

Governance of Private Protected Areas in Canada:
Advancing the Public Interest?

by

Linda Hannah
B.Sc. University of Alberta, 1979
M.A. University of Victoria, 1987

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in the Department of Geography

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ABSTRACT

In Canada, little is known about the governance of private protected areas (PPAs) and their contribution to the public interest. This dissertation evaluates the extent to which PPAs in Canada adhere to generally advanced principles of good governance – Direction, Legitimacy, Fairness, Performance and Accountability – and it assesses their contribution to the public interest. Findings from descriptive analysis of six case studies of Individual, Corporate, Non-Government and First Nation authorities indicate that principles are adhered to with relative vigor and visibility and that the public interest is generally advanced. The governance pattern is not strongly differentiated and it is generally uniform in strengths and limitations. The cases studied were exceptionally strong in fulfilling the principles of Direction and Legitimacy. Management documents not only employed long-term, ecosystem-based approaches, the private areas were shaped by the collaboration and support of a diverse array of interested parties. Public participatory processes remain relatively *ad hoc* in nature. Issues management occurred in each of the private areas studied. There was no evidence, however, of intractable disputes, suggesting that the principle of Fairness was fulfilled. The principle of Performance was determined to be the weakest across the sector. Generally, appropriate standards are not well defined, monitoring is highly fragmented and there is an absence of reporting on performance outcomes, which creates uncertainty about the standing of protection and conservation values. Accountability is multi-dimensional; accountability to different stakeholders for various goals and activities through different

mechanisms is salient. Independent oversight is employed infrequently. Findings also reveal subscription to a broad spectrum of protected area values that are achieved through moral, fiduciary and legal means. The desire to pass along a natural legacy to future generations is a leading feature. Formally expressed values that are widely shared include protection of ecosystems and biological diversity. Public access is generally constrained. Protection in perpetuity is most often guaranteed through instruments that impose obligations upon future land owners. Support for strengthened governance processes and structures would further the complementary role and contribution that this sector can make to the important mission that protected areas seek to accomplish.

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CHAPTER 1 INTRODUCTION

1.1 The Research Problem

This dissertation is an inquiry concerning new forms of governance for protected areas. This dissertation examines private protected areas (PPAs) and their relationship with principles of good governance. How compatible are the mechanisms governing PPAs with principles of conventional parliamentary democracy and democratic decision-making? Do they subscribe to emerging principles of good governance? This dissertation also examines the contribution these new forms of governance from private authorities make to the public interest in conservation and protection. Do PPAs have the capacity to solve the problems that conventional state protected areas are attempting to address? Are they up to the task and, if so, what is their effect?

This dissertation considers six cases of PPAs in Canada. Through descriptive analysis, it evaluates their adherence to advanced principles of good governance – Direction, Legitimacy, Fairness, Performance and Accountability – and it assesses their contribution to the public interest. The term private refers to autonomous and independent authorities that lie outside traditional government and have assumed responsibility for protected areas. It also refers to First Nation authorities that have had a long-standing government tradition and culture of governance that has not been formally or widely recognized and, through settlements, are becoming a new form of governance. Four distinct types of private authorities are recognized: Individual, Corporate, Non-government and First Nation.

Globally, PPAs – lands dedicated by private authorities to protected area conservation and protection goals - have reached a critical threshold. The repertoire of private nature reserves, parks, nature based tourism and ecosystem service agreements is now so large that, in some countries, the total area rivals governmental protected area programs. In view of these trends, the World Parks Congress (WPC) - a global 10 year forum that sets the agenda for protected areas - has recently provided formal recognition of PPAs that are predominantly managed for biodiversity conservation and it has

elevated their stature in the repertoire of protected areas (World Parks Congress 2003a). The proliferation of these forms of private protection suggests a quiet conservation revolution is underway and that institutions are undergoing a fundamental transition in many parts of the world. No longer solely the purview of the state, protected areas are now taking on new and varied forms of governance, potentially representing a sea change in protected area management.

A number of factors have likely contributed to this change. Scarce public sector funds, opportunity to generate profit, shifts in responsibility centres, erosion of social trust in government, a visible altruistic conservation economy, and a more informed understanding of the precariousness of environmental resources have undoubtedly influenced this pronounced shift in the global landscape.

In Canada, protected areas are very much a part of Canadian heritage and cultural identity. They are widely perceived as directly contributing, not only to national environmental standing, but also to social integrity and economic wealth.

Protected area research in Canada to date, however, has tended to emphasize traditional public sector actions and, despite significant shifts elsewhere, very little is known about PPAs, their forms of governance and their significance to the public interest in Canada (World Parks Congress 2003a, 2003b).

In spite of this limited understanding, accepting a role for the private sector in conservation and protection is not without its critics. In general, there is mistrust of a private sector role in the delivery of public values (Cashore 2002). It is believed that private interests are opportunistic and motivated only by economic efficiency which will undermine other goals and values that protected areas provide (Globe and Mail 2005a). A private role in conservation has been criticized as being driven by commodification, exclusionary, and to have an undue emphasis on autonomous decision making (Castree 2003a, Toly 2004). It has also been asserted that the private sector pursues insignificant goals from an ecological perspective and that they are unable to sustain conservation efforts for the long term (Fitzsimmons and Westcott 2002, Kirby 2003). Private areas, it is charged, cannot manage for biodiversity conservation – the central thrust of protected areas, nor can they manage at the larger ecosystem level (Bennett

1995). Many environmentalists appear to have a distinct lack of trust in acknowledging a role for the private sector role in conservation, which only adds to the litany of obstacles that the private sector must face (Brunner et al. 2002).

A clear, but simple dichotomy, pitting public against private and state against market, however, fails to capture the complexity that exists between these polar opposites. And it prevents a clear understanding of the changes that are occurring within the institutions that govern protected areas.

It has been asserted that poor institutional regimes, be they public or private, will be equally ineffective in achieving conservation and protection goals (Hanna and Munasinghe 1995a). It has also been argued that no single type of regime can be readily prescribed as a universal remedy for resource degradation or protection (Baird and Dearden 2003, Ostrom 1995). What is emerging is that governance – the means for achieving direction, control and coordination (Heinrich and Lynn 2000) – is crucial for the effective management of protected areas, be they public or private, and that governance, good or bad, will have an enormous impact on the achievement of conservation outcomes.

The WPC endorses the importance of governance as a key concept for protected areas and it promotes good governance as essential for the effective management of protected areas (World Parks Congress 2003b). It states, “The degree to which protected areas meet conservation objectives, contribute to the well-being of society and achieve broad social, economic and environmental goals is closely related to their governance” (World Parks Congress 2003b:39). Similarly, leading researchers in protected area management assert, “Governance is a critical aspect influencing the ability of protected areas to provide the values for which society sets them aside. It is not sufficient to have the right numbers of protected areas in the right places, it is also necessary to ensure that their governance is able to manage them in an effective manner and produce the desired outcomes” (Dearden et al. 2005:98). In short, for protected areas, governance matters (Borrini-Feyerabend and Johnston 2003).

The field of governance is currently enjoying a considerable upswing in interest in both popular and academic settings. It is widely perceived as affecting outcomes, with

good governance more likely to enable the achievement of policy goals and objectives (Glasbergen 1998). Good governance also allows for better planning, priority setting, adaptation and response and, most significantly, it enhances the capacity and ability to engage in critically important problem-solving (Rhodes 1996). As a measure of accountability, good governance builds social trust, legitimacy and support (Broadbent 1999).

The emergence of PPAs represents a distinct and innovative direction that offers both promise and uncertainty for conservation and protection. Without an understanding of the governance principles to which PPAs adhere, criticism about this new form will remain and opportunities to improve future conservation will be lost. Understanding the governance of PPAs and their contribution to conservation and protection is necessary in order to navigate a complex world where no guarantees of conservation can be offered.

This dissertation brings together a number of complex and disparate themes. These themes include: the shift from government to governance and the role of private authorities in shaping public outcomes; the rights and duties of the private sector to address public interest conservation and protection goals; preservation, sustainable use and restoration in protected areas; nature capitalization; voluntary environmental strategies; and contemporary applications of stewardship and altruism. The challenge is to integrate these themes and develop new understandings about the directions that governance invites for PPAs. The further challenge is to explain how governance can strengthen relations between humans and their natural world.

This dissertation breaks new ground in research and understanding of a poorly understood phenomenon in Canada: it explores the relationship between governance and PPAs. This research will make a significant contribution to knowledge in two fundamental ways. First, through a description of selected PPAs in Canada, this research will add to the growing body of knowledge that exists about PPAs in other countries (Brown and Mitchell 1999, Figgis 2004, Groves 2000, Krug 2001, Langholz 1999). Of the many jurisdictions that have engaged private land conservation and protection, materials on Canadian PPAs are noticeably absent. As this research outlines the shape and form of Canadian PPAs, it will also begin to establish Canada's reputation

in a new governance form concerned with protection and conservation. It will also help to shape the debate about the directions that protected areas should take and the role of private land initiatives in charting that direction (World Parks Congress 2003a).

Second, through a description and evaluation of the governance arrangements to which PPAs adhere, this research will also add to the general understanding that is beginning to form around governance and protected areas. By providing observations and conclusions on the scope of governance, its significance and its effect in selected PPAs, this research should sharpen the body of work that is beginning to emerge regarding governance and protected areas. Governance and its relationship to social and economic questions is a popular research theme. Although consideration of governance to environmental matters is increasing, research respecting governance and protected areas is comparatively rare; more questions than answers exist in this nascent field. This research, and its conclusions, will help to outline the parameters that can guide this emerging area of enquiry and it will begin to build a body of knowledge from which related enquires can spring. This research will also make a much needed contribution to the highly rarefied debate about the theoretical importance of governance in modern society.

This research also has policy relevance and practical application. If the role of the modern state is to encourage and create the conditions for better conservation behavior and to improve a nation's environmental standing, then the findings should be of interest to policy-makers, as well as to private sector actors interested in pursuing similar actions. Canada's reputation as an international environmental leader is becoming tarnished; its standing in environmental matters is falling, and in some areas, the drop is dramatic. For protected areas, it is believed that Canada's ranking on protected areas is behind that of sixty other jurisdictions, many of which lack a strong economic and socially democratic tradition (Boyd 2003). While there are debates about the causes of this diminishment, it is becoming clear that the state cannot go it alone. Active engagement of all society actors is a necessary and critical requisite if trends are to be reversed and standings are to be improved. The good governance of PPAs may help to rebuild and restore these natural and environmental resources.

1.2 Research Goals and Questions

The research goals are as follows:

1. To improve understanding about the governance profile and pattern of private protected areas in Canada.
2. To add to the general body of knowledge about governance and protected areas.

The questions that this dissertation seeks to answer are:

1. Do the Canadian private protected areas studied adhere to principles of good governance?
2. Do the private protected areas studied advance the public interest in conservation and protection?

1.3 Dissertation Organization

Chapter 2 presents research literature in three parts. The first part provides a context for PPAs in Canada by presenting materials from other jurisdictions where PPAs have been studied. The Canadian policy framework for conventional protected areas is also presented. The second part outlines the core concepts of governance, its relevance to the private sector, private contributions to public interests, and the import of governance in relation to environmental resources and protected areas. The third part describes the public interest in protected areas and it highlights the role of governance in serving the public interest. In order to understand the shape and form of governance, theoretical underpinnings are also presented in this Chapter. This chapter concludes with observations pertaining to the research goals and questions.

Chapter 3 outlines the methodology relied upon for this research. It presents a normative framework for the analysis and evaluation of PPAs and definitions relied upon to conduct this research. It also outlines the process for case study selection. It concludes by outlining the challenges confronting this research.

Chapter 4 presents research from the case studies. The case studies are presented in order of increasing complexity and each address the governance profile: background

context; protected area values; governance regime; and, the governance of public and private interests. A case summary, noting distinctive governance features, is also offered.

