscape unit[9] (Figure 1), which covers the woodlot licence and tree farm licence 47, this means that the holder of the tree farm licence addresses the legal requirements to manage old-growth forests under their forest stewardship plan. Again, the woodlot licensee is exempt from following government's objectives for the retention of old-growth forests.

Despite the exemption in section 13(3) of FRPA, the licensee chose to set aside the three existing old-growth stands[10] under the WLP's wildlife tree retention strategy. In doing so, the licensee took into consideration the VILUP's biodiversity objectives and the community's desire to protect old-growth forests.

Section 21 of FRPA

Section 21 of FRPA deals with compliance with plans, such as the WLP. It states that a woodlot licensee must achieve the results and carry out the strategies described in the plan. As mentioned, the licensee chose to set aside the existing old-growth stands to provide wildlife habitat and conserve biodiversity even though it did not have to. The licensee did this in consideration of the community's desire to protect old-growth forests on Quadra Island.

The WLP's wildlife tree retention strategy describes what type of trees will be retained and how the licensee will retain them in the woodlot. The strategy also sets out that the licensee is not planning to frequently designate individual wildlife trees. This is because they can manage old trees more effectively at the stand level. In addition, the strategy sets out conditions under which the licensee may harvest either individual wildlife trees or trees located within a wildlife tree retention area. The conditions are either: 1) that the trees have become a safety hazard; 2) the trees are infested with insects or diseases posing a risk to nearby trees; or 3) their removal provides access to an area.

The stumps that the complainant found are not located in any of the three old-growth stands that the licensee set aside as wildlife tree retention areas. Instead, the stumps came from scattered old trees that the licensee harvested under an approved cutting permit.

Although the licensee had committed in the WLP's wildlife tree retention strategy to assessing the retention potential of incidental old trees during planning, they are not obligated to do so. The licensee did assess the old trees for

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[9] A landscape unit is an area of land and water used for long-term planning of resource management activities. These units, which are typically 5,000 to 400,000 hectares in area, are important for designing strategies and patterns for landscape-level biodiversity and for managing a variety of resource values. From: Ministry of Forests and Range, Glossary of Forestry Terms in British Columbia, March 2008.

[10] The forest cover information for the woodlot licence indicates that these stands contain trees older than 250 years.

retention prior to harvesting but did not designate them as wildlife trees. Instead, the licensee removed the old trees to provide space for a road and for safety reasons. Thus, the licensee complied with the requirements set out in the WLP.

Section 53 of WLPPR

Section 53 of WLPPR deals with restrictions on harvesting. It states that a woodlot licensee must not harvest timber in areas where the WLP map indicates harvesting will be avoided. The section also requires a woodlot licensee to modify timber harvesting in areas where the WLP map indicates harvesting will be modified.

As mentioned, the licensee set aside the existing old-growth forests in three wildlife tree retention areas. The WLP map shows them as areas where the licensee will avoid timber harvesting. The remnants of old trees that the complainant found were from trees located outside of those wildlife tree retention areas. The licensee did not harvest any old trees in areas where timber harvesting was to be avoided.

Finding

The licensee complied with legal requirements and the WLP when it harvested old trees in the woodlot. In addition, the licensee went above legal requirements with respect to retaining old-growth forests. In their WLP, they committed to setting aside all of the existing old-growth stands by designating them as wildlife tree retention areas.

2. Was government enforcement appropriate?

In June 2021, the complainant filed a complaint with CEB. The complainant alleged that the licensee was prohibited from harvesting old trees.

CEB reviewed the WLP and the cutting permit, and sought advice from a forest professional at the district office. CEB concluded that the licensee is not prohibited from harvesting old trees in the circumstances. They also found that the licensee complied with all relevant requirements. This investigation confirmed that CEB was correct.

CEB completed their review promptly and phoned the complainant to let them know the outcome of their review.

Finding

Government enforcement was appropriate and timely.

Conclusions

This investigation examined a complaint asserting that government enforcement was inappropriate. The complainant believes that a licensee was prohibited from harvesting old trees in a woodlot licence, and that CEB did not enforce legal requirements.

The Board found that the licensee complied with legal requirements when it harvested individual old trees in the woodlot licence. The old trees were not set aside from logging. The licensee removed the trees to build a road and for safety reasons.

Furthermore, the Board found that government enforcement was appropriate and timely. CEB reviewed the complaint promptly, sought advice, and concluded that the licensee had legally harvested old trees in the woodlot licence. They also informed the complainant about their findings.

Government manages old-growth forests by setting objectives at the stand level and at the landscape level. However, section 13(3) of FRPA exempts a woodlot licensee from following government's objectives for old-growth retention. Despite this exemption, the woodlot licensee chose to set aside all of the existing old-growth forests because they recognized the community's desire to protect the remaining old-growth forests on Quadra Island.

In drawing its conclusions, the Board recognizes that individual old trees may have important cultural, aesthetic or ecological values. Government has committed to shifting how old-growth forests are managed across the province. A review and determination of where and how much old-growth forest should be conserved is currently underway. Until this shift is complete, licensees will continue to follow requirements to conserve old-growth forests at the landscape level.