Chapter 5 presents a cross-case analysis to discover patterns and shared themes of governance for potential transferability to other contexts in which questions of governance and PPAs arise. The advantages and limitations of the PPAs studied are outlined. The relationship of the PPAs to the normative framework advanced for this research is discussed and their adherence to governance principles and attributes is presented. Concurrence by the case studies with governance themes is highlighted. The chapter concludes with a summary of major findings.

Chapter 6 offers conclusions on the governance of PPAs and the promise and uncertainty that these new forms of authority offer to the public interest in conservation and protection. This chapter also outlines the implications that an increasing number of PPAs present and it addresses the role that the private sector can potentially play in protected area systems. It concludes by outlining directions for future research.

CHAPTER 2
THE CONTEXT:
PRIVATE PROTECTED AREAS, GOVERNANCE AND THE PUBLIC INTEREST

2.1 Introduction

This chapter provides the context for the dissertation question and it is approached in three interrelated parts. The first part presents descriptive materials pertaining to PPAs. The recent emergence of PPAs and the ambiguity respecting the concept is then outlined. Next, the forces that have led to PPA establishment are addressed. Given that the private sector, however, cannot be treated as a homogenous entity, distinctions within this sector relating to protection and conservation goals are then outlined. In an effort to sharpen the differences and similarities between private and public protected area regimes, the Canadian policy framework for conventional protected areas is outlined briefly and a summary of advantages and limitations of PPAs is presented. In view of the paucity of literature in this newly emerging research field, materials from both advanced industrialized countries and nations in transition are offered. While acknowledging the limitations of inferences that can legitimately be made, it is against this general backdrop that the pattern and profile of PPAs in Canada is presented.

The second part of this chapter addresses materials on governance and considers three questions. First, given that the term governance can be broadly interpreted, what is its precise meaning for research of this kind? Second, what is the relevance of governance to a private sector that undertakes conservation and stewardship measures? Third, how has governance been interpreted with respect to environmental matters and protected areas?

The third part of this chapter discusses the challenges in defining and understanding the public interest. In particular, the public interest with respect to protected areas is presented. The significance of governance principles as representation of the public interest is noted.

This chapter also offers a brief explanation of theoretical underpinnings that can best explain the shape and form of governance.

This chapter concludes with observations pertaining to the research goals and questions.

2.2 Private Protected Areas

2.2.1 Emergence of Private Protected Areas

PPAs have existed for many centuries – for example, the declaration in 1079 of a royal hunting preserve in southern England is one of the earliest examples (Watkins, et al. 1996). The first scholarly reference, however, to this phenomenon seems to have occurred in 1962 at the first WPC on National Parks where it was declared that many nature reserves “are owned by private individuals, but are nevertheless dedicated in perpetuity to the conservation of wildlife and natural resources” (Adams 1962:379). In the mid 90s, researchers noted the emergence of a variety of institutional forms governing protected areas (Barborak 1995). In 1992, the Convention on Biological Diversity urged the involvement of the private sector in protected area systems (Swanson 1997). A report prepared for the World Commission on Protected Areas (WCPA) in 1998 notes “private initiatives contribute significantly to *in situ* biodiversity conservation in many parts of the world” (Green and Paine 1997:121).

Various political and economic reasons for the emergence of PPAs are offered. Frustration with grid-locked land management in public institutions, government failure to meet social policy goals, insensitivity of centralized agencies towards local or community aspirations and opposition from autonomous and self-directed interests have likely coalesced to provide momentum for new governance forms (Bennett 1995, Meadowcraft 1998). More meaningful participation in land management has also likely had a direct impact (Michaels et al. 2001). For private interests, threats of government intervention to private property have also been identified as a driver of new governance forms (Merenlender et al. 2004).

PPAs are now so immense in scope and importance, that it would appear that a quiet conservation revolution is underway in many parts of the world. This growth is now attracting a growing body of research. Langholz (1999), one of the leading research pioneers in this field, found that the efforts of private individuals undertaking tropical biodiversity conservation in Costa Rica was equivalent to 4.5 national parks of median size. Similarly, Africa contains a large suite of PPAs - reserves, conservancies, and game ranches - in private ownership that amounts to 14 million hectares (Krug 2001). At 650,000 hectares, Galana Ranch in Kenya is one of the largest private game ranches in the world. It protects wildlife habitat and provides consumptive and non-consumptive wildlife uses and its large size rivals the area of most public parks established in economically advanced countries (Watkins et al. 1996). In South Africa, private sector land conservation efforts are so widespread – now representing close to 18 per cent of the land area, as compared to 11.5 per cent for public protected lands – it has been argued that reliance on state efforts to provide protected area values and services can be reduced (Krug 2001). Brazil has embarked on a program - Private Reserves of Natural Heritage - to encourage private initiatives in conservation. Under the legislative reforms that address standards, as well as permanence of the initiatives, Brazil has at least 185 private reserves covering roughly 380,000 hectares, with “representation in every region of Brazil” (Brown and Mitchell 1999:175).

A recent assessment by the American non-government organization The Nature Conservancy emphasizes the importance of private land ownership for conservation (Knight 1999). As private lands in the U.S. harbor a significant number of federally-listed endangered and threatened species – as a consequence of historical land disposition practices that allocated highly productive lands to private interests - private ownership is believed to offer the most direct and absolute way to provide conservation to those plants and animals inhabiting a piece of land (Groves 2000). Indeed, some species at risk are only found on private lands, and conservation authorities suggest that such landowners have special responsibilities. The Nature Conservancy has a system of more than 1,300 reserves, ranging in size from 1.3 to 130,000 hectares that protect well over 6.07 million hectares, making it the largest private nature reserve system in the world (The Nature Conservancy 2005, Murray 1995). Others have estimated that more than 1500 land trust agencies exist in the US, many with a strong regional presence protecting over 10 million hectares (Land Trust Alliance 2004). Systems most likely to

be protected by land trusts include: wetlands, river corridors and watersheds for water quality purposes; farm and ranch land; nature preserves; open space; and habitat for species at risk (Land Trust Alliance 2004). Despite the explosive growth of agencies a coherent and systematic understanding of this phenomenon is missing. It is observed that agencies are “protecting an unknown quantity of open space of unidentified ecological integrity for an undetermined amount of time” (Merenlender et al. 2004:70). It is also added that information on the level of connectivity and integrity of the land being protected, as well as the goods and services that are provided would aid understanding considerably (Merenlender et al. 2004).

Australia also has a growing niche of private reserves which has become so prominent that the Commonwealth government has recently embarked on a dramatic program of reform to meet biodiversity goals. It is now pursuing non-statutory protected areas held by the private sector as a means of augmenting the formal protected area system (Thackway and Olsson 1999). Australia’s National Strategy for Conservation of Biological Diversity states that “by 2005, Australia will have established a system of voluntary or cooperative reserves, or both, and other management schemes on private lands to complement the protection provided by the public estate in protected areas” (Figgis 2004:6). As a consequence, a very different conservation, and governance, landscape is now emerging in Australia as the definition of protected areas expands to accommodate the contribution of the private sector. The effectiveness of such areas in securing conservation and protection values, however, has yet to be thoroughly documented and the significance of the contributory role of PPAs remains cautiously optimistic (Figgis 2004).

In view of these important trends, an action plan for PPAs has been developed, flowing out of the Vth WPC (World Parks Congress 2003a). A number of reforms – legal, economic and institutional – have been recommended to better harness this form of private conservation. The WCPA – the international authority on protected areas – also contemplates in its Guidelines for Protected Area Management Categories organizational responsibilities for the private sector (IUCN 1994). Although the WCPA contemplates autonomous ownership and management authority by a private body it has historically cast the private sector in a supporting and service delivery role; it has not assigned a central policy capacity to this sector. The traditional emphasis of the WCPA

has been directed towards state policy direction, ownership authority and management responsibility. This approach, however, is now undergoing a dramatic evolutionary change. The WPC has recommended to the WCPA that governments and civil society not only “recognize the legitimacy and importance of a range of governance types for protected areas”, but it has also specifically requested that the WCPA refine its “Protected Area Categorization System” to include a governance dimension that recognizes the legitimacy and diversity of approaches to protected area establishment and that it make explicit that a variety of governance types can be used to achieve conservation goals (World Parks Congress 2003a:42). It recommends that this:

“governance dimension recognize at least four broad governance types applicable to all IUCN protected area categories: a. Government managed; b. Co-managed (i.e. multi-stakeholder management); c. Privately managed; and d. Community managed (community conserved areas)” (World Parks Congress 2003a:42).

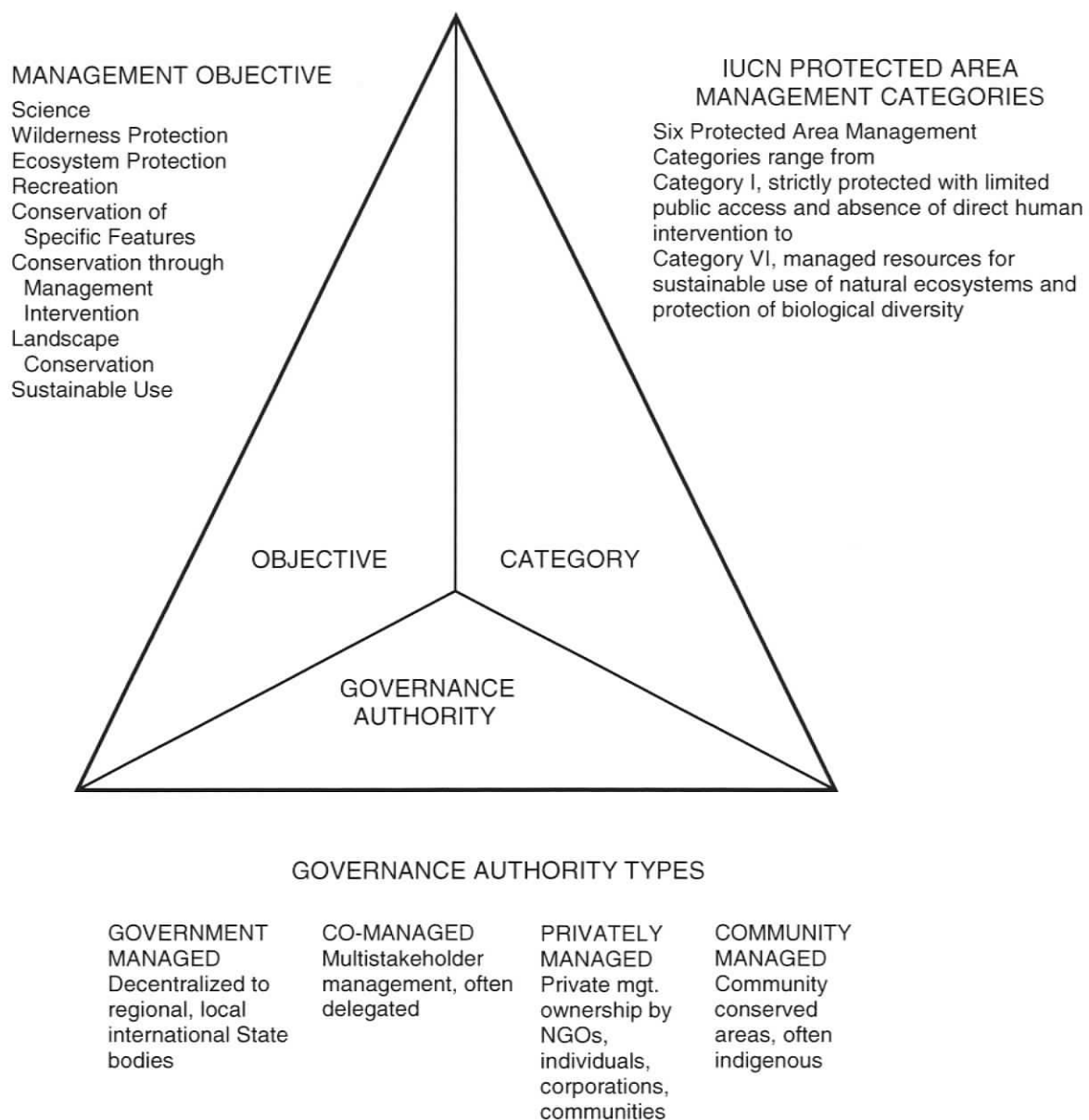
The implications arising from this tripartite arrangement are profound (Figure 1). Not only are PPAs being formally invited to join a movement that was generally focused on state or government protected area initiatives, it suggests that the perceived or real divide between public and private efforts may be softening. It would appear that a private sector role that was dismissed a mere decade ago as an insignificant aspect of protected area management (Dixon and Sherman 1990) may now well represent a new turn in conservation and protection.

2.2.2 Ambiguities in Definition and Typology of Private Protected Areas

In comparison to research on public protected areas, research respecting PPAs is relatively recent and remains sporadic. Although private ownership of land may be a key feature, there has yet to emerge an adopted consensus by private authorities on the definition of a PPA, suggesting a murky interpretation of the entire concept and of its potential salience.

For general comparative purposes, the definition of protected area adopted and advanced by the IUCN is “an area of land and/or sea especially dedicated to the protection and maintenance of biological diversity, and of natural and associated cultural resources, and managed through legal or other effective means” (IUCN 1994:1). The

Figure 1. New Forms of Governance for Protected Areas



IUCN embeds this definition by accompanying it with a six-part classification scheme based upon management objectives and degrees of human intervention. The defined categories cover a spectrum of: I. Strict Nature Reserve/Wilderness Area; II. National Park; III. Natural Monument; IV. Habitat/Species Management Area; V. Protected Landscape/Seascape; and VI. Managed Resource Protected Area. The main management objectives that are addressed along this classification spectrum include: science; wilderness protection; ecosystem protection and recreation; conservation of specific natural features; conservation through management intervention; landscape conservation and recreation; and sustainable use of natural ecosystems. The definition and typology is internationally recognized and has had tremendous influence in shaping the public protected areas agendas pursued by national governments in both economically robust and transitional countries.

Although the IUCN protected area definition and classification scheme is not inimical to PPAs, the private sector has not been a focus of emphasis. It is against this backdrop that the participants to the Vth WPC have reached a consensus opinion and propose that “a private protected area refers to a land parcel of any size that is predominantly managed for biodiversity conservation, protected with or without formal government recognition and is owned or otherwise secured by individuals, communities, corporations or non-government organizations” (World Parks Congress 2003a:1). The definition was unanimously adopted by the WPC in 2003 (World Parks Congress 2003a). In a similar vein, the Canadian Institute on Governance asserts that a PPA occurs where “the accountability for management of the protected area rests with private (non-government) individuals, corporations or representatives of indigenous peoples who are owners of the lands, who have formally dedicated the lands to conservation, who manage the area and make the decisions” (Institute on Governance 2002:29). These definitions, however, are at the early stages of conceptual introduction and have yet to be implemented and practiced by the various jurisdictional authorities that are contemplated by this new governance form.

Research respecting the concept, definition and application of PPAs, is likely to undergo evolutionary development before it reaches a critical threshold similar to that currently enjoyed by traditional state protected areas. Researchers have suggested, for example, that PPAs are lands of more than 20 hectares that are intentionally maintained

in a mostly natural state and are privately owned (Langholz and Lassoie 2001a) and are sites owned freehold or formally leased by individuals, corporations and other private bodies in which wildlife conservation is a primary activity and the responsibility of such owners or leaseholders (Watkins et al. 1996). Others have stressed that the lands are managed for nature conservation, not a formally gazetted status protected area, protected by legal or other effective means and managed principally as an IUCN protected area category of I-IV (Figgis 2004). Researchers interested in the voluntary, stewardship initiatives of landowners in Brazil suggest that PPAs are an area of private property designated for special protection at the initiative of the landowner and are recognized by public authorities for its important biodiversity or landscape character or is based on environmental characteristics which justify restoration activities (Brown and Mitchell 1999).

Areas of definitional consensus include the requisite private authority, ownership and management of the land at issue, secured by permanent or long-term land title arrangements. Areas of difference include whether to recognize the role of the state in the private area at issue. In other words, there remains no consensus as to whether the state needs to sanction the PPA and the presence or absence of government involvement remains a line of demarcation amongst researchers (Brown and Mitchell 1999, Langholz and Lassoie 2001a, World Parks Congress 2003a). The relevance of the size of the protected area also remains a debatable matter with views ranging from complete flexibility to a minimum standard (Langholz and Lassoie 2001a, World Parks Congress 2003a).

A conservation goal is an obvious prerequisite and primary goal in all definitions – “predominantly managed for biodiversity conservation” (World Parks Congress 2003a). Notably absent from many definitions, however, is commentary on the range of values that PPAs can represent and embody, which suggests that the benefit streams of PPAs have yet to be thoroughly explored. A general silence on the character of the PPA, for example, as a reserve, wilderness area or habitat management area, also adds to definitional ambiguity.

The most important area of definitional ambiguity, however, pertains to the type or degree of sustainable use that can be permitted in a private area without impinging on

conservation goals. General terms such as “wildlife conservation” (Watkins et al. 1996) and “nature conservation” (Figgis 2004) and more specific terms such as “predominantly managed for biodiversity conservation” (World Parks Congress 2003a) and “maintained in a mostly natural state” (Langholz and Lassoie 2001a) indicate the conservation and protection direction that is to be taken by PPAs. However, the absence of clarity on the level and types of activities permitted in PPAs and the extent of land that must remain in a pristine condition may invite debate about when PPAs are departing from accepted norms. This aspect could become a divisive point in future discussions and, if not agreed to, or clarified, burden the maturation of PPAs.

Given the revenue challenge that private protected land owners often face, guidelines on appropriate resource management strategies may be necessary. Some researchers have already noted, for example, that given the economic realities that PPAs confront, a relevant definition must reflect the quality of land protected over mere considerations of quantity (Langholz et al. 2000a). It has also been suggested that IUCN Category V and VI – Protected Landscapes and Seascapes, Managed Resource Protected Area – represent a tangible means to achieve conservation on private lands, such as working forests, as well as offering the greatest potential to accommodate the “presence of people” (Lucas et al. 1998:18, Phillips 2003). In these categories, providing “opportunities for public enjoyment through recreation and tourism appropriate in type and scale to the essential qualities of the areas”, “to promote sound management practices for sustainable production purposes” and “to contribute to regional and national development” may provide the flexibility that PPAs need to accommodate the demands of production (IUCN 1994). Others similarly suggest that private reserves are models of combined production and conservation and that sustainability is a central component of private land initiatives (Brown and Mitchell 1999). It is also argued that working landscapes, such as IUCN categories V and VI, can serve as buffers to areas requiring greater protection of their biodiversity values (Phillips 1999). In particular, IUCN category V advances protected areas where the interaction of people and nature “has produced an area of distinct character with significant aesthetic, ecological and/or cultural value”; safeguarding the integrity of this traditional interaction is vital to this category (IUCN 1994:5). PPAs with a strong cultural presence and biodiversity values could be candidates for this category.

Although the WPC recommends that the categorization system be refined to include privately managed lands, a typology governing these lands remains under development and in progress. The American non-governmental organization The Nature Conservancy, for example, recognizes four types, based on management authority, as being significant for conservation: individual, corporate/other, conservation organization and unknown private (Groves 2000). Alderman (1994) distinguishes three such types based on motivation and management activities: profit (consumptive), non-profit (non-consumptive) and hybrid private nature reserves. The Canadian Institute on Governance outlines three governance types: individuals, not-for-profit organizations and for-profit corporations (Graham et al. 2003a). Langholz and Lassoie (2001a) advance ten types of private areas which are loosely based on the IUCN classification scheme, including the following: formal park; corporate reserve; personal retreat reserve; biological station; eco-tourism reserve and hunting reserve. Figgis (2004) highlights four types, reflecting purpose and ownership structures: the bio-regional model, indigenous, private and private wildlife sanctuary. The WPC (2003b) advances four types of PPAs: individuals, communities, corporations and non-government organizations.

In contrast to generally-accepted classifications for public protected lands based on land title, bright lines have yet to emerge for lands governed by private authority, reflecting the growing interest, complexity and contributions of this phenomenon to conservation and protection goals (Philips 2003). The lack, however, of a generally-accepted, and tested, definition and the absence of a widely-recognized classification scheme for PPAs, will create conditions for debate and uncertainty for this newly emerging governance form. It is anticipated that potential candidates for this new governance form will undergo rigorous analysis and assessment before they are spotlighted as representative illustrations of PPAs. It is also anticipated that potential examples will help to refine the concepts and definitions that have been advanced thus far for PPAs. Recommendations that the protected area category system of the IUCN explicitly address privately owned protected areas may begin to bring some much needed harmonization to this emerging type (WPC 2003a). Understanding the forces that underlie the establishment of PPAs may also bring clarity to the development of classification and organizational schemes.

2.2.3 Forces Underlying the Establishment of Private Protected Areas

The values and motives of those who establish and maintain PPAs are complex. They can be generally captured by conflicting theories of moral economy, by which people act to benefit society at large and consider that they have a moral obligation to all human beings, as well as by theories of political economy, by which people act primarily out of economic self-interest. It is in this light that researchers have identified three distinct value types: 1. self-interest: protect the environment, only when benefits exceed costs; 2. social-altruistic: bear personal costs to safeguard the environment only when doing so protects other human beings; and 3. biospheric: express and act on moral principles that incorporate concerns with other species and natural environments (Schultz and Zelezny 1998).

Values identified as being significant to protected areas include the practice of a stewardship and conservation ethic that extends not only toward all human beings, but to those that embrace a moral obligation to nature. The attachment to existence, option and bequest values is prevalent in conservation and stewardship activity and is not to be underestimated as a major force driving conservation behavior (Bennett 1995, Brown 1998, Dunlap et al. 1992, Ferraro and Kramer 1997, Frank and Muller 2003, Hurley et al. 2002, Welchman 1999). Fyfe and Milligan (2003) document the growing and more visible role of voluntarism in western economies and its effect as a dominant force. Others have suggested enduring stewardship values arise from biophilia – where humanity has a deep urge to connect with living diversity (Kellert and Wilson 1993). Moral theorists argue that, given the urgency of resource scarcity, it is necessary to acknowledge a principle respecting conservation of access (Weiss 1989). They maintain that the rights of access enjoyed by past generations to resources must be conserved for future generations and that, under standards of justice, there is a minimum of access to conservation values for which each generation must maintain.

Other researchers have advanced more prosaic explanations to account for the rise of conservation and stewardship actions, particularly those involving private lands (Swanson 1997). The reasons most frequently cited include profitability, response to tax incentives, civil society concern about sustainability and post-materialism, public sector reforms, a rethinking of private land rights and the desire to establish a natural legacy

(Watkins et al. 1996). For example, owners of private nature reserves in Latin America and Africa claim, contrary to popular belief, that profit making was not the primary reason for establishing the reserve, but rather, the provision of conservation and education to a society at large was a key additional motivating factor (Alderman 1994). Similarly, owners of private nature reserves in Costa Rica maintain that they were primarily motivated so as to provide a legacy for their direct family members, as well as to fulfill conservation obligations (Langholz et al. 2000a). Others have also observed that private owners of large protected areas in Finland were motivated not by attractive financial compensation packages, but by a desire to pass on a future land legacy and, in so doing, they willingly accepted burdens that other landowners typically shunned (Tikka 2003a). Researchers have also noted that land and property values increased significantly around open space in selected American states and concluded that overall benefits to the community are generated by increased tax revenues (Standiford and Scott 2001).

It is also contended that private owners engage in conservation and protection because protected areas provide a mixed suite of direct private and indirect public benefits with demonstrable market and non-market value (Bennett 1995). Examples include revenue generation from sustainable activity, non-consumptive and consumptive recreation, spiritual and aesthetic enjoyment, and the provision of ecosystem services.

These recent findings challenge firmly held contentions that the wide range of benefits derived from protection and conservation – some on site, some off-site, some with market prices and others without clearly identified prices – militate against private investment in protected areas. It is argued that since conservation and protection actions are often non-exclusionary and joint and invite free-rider effects, they constitute a public good that it is likely to be under-produced in the market in the absence of government intervention (Dixon and Sherman 1990). By definition, markets will not generate public goods and, researchers argue, that the private sector would therefore extract rather than protect (Dixon and Sherman 1990).

The growth of PPAs, however, should lead society to re-think this line of query. For instance, although private land owners may have an incentive to mine or otherwise exploit their natural resources, private land owners motivated towards conservation and

protection have a strong incentive to maintain the integrity of their natural areas, since the continued success of their business or of their objective, depends on such integrity.

One of the interesting features of PPAs is the extent to which they manifest sustainable development. Unlike public sector protected areas that can pursue revenue generation and cost recovery through flexible *ex-situ* arrangements, the challenge of integrating ecological protection with economic development is very much an *in-situ* central concern of private owners (Merrifield 1996). It is asserted that the fate of private conservation very much depends on the ability of private land owners to capture conservation benefits in monetary terms (Krug 2001).

In particular, the rise in eco-tourism and its apparent straightforward relationship with biodiversity conservation has become a practical way to generate income and to pursue conservation goals, provided there is compatibility between the activity and conservation objectives (Schuerholz 2000). Many PPAs have also promoted active and passive recreational activities, such as game ranching, wildlife viewing and hunting, the harvest of botanical products and employment of local populations in service delivery (Alderman 1994, Watkins et al. 1996). More importantly, most owners of PPAs believe that they are able to generate more income from tourism operations, than from alternative land uses such as logging, agriculture or cattle ranching (Langholz 1999).

However, fluctuations in tourism interest and investment can jeopardize this source of revenue. Past studies suggest that most private owners do not make a profit or they are just breaking-even (Alderman 1994). In such cases, conservation intentions can be undermined and the problem of conserving non-market goods and services will become exacerbated, upsetting stability and long-term investment plans for the PPA in question.

In view of the economic struggle that land owners generally face, much research on the protection of nature within private lands focuses on the challenge of integrating economic and ecological objectives successfully through a vast array of incentives to encourage behavior among conservation entrepreneurs. Programs include such things as voluntary, non-binding and binding agreements in exchange for cash compensation. Tax relief, such as reduced municipal property taxes in exchange for conservation actions or provision of federal tax credits and reductions on the taxable gain capital gain

on gifts of and interests in ecologically sensitive land, such as the federal Ecogifts Program, are mechanisms that are gaining in popularity (Environment Canada 2005, National Round Table on the Environment and Economy 2003). Other mechanisms include revolving funds, where unconstrained lands are purchased, covenanted and subsequently sold to willing purchasers (Tikka 2003a). Other instruments include tradable development rights, legal protection from development interests and technical assistance such as positive publicity, marketing opportunities and educational materials (Kirby 2003, Michael 2003).

Researchers have suggested that, although much work remains to be done in providing the right mix of incentives to attract private land owners to conservation for the long-term, short-term incentive programs can have long-term biodiversity and conservation benefits (Langholz et al. 2000b). Others are more skeptical, however, asserting that incentive programs are too easily heralded and that they introduce unintended consequences and risks (Shogren et al. 2003). Such programs, it is argued, have the unfortunate effect of creating an ongoing dependency from private landowners that is difficult to satiate. The programs also result in a "patch work quilt" response that is not truly based upon conservation values, but rather is reflective of willing participants. The programs also employ a payment scheme that fundamentally does not relate to moral obligations, but rather to economic self-interest.

Studies on the take-up and effect of conservation incentives also suggest that, although they may aid appropriate conservation behavior, active implementation is not as aggressive as the policies intend and that a great deal more needs to be done in order to fully realize the benefits they suggest (Ducross and Watson 2002). A broader array of voluntary social and economic incentives to complement public, legal instruments is needed and a much greater effort is needed to enhance the predictability of incentive policies (Bowles et al. 1996, Doremus 2003, Gunningham et al. 1998). The importance of effective, that is, non-interfering, leadership from the state in environmental reform is seen as particularly relevant (Mackendrick 2005). If policy-makers seek to promote private conservation, they must learn which incentives are most valued by relevant landowners. Incentives must reflect the ways in which resource decisions are actually made by private land owners (Uphoff and Langholz 1998).

Tax reforms and price signals are often advanced as offering the greatest potential to encourage private conservation behavior. Markets for ecosystem services and trading in biodiversity credits are now being recommended (Merrifield 1996). Others have found that simple, direct, respectful engagement with landowners, complemented with tailored incentive programs, will improve conservation effectiveness (Langholz et al. 2000b, Tikka 2003a).

2.2.4 Distinctions within the Private Property Sector

Globalization has reinforced the notion that we live in a shrinking and boundary-less world, forcing a reassessment of the dividing line between what is private and what is part of the larger public community (Geisler 2000). The globalization phenomenon is also forcing a more cogent understanding of private sector rights and obligations towards conservation and protection.

Tension is growing, for example, between traditional private approaches to land protection and contemporary expectations that one must provide for nature. On the one hand, property rights advocates claim that well-defined and secure private rights will result in greater efficiency and more effective land management. They argue that self-determination, autonomy and sovereignty have been, and will continue to be, the root of successful land management (Anderson and Leal 1991, Edwards 1995, Prasad 2003).

On the other hand, opinion is advanced that market inefficiencies, such as imperfect pricing and externalities, prohibit responsible land stewardship and that traditional land ownership patterns that emphasize rights over responsibilities are no longer conducive to meeting larger biodiversity requirements (Knight 1999, Rantala 2003, Sand 2001, 2004). However, even within environmental science and policy fields, the deeply ingrained authority of private jurisdiction remains pre-eminent over that of broader environmental obligations, making it difficult to challenge tradition. Such positions claim that "protection may seriously limit the opportunities of landowners to develop their lands, therefore the property rights of landowners should in every case be evaluated against their duty to secure the survival of species or ecosystem in question" (Tikka and Kauppi 2003b:193).

The ownership of private property is commonly viewed as conferring tremendous privileges, rights and duties. Amongst the privileges is the ability to securely possess and use the property, to exclude and to bequeath the ownership rights and to do so without creating harm to others or incurring liability (Bromley 1991). While property rules are seen to be an efficient and peaceful social process of allocating scarcity, they are, in the final analysis, a legally and socially sanctioned ability to exclude. Private property sets the rules on who has access to which resources for what purpose and when (Alexandra and Walsh 1997).

Ostrom, however, reminds us that private property rights:

“tells us nothing about how that bundle of rights is to be defined, how the various attributes of the goods involved will be measured, who will pay for the costs of excluding non-owners from access, how conflicts over rights will be adjudicated, or how the residual interests of the right-holders in the resource system itself will be organized” (Ostrom 1990:22).

In response to the limitations that private property rights invoke, calls are routinely made for fundamental redefinition of private property, a fairer distribution of its benefits and costs among public and private entitlements and the adoption of biodiversity preservation as a shared goal and moral duty of the community and the individual (Sax 1993, Voyce 2003).

Although changes within the private rights sector may not be as grand as Ostrom envisages and effective challenges to deeply ingrained private authority are difficult to mount, important distinctions within this sector are emerging. Distinctions are drawn, for example, between land owners who are motivated by values that benefit the environment and society without an expectation of anything in return – “environmental altruists” (Schultz and Zelezny 1998) and those who are motivated to provide private and public benefits with a compensatory return – “asset managers” (Stone 1995).

In the former, the acceptance of intrinsic value underpins the obligation, providing opportunity, for example, of intangible aesthetic and spiritual engagement or existence values. In the latter, a first layer of benefits is appropriable by the owner in private markets, such as eco-tourism services, but the second layer of benefits spills across “so broad, even global, a community, as to present a public good” (Stone 1995:585). The

mitigation of flood risks, carbon sequestration, providing safe harbor for flora and fauna, and the provision of ecological services are but a few of the public benefits provided by private conservation landowners, but, as the author stresses, not willingly paid for by the beneficiaries.

In these private conservation and stewardship approaches, land ownership is not merely a purely private good with exclusionary and rival attributes, and marketable commercial value, but contains attributes normally associated with public goods, the most notable of which is the environmental benefit stream available to a complete range of participants.

McKean (2000) also elaborates on the distinctions to be found within private property rights regimes where protection and conservation is a central and shared goal. She suggests these represent a unique private property rights arrangement where owners share rights and duties toward a resource and where, unlike most resource privatization schemes, the resource is not likely to face a “chopping up (of) natural resource systems into environmentally inappropriate bits and pieces and of awarding rights in the bits to individuals” (McKean 2000:30). In these shared private property arrangements there is an awarding of rights and duties to specific groups of users or individuals who hold their rights in common with a view to maintaining resource systems as productive wholes.

That there are various types of arrangements emerging within the private sector is a reflection of the complexity respecting property regimes in general. Property rights regimes – be they public and private – are now seen not as opposing types but rather as combinations along a spectrum of a defined authority (state, private, common, open), with an almost infinite variety of components (Hanna and Munasinghe 1995a).

Moreover, since effective and ineffective control can exist under any kind of property regime, no single type can be prescribed to remedy the problems of resource degradation and overuse. It has also been suggested that a property regime and its conveyance of ownership is insufficient to achieve effective management; good governance of the regime is also essential (Groves 2000, Hanna and Munasinghe 1995b). To be effective, a property rights regime, be it public or private, must have a governance arrangement that is both well tailored and congruent with its ecological and

social context. It must also contain rules that address entitlements and constrain human action and be enforceable (Ostrom 1995).

2.2.5 Advantages and Limitations of Private Protected Areas

There is general consensus that PPAs contribute to long term conservation efforts by protecting sizeable amounts of diverse and ecologically valuable habitat, as well as serving as buffer zones and providing corridor areas to conventional protected areas (Thackway and Olsson 1999). It is noted, for example, that strategic land purchases of relict ecosystems by non-government organizations in cooperation with local landowners, “serve as ecological stepping stones, in an effort to establish ecological connectivity” (Schuerholz 2000:5).

PPAs can be models of best practice, showcasing a land-ethic responsibility where land owners become new extension officers for the off-reserve conservation ethic and stewardship practice (Figgis 2004, Horwich 1990). As an autonomous form of protected areas, private areas help to empower and, in some cases, restore human dignity, as control and responsibility for decision-making is vested in new organizational forms (Borrini-Feyerabend and Johnston 2003). The engagement of an expanded and diverse group of conservation actors in private initiatives is also seen to enhance the capacity for protected area management, as well as strengthening civil society (Brown 1998, Brown and Mitchell 1999).

In the search for tangible illustrations of sustainability, private areas can also manifest the balance between profit making and profit maximization as they pursue activities compatible with conservation objectives and the provision of public goods. For example, it has been asserted that “protected areas that are owned and operated privately allow for a more efficient and cost-effective management than government-run operations, with the ability to generate revenues and sizeable profits, while safeguarding ecological integrity” (Schuerholz 2000:5). It is noted that PPAs generate local - employment and contribute to community building (Edwards 1995, Horwich 1990).

PPAs, however, are not without their strong critics. Many argue that private parks cannot be a substitute for, nor compete with, state-centered protected areas (World

Parks Congress 2003a). Private parks, and the voluntary, self-interest that they represent, are said to be unable to serve the public trust and growing dependencies upon commonly-held resources (Hoogesteijn and Chapman 1997). There is deep-seated concern that the public interest will be traded off for the private interest and that private goals will be placed above public goals. It is feared that public goods will be treated as belonging to the private owner and that the benefits that flow from such scarce gifts of nature will unfairly accrue to the private owner, rather than be distributed to society. Further injury occurs when private charges are levied on the public goods (Goldman 1998). Compensation to private land owners to encourage the pursuit of environmental goals also raises concerns (Michael 2003). While the question of whether private owners of protected areas should be compensated for providing public good benefits is ultimately a practical and philosophical one, it is generally accepted that the current mix of financial incentives are wanting and that more sophisticated tools are needed to encourage conservation behavior (National Round Table on the Environment and Economy 2003).

Critics also contend that the fluctuation of market economies undermines the ability to pursue conservation in perpetuity (Brown and Mitchell 1999, Langholz and Brandon 2001). Ecologically, PPAs are generally small and isolated, and not often formally part of a systems and network approach committed to conservation and biodiversity objectives (Michael 2003).

Others have charged that private property rights in protected areas will result in more human-dominated landscapes, eroding the ecological foundation upon which current and future generations depend (Dearden et al. 1998). This point is a dividing line amongst researchers. Some researchers contend that working landscapes within the protected area classification scheme - such as IUCN categories V and VI, respectively culturally modified landscapes and managed resource areas that allow for human intervention and use - are a showcase of sustainability and demonstrate a challenging and poorly understood concept (Brown and Mitchell 1999, Lucas et al. 1998, Phillips 2003). Others assert that the establishment of more human dominated protected areas will compromise and undermine the more strictly protected areas where biodiversity conservation is paramount, such as IUCN categories I-IV (Locke and Dearden 2005). It is argued that as human dominated landscapes are established at the expense of

protected landscapes, the total amount of protected area will become artificially inflated and, more importantly, people, rather than biodiversity, will be placed “the centre of the protected area agenda” (Locke and Dearden 2005:1). Although PPAs need not be human dominated landscapes, it is anticipated that the financial reality that private land owners face may result in an accommodation of uses that may be contrary to protection and conservation objectives and inviting charges that they are, in essence, not protected areas, but lands practicing good stewardship.

PPAs interests are not generally governed by an organizing or self-regulatory framework that can orchestrate individual and group interests towards a common goal and a shared fate. While there are exceptions, the lack of an expressed declaration and organizing policy framework for PPAs invites differences about protection emphasis, performance standards, public involvement and role of the market; the sum of which creates uncertainty about their conservation significance (Brown and Mitchell 1999). Some have noted network “policies should include not just incentives for biodiversity conservation, but also ways to ensure sufficient monitoring and evaluation of private parks. There is a risk that even legally recognized private parks will fake conservation” (Langholz 1999:34).

Notwithstanding the limitations that measurement of conservation performance suggests for the integrity and credibility of PPAs, a significant concern has also been expressed about the unintended consequences and negative externalities that privatization represents; notably, the commodification of nature and an exclusion of public interests.

Under this scenario, critics argue, nature will be deemed relevant only if it is a commodified form imputed with value useful to the economy, becomes sellable and is no longer governed by the public interest (Cloke and Perkins 2002, Robertson 2000). Others go further and contend, given that goods and services of nature exist independent of human-kind, nature cannot be owned. They argue that ownership in nature cannot apply to the natural laws on which they are based (Frow 1996). Others argue that, because market approaches cannot address irreversibility and future uncertainty, they have no place in world heritage resources (Martinez-Alier 1996). As

biodiversity becomes globally significant, it removes the right of local peoples to that resource (Posey 2002).

It is also suggested that, as public funds are distributed to land trusts, wealthy landowners may benefit disproportionately from the approach as private lands are purchased or covenanted (Merenlender et al. 2004). Researchers argue that “the priorities of the less endowed are not well served by private organizations enjoying government largess rather than entrusting land conservation and management to more publicly accountable government agencies” (Merenlender et al. 2004:72).

The difficulty, and failure, of monetizing nature and the values that it represents may have unwittingly contributed to the protection of nature, at least historically. However, the increasing ability to assign price for profit renders nature commensurable with things, not only in the same taxonomic class of goods, but in different ones as well. For example, alligators are now easily compared to, and compete with, credits for carbon sequestration and running shoes (Goldman 1998). The failure to compete in market competition puts even greater pressure on resources removed from human interference. Researchers comment, “To the extent that a particular ecosystem does not offer ecological services, ecotourism opportunities, or genetic and biochemical resources that are highly valued by the global market, they are in danger of converting back to unsustainable uses such as timber or hydroelectricity” (Toly 2004:52).

Commodification also invites debates about the proprietary rights to nature, appropriation and exclusion. When non-monetary resources become monetized, struggles respecting rights of access and the distribution of benefits and costs occur (McAfee 1999). Commodification also calls for individuation - a splitting of complex ecosystems into legally definable and economically tradeable property rights that are removed from their social and ecological contexts (Castree 2003b). As resources are isolated they are shifted to seek comparative advantage. Bio-prospecting and public trading of environmental investments are the most recent illustrations of this trend (Alexandra and Walsh 1997, Castree 2003a, Koziell and Swingland 2002, Prudham 2003). Commodification also ignores ecological salience and attachment. For example, wetlands are now easily substituted or artificially created as part of development schemes and tradeable permits (Gardner 1996, Robertson 2000).

Commodification can also take less pernicious forms. For PPAs, game ranches and wildlife hunting have become a predominant form that has successfully competed against non-consumptive activities, such as wildlife viewing, potentially undermining this important protected area value (Krug 2001). The strength of the excludable and rival good not only results in its promotion at the expense of other values that are not easily commodified, it also inadvertently creates a paradox, where the protection of nature becomes dependent upon increasing commodification (Head 2000). A summary of the advantages and limitations of PPAs is presented in Table 1.

2.2.6 The Canadian Context

Research literature on PPAs and private conservation initiatives tends to be case-study based and situated in countries that are undergoing economic transition (Brown and Mitchell 1999, Hoogenstein 1997, Junge 2004, Krug 2001, Langholz 1996, Langholz 1999, Langholz and Lassoie 2001a, Watkins et al. 1996, Yu et al. 1997). For economically advanced countries, such as Australia and the United States, research on PPAs, although comparatively not as extensive, is beginning to grow (Figgis 2004, Fitzsimmons and Westcott 2002, Murray 1995, Groves 2000, Thackway and Olsson 1999, Young et al. 1996). Despite the rapid growth of land trusts and private land conservation researchers lament that there is such little meaningful information that “it is difficult to assess their conservation accomplishments and long-term viability” (Merenlender et al. 2004:65).

In Canada, the PPA sector has not been studied. Literature specific to Canada respecting resource stewardship, conservation incentives, environmental regulatory developments, as well as materials on protected areas in general does provide a relevant context for a study of PPAs (Abrams et al. 2003, Amos 2003, Boyd 2002, British Columbia Land Trust Alliance 2005, Cashore et al. 2001, Dempsey et al. 2002, Graham et al. 2003a, Hartshorn 2003, Institute on Governance 2002, National Round Table on the Environment and the Economy 2003, Parks Canada Agency 2003, Pollution Probe 1999, Sandborn 1996). However, the collection of empirical information and the conduct of analysis respecting PPAs have yet to be conducted or initiated in a meaningful way. The technical inventory and data synthesis needed to understand the scale and scope of

Table 1. Private Protected Areas: Advantages and Limitations

<p>ENVIRONMENTAL ADVANTAGES</p> <ul style="list-style-type: none"> • As ecological corridors and buffers can contribute to biodiversity and complement national protected area strategies (Alderman 1994, Figgis 2004, Thackway and Olsson 1999, Watkins et al. 1996) • Many species at risk are only found on private lands increasingly surrounded by development pressure (Groves 2000) • Provide ecological services that would otherwise be potentially diminished through other land uses (Bennett 1995) • Serve as a buffer zone around formal protected areas and as an ecological stepping stone for migratory species (Schuerholz 2000) 	<p>LIMITATIONS</p> <ul style="list-style-type: none"> • Most are small, isolated and outside a systems network creating habitat fragmentation (Michael 2003) • Areas tend to emphasize commodity and use production, such as game ranches, potentially under representing other protection values (Watkins et al. 1996) • Contribution of private areas to national conservation strategies is not well-understood and private market supply of biodiversity values is not definitive (Langholz and Lassoie 2001b, Krug 2001) • Erosion of ecologically-intact areas into human-dominated landscapes undermines ability to sustain current and future generations (Dearden et al. 1998)
<p>SOCIAL ADVANTAGES</p> <ul style="list-style-type: none"> • Provide a diverse value range: direct, indirect, use, non-use, option, existence, bequest (Bennett 1995) • Serves public interest by assuming costs the state would otherwise incur (Kirby 2003) • Enlisting locals extends a conservation and stewardship ethic on middle lands and working landscapes (Knight 1999, Lucas et al. 1998) • Expression of a direct family legacy (Langholz 1999) • Strengthen community relations through direct employment (Horwich 1990) • Effectively market nature-based tourism (Alderman 1994) • Autonomy and responsibility for decision-making creates empowerment, reduces conflict (Borrini-Feyerabend and Johnston 2003) • Voluntary approach is more effective than regulatory (Brown and Mitchell 1999) 	<p>LIMITATIONS</p> <ul style="list-style-type: none"> • A paradox where environmental preservation becomes dependent upon increasing commodification (Head 2000) • Desire to protect nature can act as a subtle but highly effective mechanism of social exclusion and reaffirmation of elite class identities (Duncan and Duncan 2001) • Foreign investment creates tension at the local level (Watkins et al. 1996) • Limited technical and legal support to prevent resource infringement (Langholz et al. 2000b) • Predictable eco-tourism adventure activities affects cultural identity and limits opportunities for transformation (Cloke and Perkins 2000) • Nature is becoming increasingly capitalized and valorized, creating a new governance regime where production and profitability are paramount (Toly 1994) • Landowners initiation; vision may not be sustained (Brown and Mitchell 1999)

Table 1 (continued)

<p>ECONOMIC ADVANTAGES</p> <ul style="list-style-type: none"> • Free-market allows for entrepreneurial, innovative and profitable activities that engenders accountability (Watkins et al. 1996, Koziell and Swingland 2002, Langholz 1996) • Showcase sustainability and integrate biodiversity with sustainable development (Hoogesteijn and Chapman 1997) • Provides public interest biodiversity values at zero-cost to the public (Krug 2001) • Augment public sector efforts when general funds are limited (Koziell and Swingland 2002) • Provides private and public goods via for-profit and non-profit venues (Bennett 1995) • Fills an infrastructure gap for tourism, education and research that public parks cannot provide (Alderman 1994) • Provides direct and indirect economic benefits to the surrounding community (Alderman 1994) • Provides a suite of private and public benefits with market and non-market values (Langholz et al. 2000a) 	<p>LIMITATIONS</p> <ul style="list-style-type: none"> • Market sensitivity and pressure to generate revenue may allow for activities that undermine conservation objectives and invites trade-offs (Langholz and Lassoie 2001b) • Relationship between sustainable land use and biodiversity benefits not well understood (Koziell and Swingland 2002) • Free-riders take advantage of conservation reputation; drain public resources (Yu et al. 1997) • Unacceptable activities have not been defined; invites debate about appropriate land use, uncertainty and conflict (Bennett 1995) • Inefficient and overstate cost-effectiveness, when part of a state-run program (Michael 2003) • Long-term conservation not guaranteed due to market fluctuations and macro-economic policies (Krug 2001) • Insufficient market based tools to encourage conservation (Bowles et al. 1996) • Property and capitalization of nature invites commodification and exclusion (Castree 2003a, Robertson 2000)
<p>ADMINISTRATIVE ADVANTAGES</p> <ul style="list-style-type: none"> • Complements PAs and strengthens civil society (Mitchell and Brown 1998) • Variety in PPAs management objectives, allowable activities and levels of protection, potentially aid resilience (WPC 2003b) • Serve as supplements to effective public protected areas (WPC 2003a) • Subject to legally binding conditions for long-term conservation (Bowles et al. 1996) • Temporary way-stations until formal planning processes are complete (Bennett 1995) • Flexible decisions (Alderman 1994) 	<p>LIMITATIONS</p> <ul style="list-style-type: none"> • Informal protection arrangements invite uncertainty about their long-term conservation status (Fitzsimmons and Westcott 2002) • Insecure tenure invites expropriation and infringement (Watkins et al. 1996) • Lack of oversight for biodiversity values invites departure from accepted norms for protected area management (Fitzsimmons and Westcott 2002) • Can suffer from park as an island effects (Brown and Mitchell 1999) • Corporate tokenism and greenwash; frustrate land distribution reforms (Langholz and Lassoie 2001b)

the sector at national to local levels are missing, undermining confidence in spatial extent, central purpose and effectiveness. For example, Conservation Data Centres that document species, communities, land ownership, ecological standing, representation and management are at various developmental stages in some jurisdictions. When inventories are conducted, they tend to be on public, rather than private, lands, introducing another potential complication to understanding this sector.

A comparison with the approach taken by the public regulatory sector with respect to protected areas may provide a useful context for understanding the significance of PPAs. Conventional public protected areas have been well inventoried and, to a lesser extent, have likewise been the subject of considerable analysis as regards to their quality and the quantity of resources they represent. They are typically defined as being legally established areas, both land and water, that are regulated and managed for conservation objectives. They include parks, wildlife management areas, wilderness areas, ecological reserves and other conservation areas designated through federal, provincial, and territorial legislation and which provide a different emphasis regarding a conservation, recreation and resource use mandate. Although estimates as to the extent of protected area for the nation vary, depending upon the scope of measurement, it is generally believed that land base in protected areas – in this case, IUCN Categories I to VI – accounts for 6.3 per cent of the total land area of Canada; if marine protected areas are included, the estimate is 9.9 per cent of the total land area (World Resources Institute 2003). Other estimates suggest that 9 per cent of the land area has been set aside by national, provincial and territorial governments (Canada 2005). The World Wildlife Fund Canada estimates that 8.4 per cent of the land area of Canada has been permanently protected from industrial activity (World Wildlife Fund Canada 2003).

Canada's standing in the field of protected area management, however, is not strong internationally; it is believed that Canada's performance in protected area establishment ranks behind that of sixty other jurisdictions (Boyd 2003). The Parks Canada Agency estimates that when the national park system is complete it will likely cover about 3 per cent of the nation's land and fresh water; existing national parks currently cover just over 2.5 per cent of this base (Parks Canada 2006). The agency is aiming for representation in each of its 39 natural regions as introduced under the National Parks Systems Plan in 1971. Although there are more public protected areas in southern Canada, these are

generally small compared with the few, but very large, protected areas located in the northern regions of Canada. This spatial arrangement, it is argued, is “too few, too small and too isolated to be able to protect biodiversity. These problems exist because economics, rather than ecology, dominates the process of identifying and selecting protected areas” (Boyd 2003:170).

The Convention on Biological Diversity stresses that “the current global systems of protected areas are not sufficiently large, not sufficiently well-planned, nor sufficiently well-managed to maximize their contribution to biodiversity conservation” (United Nations Environment Programme 1992:349). As signatory to the Convention, Canada is committed to reducing the current rate of biodiversity loss and, by 2010, to the establishment and maintenance of a comprehensive, effectively managed and ecologically representative system of protected areas. During much of the 1990s Canada appeared well on its way to meeting this obligation. Researchers have documented that the coalescence of scientific, political and policy factors generated momentum for the greatest increase in protected area establishment witnessed in Canada; in 1989, 2.95 per cent of Canada was protected, in 1999, this had increased to 6.84 per cent (Dearden and Dempsey 2004). Given the challenges burdening the protected area agenda, it remains to be seen whether Canada can meet the letter and spirit of the Convention. The Canadian Commissioner on the Environment and Sustainability reports that “overall, the federal government’s progress in implementing key aspects of the Canadian Biodiversity Strategy is unsatisfactory. Nearly 10 years after endorsement of the strategy, momentum has stalled on several key fronts” (Auditor General of Canada 2005c:1). The notable missing pieces include the lack of a coherent plan, failure to improve the capacity to understand biodiversity and manage information, and the absence of a consolidated, comprehensive report on the state of biodiversity in Canada.

At the provincial level, there is variety in the amounts of land protected. For example, British Columbia has protected 13 per cent of its land base and is noted as the leading jurisdiction in Canada (World Wildlife Fund Canada 2003). Yukon, Ontario and Manitoba are estimated to have secured respectively 12, 9.2 and 8.5 per cent of jurisdictional lands in protected area status (World Wildlife Fund Canada 2003). These estimates may be impressive relative to the calls arising from the Brundtland

Commission to the effect that at least 12 per cent of a jurisdiction should be secured in protected status. They do not, however, convey assurances regarding ecological representation as captured by ecological land classifications. At the ecoregional level across Canada, for example, it is estimated that protection ranges to over 90 per cent for some ecoregions to none in others. About two-thirds of the land occupied by Canada's ecoregions has some protection, leaving about one third with virtually no protection (Canada 2005). Notable areas without formal protection include northern regions of British Columbia, northern and mid Alberta, southern Saskatchewan, northern Ontario, northern Quebec and Labrador, southern Yukon and Northwest territories.

At the ecosection level in British Columbia, 37 of 112 ecosections were estimated to have more than 12 per cent of the ecosection protected and 33 ecosections were estimated to have 1-6 per cent protected (British Columbia 2002). As a result, at least two thirds of British Columbia lacks adequate protected area representation. Other jurisdictions are expected to demonstrate a similar or weaker pattern of representation. Unevenness in ecological representation is considered a serious impediment to securing ecological integrity (Parks Canada Agency 1999).

Ecological integrity is a difficult concept to define precisely. It is interpreted by the *Canada National Parks Act* (see glossary for legislative references) as meaning that the biotic and abiotic characteristics of a natural region – including its species, communities, rates of change and ecological processes - are likely to persist. The adoption of ecological integrity – where protection of natural resources and processes are required to be the first priority of the responsible Minister - has emerged as a major policy shift in protected area management and is a reflection of the growing tension between natural values and human activity that has been witnessed in the Canadian national park system. Although ecological representation is critical to the achievement of ecological integrity and to the success of protected areas, the objective of ecological integrity is also “contingent upon factors such as park size, the location of park boundaries, the connectivity between parks, and the nature of land use in adjacent territories” (Rollins and Dearden 2002:403). In 2000, the Panel on Ecological Integrity reported that thirty-eight out of thirty-nine national parks are suffering from severe ecological stress (Panel on Ecological Integrity 2000). In 2005, the Canadian Commissioner of Environment and Sustainability reported that “significant issues in ecological integrity...are being

addressed through monitoring and restoration activities, but gaps in coverage exist” (Auditor General of Canada 2005b:2). Researchers have also argued that the prevailing legal and regulatory framework contributes to this stress and that it is detrimental to securing the ecological integrity of protected areas (Boyd 2003).

Boyd (2002) concludes that the legal and regulatory framework governing protected areas, both at the national and provincial levels, is “for the most part, grossly inadequate” to protect the landscapes and values that protected areas embody (Boyd 2002:1). Although there are few exceptions, most jurisdictions in Canada fail to provide the comprehensive laws needed to provide protection. Among the litany of concerns, current regulatory frameworks not only allow for exploration, development and extraction of natural resources to the detriment of protected area values, they also allow for changes in park boundaries or revocation of park status through legislative or regulatory mechanisms. These limitations conspire to severely undermine the quality, scope and scale of protected areas and they invite uncertainty about permanent and lasting protection.

Although the problem may appear insurmountable, the appropriate remedies and prescriptions required to substantially improve the governance framework are not extensive. The provisions that are to be commonly shared amongst all Canadian jurisdictions include the following: entrenching conservation and ecological integrity as the top management priority; prohibiting industrial resource use; permanently protecting protected area boundaries; incorporating dedications to future generations; providing mandatory public participation in park planning; requiring reporting on the state of parks; recognizing aboriginal rights; enshrining a minimum of 12 per cent protection of all ecosystems; providing additional protection for ecological reserves and wilderness areas; and providing for controls in outside buffer zones that may cause ecological harm inside the protected area (Boyd 2002). Emergency protection and reserve orders, a public registry of information about the status and management of protected areas and a secured funding based are also frequently noted as compelling features of an improved governance framework (Boyd 2003).

Special mention must be made of Nova Scotia. In recognition of the relatively high proportion of private land ownership in the province – over 70 per cent is privately owned

- the Nova Scotia *Wilderness Areas Protection Act* requires the government to promote the designation of private land as wilderness. Section 14(1) of the Act states: "The Minister shall promote the voluntary establishment of privately owned lands as new wilderness areas or as parts of designated wilderness areas". Various programs exist to encourage private conservation and to acquire and secure lands in ecologically significant natural areas for conservation and preservation purposes. The programs include designation of private land under the Act, donation of private land to a recognized conservation agency, conservation easements that restrict development on private land, designation of ecologically sensitive land under the federal Ecogifts Program, as well as partial donation and split-receipting (Nova Scotia 2005a). Each program involves different land ownership regimes and financial incentives. The implementation of the private land conservation initiative is considerably augmented by land trusts that receive government financial support, purchase private lands and then transfer ownership to the provincial government (Nova Scotia 2005). To date, less than 0.1 per cent of that province has been formally protected on private land (Nova Scotia 2005a).

In view of the substantial gaps in protected areas created at the national and provincial level, can private land authorities make a meaningful contribution to land protection and conservation? There are a growing number of non-government land trust organizations in Canada at the national to local level committed to land protection and conservation. The most notable among these is the Nature Conservancy of Canada (NCC), established in 1962 and responsible for 1.8 M hectares of ecological significant land (Nature Conservancy of Canada 2005). The NCC is governed by national and regional boards and offices across Canada. The protection by the NCC in 2005 of 100 square kilometers of private land through a conservation easement surrounding Waterton National Park – Waterton Park Front – is the largest private conservation initiative in Canadian history and illustrative of the growing role of land trusts, land-owner contact and stewardship programs (Globe and Mail 2005b).

In British Columbia, about 40 land trust organizations have worked to secure over 200,000 hectares of land for conservation and protection purposes through some 400 fee simple ownership and covenant arrangements (British Columbia Land Trust Alliance 2005). A diverse range of values including significant biodiversity habitats and species,

recreational, educational and research are represented in most ecoprovinces, with the exception of northern British Columbia. Provincial land trust organizations, such as The Land Conservancy and The Nature Trust of British Columbia are central players in the land conservation mission.

The arrangements for each land trust will reflect regional constraints and opportunities, as well as, attention to broader factors. To this end, a comprehensive document that outlines best governance practices for land trusts has been prepared by a central coordinating agency (Land Trust Alliance USA 2004). The purpose of the standards document is to instill confidence in the public, secure its trust and ensure the permanent conservation of land. Notably, the practices call for a clear mission that serves the public interest, expectations for board accountability, and processes for evaluating and selecting conservation projects. Although US based, a number of Canadian land trusts have adopted, or at least acknowledged, the framework to guide management and operations.

The PPA sector, however, is more than land trusts and conservation organizations. In the US, for example, lands held by private and corporate owners are seen to contribute significantly to biodiversity conservation. However, a significant amount of private land remains undocumented as to owner and is referred to as “unknown”, underestimating the significant contribution from these land types (Groves 2000). A similar arrangement is expected to exist in Canada.

Private lands in the US harbor a significant number of species at risk and private ownership may offer a direct and effective way to protect species at risk (Knight 1999). In Canada, the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) advises that Canada has lost, through extinction and extirpation, at least 35 species of wild flora and fauna. COSEWIC also advises that another 465 species are endangered, threatened or of special concern (Committee on the Status of Endangered Wildlife in Canada 2005). Habitat fragmentation and decline in habitat quality is often cited as the most significant factor in species decline (Tikka 2003a). The role of private lands in the COSEWIC assessment, however, cannot be isolated. Stresses on protected areas also influence private lands. Major stresses to protected areas are increasing and include a litany of manageable to uncertain events inside and outside protected area boundaries.

Major stresses include solid waste, human disturbance, utility corridors, pesticides, park management practices, urbanization, exotic vegetation and climate change. These stresses are resulting in habitat loss, a decline in large carnivore populations, an increase in pollution, the introduction of exotic species and intensified human disturbance of wildlife (Parks Canada Agency 2000, 2003). Researchers have similarly documented a decline in environmental quality in Canada (Alperovitz et al. 1995, Commission for Environmental Cooperation 2001).

The laws of general application apply to PPAs, just as they would apply upon any other privately held property. Those regulatory standards that would apply to private property in given provinces must be met – for example, wildlife protection measures, the laws of trespass and the like. The federal *Species at Risk Act* (SARA), which came into force in June 2003, protects the wildlife found on federal lands as well as their critical habitat. In addition, if critical habitat is located on private or provincial lands and is not protected through stewardship arrangements, conservation agreements, or provincial or territorial laws, SARA contains a safety net. Under section 61, the federal Cabinet, on the recommendation of the Minister of the Environment, may make it an offence to destroy critical habitat in a province or territory. The Minister must make a recommendation if, after consultation with the provincial or territorial minister, the Minister finds that the critical habitat is not protected effectively. This can obviously apply to PPAs. However, there have been no actions to date under this legislation. Sanctions under SARA forbid harming endangered or threatened species and destroying their habitat, whether on public or private lands. Violators would be subject to criminal sanctions, including fines and prison sentences.

The lack of enforcement respecting statutory and regulatory arrangements has also turned attention to the role and effectiveness of voluntary approaches. A stewardship ethic, however, will only go so far. In a study of voluntary initiatives in Canada, it was observed that although such schemes are heralded as creating a positive climate for improved land conservation, “one fundamental criticism of voluntary programs in conservation is that the emphasis on engaging individuals and organizations has come at the expense of setting hard performance targets” (Pollution Probe 1999:41). Furthermore, while expectations of land owners to provide public benefits at private expense is high, tension between landowner and the public is inevitable as few

landowners are willing to make long-term, and potentially risky, investments in conservation that the public may desire. Moreover, private land owners have been found to be reluctant to have conservation requirements imposed upon them, with or without compensation (Ducross and Watson 2002).

Research now suggests that a more comprehensive policy mix is needed to overcome the limitations that voluntary measures present; substantive changes will come about, it is argued, when landowners are rewarded for doing the right thing (Pollution Probe 1999). To this end, a series of recommendations to improve private land conservation and protection in Canada have been made. The scope is understandably broad, offering a mix of financial incentives and benefits, largely geared towards donations of ecologically sensitive lands (National Round Table on Environment and Economy 2003).

Such recommendations, however, may not be tailored enough to address the special niche that PPAs could potentially fill. Independent and autonomous bodies committed to conservation and protection may require a more fulsome approach to harmonize efforts and to ensure accountability. In comparison, some policy frameworks advanced for conventional protected areas are explicit as to their philosophy, goals, priorities and approaches, which go some distance to coordinating public sector efforts towards a comprehensive system. For example, the *Canada National Parks Act* stresses, among its key features, that ecological integrity is the first priority (where ecosystems are unimpaired and the biological diversity and supporting processes are likely to persist), permanent protection is to be secured through legislated boundaries and that parks are to be dedicated to the Canadian public for their benefit, education and enjoyment. In view of these strengths, a recent assessment and report card awarded the national parks legislation the highest grade for providing legal protection to protected areas (Boyd 2003). These policy features are underscored by a management approach that includes inventory and assessment, planning, evaluation and enforcement – aspects often missing in a voluntary stewardship regime.

Moreover, although these provisions apply at the national level, they are not commonly-held amongst provincial jurisdictions vested with the authority for protected area management. Key differences at the provincial level in selected jurisdictions

include, for example: British Columbia's failure to dedicate lands to future generations; Manitoba's failure to prohibit industrial resource use; and Yukon's failure to enshrine a protection threshold (Boyd 2002). These failures are not restricted to the jurisdiction noted, but are merely representative of the wide scope of inadequacies in legislative frameworks across the country. Jurisdictions, however, are not immune to introducing stronger legislative reforms. For example, the recent introduction of ecological integrity as a first priority in planning and management of Ontario's parks and conservation reserves and regular public reporting on the achievement of park objectives are two legislative amendments that will strengthen protected area governance (Ontario 2005). In general, inconsistencies, incompatibilities and lack of coherence between the jurisdictions are likely to invite conflicts and tension between the administrations and, more significantly, gaps in protected area systems. PPAs may well have a significant role to play in the future in filling these gaps.

2.3 Governance

2.3.1 Defining Governance

During the last decade, the concept of governance has experienced a remarkable upswing in interest and application. It has moved from sporadic reference to wide use in many academic fields, and it is enjoying increased attention in political and popular practice at both the national and international level. The term governance, however, suffers from considerable definitional ambiguity and very often remains unclear what is actually being referenced when the term is invoked.

The literature generally concludes that the term is used in an eclectic and sometimes disjointed manner. It is also used interchangeably and has been assigned a wide variety of general and specific meanings, which no doubt reflects its diverse roots in international relations, human rights, political science, jurisprudence and the democratic tradition (Weiss 2000).

At the conceptual level, governance seeks to understand the changes in the way that contemporary society is governed. It is ultimately concerned with creating conditions for

ordered rule, collective action and societal support: governance is about managing social change. Governance is also concerned with helping to shape a society that should ideally be different and better than the present one (Rhodes 1996). The key function of governance is problem-solving.

At the applied level, governance tries to “decompose and reconstruct the variety and complex combinations of institutional devices by which societies control and regulate...factors and conditions fostering or inhibiting the evolution of different institutional arrangements...constitute the core *problematique*” (Schneider 2002:187) . In this respect, organizational structures, administrative procedures, judgments, incentives and management philosophies are often put under a governance lens (Heinrich and Lynn 2000). Formal and informal norms, such as legislative goals and cultural understandings, are also the subjects of governance. In many instances, governance studies emphasize the allocation and use of decision-making power; they evaluate actions that constrain, prescribe and enable (Cortner and Moote 1999). In this capacity, understanding the authority, accountability and relationships among central and peripheral actors provides a profound commentary on power relations and how such authority is exercised, over and among those who stand to lose and those who stand to gain.

Governance can also have a dual meaning. On the one hand, it stresses the adaptation of government to new challenges and, on the other it refers to the coordination of social partners and actors, where the state merely has a role in the negotiation, implementation and delivery process.

In this vein, governance is not necessarily about government, which suggests that the image of the state must be reconsidered. Many governance studies address government pursuits. However, for the most part, governance is “beyond government” (Rhodes 1996). It is about the emergence of new forms of governing where the governmental role is changing and moving from steering to coordination to self-governance and from state-centric to society-centered forms of organization (Pierre 2000). Others maintain that the essence of governance is the emergence of autonomous, self-governing forms that do not turn on any recourse to the authority and sanctions of government (Stoker 1998).

To further emphasize that a substantial break from the past is occurring, governance is often described in terms of dichotomies - public/private, government/society, state/market. The presentation, however, is not to further entrench these entities, but rather to make clear that the boundaries between the public and private sectors and between the national and international levels, for example, have become fundamentally blurred. For governance, there is a whole sector in between that is neither purely public nor purely private (Stoker 1998). As a result, governance studies emphasize the transformation to new types of organizations that are emerging in the supply and distribution of goods and services in society and, more importantly, in the allocation of values (Aquino 1993).

Derived from the Latin word *gubernare*, which means to steer, governance generally refers to the “means for achieving direction, control and coordination of wholly or partially autonomous individuals or organizations on behalf of interests to which they jointly contribute” (Heinrich and Lynn 2000:2). The following selection of definitions is also instructive:

“the sum of the many ways individuals and institutions, public and private, manage their common affairs. It is the continuing process through which conflicting or diverse interests may be accommodated and co-operative action may be taken” (Commission on Global Governance 1995:2)

“the interactions among structures, processes, and traditions that determine how power and responsibility are exercised, how decisions are taken, and how citizens or stakeholders have their say” (Institute on Governance 2002:2)

“the decision-making structures, mechanisms and systems of administration which influence the operation of management systems” (Short 1999:614)

“governance refers to sustaining co-ordination and coherence among a wide variety of actors with different purposes and objectives such as political actors and institutions, corporate interests, civil society, and transnational organizations” (Pierre 2000:3).

The broad scope of governance invites research in a broad arena. Researchers promote governance as: “good management” (Rival 2003:494); “absence of corruption” (Smith et al. 2003:68), “stakeholder representation” (Short 1999:613); “the predominant view of government in the Zeitgeist of the late twentieth century” (Pierre 2000:4);

“environmental corporatism” (Meadowcraft 1998:21); “community-based initiative” (Brunner et al. 2002:7), “enhancement or a change in the relations of responsibility” (Pellizzoni 2004:542) and “enhancement of the common interest” (Brunner et al. 2002:7). Governance can be good, bad, new and old and be the solution to collective—action problems or be the problem.

Government failure, public fiscal restraint, constrained business competitiveness and state restructuring may provide the momentum for an increased emphasis upon governance and the emergence of new organizational forms (Meadowcraft 1998). Its rise, however, most likely reflects a range of broad internal and external forces orchestrated around calls for more meaningful participation and co-management (Michaels et al. 2001). This is particularly salient for environmental and resource problems. The acceptance of complex, large problems embedded in uncertainty, in conjunction with the rise of a civil society concerned with the effectiveness of the methods selected to resolve these problems, appears to offer an explanation for the emergence of new forms of governance (Pellizzoni 2004). It is now accepted that:

“No single actor, public or private, has all knowledge and information required to solve dynamic, and diversified problems; no actor has sufficient overview to make the application of particular instruments effective; no single actor has sufficient action potential to dominate unilaterally in a particular governing model” (Kooiman 1993:4).

The forms of governance span a diverse spectrum from public to private monopoly and co-management forms. They hold, however, in theory, a common pursuit which is the most important role and function of governance. New governance forms are to lead to outcomes that parallel those of the traditional institutions of government. Governance is a direct, deliberate, predominating influence that determines direction and shapes goals and outcomes. Researchers suggest that governance is “a purposeful effort to guide, steer, control or manage” (Kooiman 1993:2) and “the joint role of governmental, semi-governmental, non-governmental, and private institutions to provide for the well-being of citizens” (Micheletti as quoted in Cashore 2002:523). It is argued that governance is “how to bring about changes...and imbue it with meaning to make goal-oriented action possible” (Glasbergen 1998:3).

To be effective, governance also calls for an understanding of the context in which

the intent and direction are to be realized:

”governance problems do not exist *a priori* but depend on concrete institutional, technical and social contexts in which they are embedded. Different contexts imply different coordination problems and different property regimes give rise to different institutional control problems” (Schneider 2002:253).

The literature on governance is diverse and five consistent themes emerge. Governance seems to be about the following: the blurring of boundaries between traditionally distinct roles; interaction, partnership and cooperation, as well as self-regulation, among various actors; formal and informal regimes; context-relevancy; and purposeful direction. Together these themes point to questions relevant to an analysis of PPAs. If governance is about the emergence of new authoritative bodies and responsibility centres, can new forms of governance that include the private sector also pursue the collective interest that publicly held protected areas represent? Is governance relevant at all to the private sector and, if so, what potential problems does this suggest for private contributions to meeting public interests? This dissertation now addresses these questions.

2.3.2 Relevance of Governance to the Private and Voluntary Sector

Questions of governance have most often been considered in public arenas. Given failures of accountability and a marked decline in social trust, however, there is a rapidly growing interest in governance and its potential role and function in the private and voluntary sector and in for-profit and not-for-profit organizations. Expanded roles for stakeholders, greater transparency, and new forms of governance have emerged, some to the point of taking on rule-making authority that to date has been primarily reserved for the state (Cashore 2002, Clatworthy et al. 2000, Jordan et al. 2003a, Organization for Economic Co-operation and Development 1999a). For the corporate and private sector, effective governance is judged by rules and standards, as well as the culture of attitudes and values that stress efficiency, equity and legitimacy (Canadian Institute for the Administration of Justice 2004). There is a need, it is argued, “to governmentalize the private sector” (Kettl 1993). For the voluntary sector, effective governance is advanced when there is transparency in all governance practices, annual, publicly available reporting on mission, program and intended results and reporting that focuses on

performance (Broadbent 1999). For foundations that are delivering public policy in Canada, this latter point is also emphasized by the Auditor General. To ensure accountability and transparency, annual foundation reports are to incorporate the significant expected results to be achieved (Auditor General of Canada 2005a).

Although it is charged that private sector interest in governance is merely instrumental and driven by liability risks to the corporation and its shareholders (Bergkamp 2002), some research is demonstrating the private sector can operate as a social agent that can contribute directly to a sustainability agenda (Pellizzoni 2004). According to this line of query, there is increasing sensitivity by the corporation to the needs and expectations of the world outside itself and that the sector has a character beyond its responsibility to maximize the economic value of their owners' interests (Schacter 2000). Legitimacy, it is argued, should be sought through actions that benefit the broader public interest and accountability should be expanded beyond notions of efficient returns to the shareholder and be evaluated through such instruments as the triple-bottom line (Eckersley 1993).

There is potential for a greater private sector role in contributing to the public interest. However, there also exists the potential for negative externalities or non-intended consequences for society at large, which, if left unattended, can generate viability problems for the sector itself, undermining governance structures and functions (Schneider 2002). For instance, private land expansion geared towards voluntary stewardship enhances the potential of environmental integrity. At the same time, dependency upon these voluntary arrangements increases the vulnerability of society if the arrangements are not durable or effective. Social conflict or inequalities may also be the result of private forms of governance that exclude or restrict public access (Castree 2003a, Duncan et al. 2001, Toly 2004).

Research suggests that at least four enabling governance conditions must be met by the responsible private sector authority when engaged in environmental and resource protection (Hurley et al. 2002, Ingraham and Donahue 2000, Norris and Camposbasso 1995, Singleton 2000). These private sector authorities must have a cultural and value preference for sustainable management relative to, for example, liquidating the resource and investing the proceeds elsewhere. Second, they must have the capability as well as

the social, administrative and financial resources to solve the variety of problems associated with creating and maintaining resource management institutions. Third, they must have appropriate beliefs and understandings about what actions are necessary for sustainable resource use. Fourth, they must have sufficient information available to them to make the necessary course corrections with a focus upon managing for results.

While debate will continue about the role and relevance of governance to the private sector, what conclusions are offered from general studies of governance and resources as well as from more specific studies of protected areas?

2.3.3 Governance and Environmental Resources

If governance is about the emergence of new organizational forms that are once removed from the state, over the last decade there has been a virtual explosion of new forms of governance for environmental resources. The demands posed by complex problems that involve many interested parties have created the conditions for dynamic change and, as a result, new forms of governance have been invented. There are more flexible forms of coordination, decentralized management and the use of contracts/negotiated agreements, mediation and economic incentives involving communities, non-government organizations and a radically enhanced role for the private sector (Theys 2002).

With these new forms of governance also come new policy instruments that communicate environmental commitment. The burst of non-regulatory or new environmental policy instruments, as they are commonly termed, represents a move away from command and control and a move toward command and covenant. They are seen to represent a fundamental transition in environmental policy and an evolution of governance, where the traditional role of the state is changing profoundly (Glasbergen 1998, Jordan et al. 2003b, Karamanos 2001).

The Organization for Economic Co-operation and Development (1999b) has advanced a typology for the more popular voluntary agreements that note distinctions of private and public (state) involvement. Unilateral commitments, for example, consist of environmental improvement programs that do not involve the state. In these cases, the

private sector voluntarily undertakes commitments and actions to improve the environment; the private sector defines its environmental goals and outlines the measures that will lead to attaining these goals. Under this type, credibility and environmental effectiveness can be enhanced through delegation of monitoring and conflict-resolution to third parties (Organization for Economic Co-operation and Development 2001).

Although governance theory suggests a potential lessening of the conventional role of the state, one assessment has revealed that the vast majority of voluntary agreements in fact do involve the state (Karamanos 2001). Agreements between and among private sector actors to achieve environmental and resource objectives are so infrequent, they can still be described as rare. Although yet to be recognized as such, PPAs may well be another expression of unilateral commitments contemplated by the new environmental policy instruments and an illustration of self-regulated behavior, albeit still unorganized and uncoordinated.

Governance, however, is not only about new organizational forms and instruments; it is also about effectiveness and fulfilling a purposeful direction. To this end, the emphasis of governance research has been upon social and economic, rather than environmental and resource, accounts. Much theoretical and empirical research attests to, in various degrees, the significance of good governance – often presented as democratic quality – as a determinant of long-run economic growth and social development outcomes (Coles et al. 2001, Cornell and Kalt 1992, Feng 2003, Heinrich and Lynn 2000, Kaufmann et al. 1999, Nelissen 2002, Rivera-Batiz 2002, van der Walt 2002).

The consideration of governance regarding the effectiveness of environmental and resource outcomes, is a comparatively recent development, and consequently, does not offer as robust a body of knowledge from which to draw. Governance enquiries respecting trans-boundary pollution, fishery and forestry commonly describe decision-making arrangements and conflict resolution mechanisms for the resource in question. However, due to obvious complexities, to date they have not directly linked findings of governance to resource capability and sustainability outcomes (Brunner et al. 2002, Cole 2003, Kettl 2002, McKean 2000, Singleton 2000, Rival 2003).

Although rare, studies have begun to explore the direct links between governance and biodiversity conservation. For example, an empirical study conducted in countries undergoing economic development has established a causal association between quality of governance and the quality of biodiversity (Smith et al. 2003). The study shows that poor governance – in this case, political corruption, low trust in government, ineffective rule of law – is correlated with removal of total forest cover and decline in large sub-tropical species, notably African elephants and black rhinoceroses. The study also revealed that poor governance was associated with countries found to be rich in species, suggesting a grim conservation prognosis. The researchers conclude that the “results highlight the need for the conservation community to develop approaches that offset the effects of poor governance” (Smith et al. 2003:69). In view of this sobering conclusion, for some researchers, the priority task of governance is to include sustainability and unleash its potential to transform profoundly the now-threatened security of the planet (Clark 2000).

Despite this still nascent field of academic enquiry, there is general consensus that there are well-accepted principles to which governance must conform when sustainability and environmental matters are at issue. There must be legal systems in place that include fair rules and procedures, economic structures of open markets, social engagement of committed and pluralistic parties, transparent and accountable political regimes and a vision with strategic goals (Organization for Economic Co-operation and Development 2002). In addition, governance must also reflect its context and have ecological and social congruence (Hanna and Munasinghe 1995a).

Ostrom asserts that “any governance system that is designed to regulate complex biological systems must have as much variety in the actions that it can take as there exists in the systems being regulated” (Ostrom 1995:34). She elaborates further on this contextual approach and suggests that, beyond the well-accepted macro-level democratic principles, there are certain design principles which institutions governing natural resources must fulfill. The most notable among these are the following: defined boundaries with clear rights and obligations; long term resource objectives; engagement of affected interests; active monitoring and sanctions; and mechanisms to resolve conflict. Environmental governance will also be advanced considerably when structures and processes are transparent, through access to information, and are accountable,

through access to a fair and non-discriminatory decision making system (Bruch and Czebiniak 2002).

Other pertinent findings to emerge from these recent studies are that organizations engaged in environmental resource matters are not isolated or autonomous entities but rather are relational and very much a part of a nested enterprise that requires harmonization and coherence (Gleeson and Low 2001, Sand 1990). Further, the treatment of equity and the appropriate distribution of rights and benefits is a common refrain in governance research. It has been found that equity, when properly embedded, helps to create an incentive structure that can promote, or inhibit, the stewardship of resources (Adger et al. 2003, Young and McCay 1995).

2.3.4 Governance and Protected Areas

As in other environmental and resource fields where there have been broad and dramatic shifts toward more pluralistic authorities, attention has also turned towards the institutions of protected areas and the role and effect of governance. Studies suggest that in many parts of the world, governance arrangements for protected areas are undergoing enormous change and that there needs to be a move from the establishment of protected areas to their effective management (Borinni-Feyerabend et al. 2003, Hockings and Philips 1999). There is an active pursuit of decentralization, the delegation of decision-making through cooperative ventures, an expanded public and community participation, a greater emphasis on accountability, a greater interest in stewardship on non-public lands and an increased presence of the private sector (Dearden et al. 2005, Dempsey et al. 2002, Knight 1999, Lane 2001, Lee 2003, Schuerholz 2000).

This bold change and diversity can only be welcomed. The WPC claims that “protected area systems that combine different governance types are likely to be more resilient, responsive, and adaptive under various threats to conservation and thus more sustainable and effective in the long run” (World Parks Congress 2003a:41). The United Nations Environment Programme (UNEP) bolsters this claim by also recommending that

parties:

“recognize and promote a broad set of protected area governance types related to their potential for achieving biodiversity conservation goals in accordance with the Convention, which may include areas conserved by indigenous and local communities and private nature reserves. The promotion of these areas should be by legal and/or policy, financial and community mechanisms” (UNEP 2004:14).

The endorsement at the recent Vth WPC that governance is “essential for the effective management of protected areas of all types in the 21st Century” clearly advances the role of governance as a key determinant of protected areas (World Parks Congress 2003a:39). This Congress has also recommended that governance be added to the long-standing dimensions of protected area categories and management objectives which have shaped protected area management and philosophy, potentially framing a new tripartite ideology for protected areas as discussed earlier (Figure 1) (World Parks Congress 2003:42). That UNEP (2004) recently isolated poor governance as one of the top tier threats, alongside threats to biodiversity and insufficient finances, which can undermine protected area objectives, further buttresses its significant and growing role.

As diverse organizational forms emerge, a caution, however, is offered. An informed understanding of governance within these organizational forms is required:

“Governance is a critical aspect influencing the ability of protected areas to provide the values for which society sets them aside. It is not sufficient to have the right numbers of protected areas in the right places, it is also necessary to ensure that their governance is able to manage them in an effective manner and produce the desired outcomes” (Dearden et al. 2005:98).

To this end, a collaborative effort between the Canadian Institute on Governance and the Parks Canada Agency has produced principles of sound governance for protected areas (Graham et al. 2003b). With its roots evident in United Nation principles, the principles are defended as being non-Western, comprehensive, widely-applicable to all institutions concerned with protected area objectives and are presented as a work in progress and a point of departure (Institute on Governance 2002). The five core governance principles - Legitimacy and Voice, Accountability, Performance, Fairness, Direction - are generally advanced as necessary requisites to the success of protected areas and are seen as relevant to the full range of governance forms. The WPC has endorsed the Canadian contribution and has recommended that governments and civil

society adopt “Legitimacy and Voice”, “Accountability”, “Performance”, “Fairness”, and “Direction” as general principles of good governance for protected areas in the 21st Century and use them as a basis for developing their own principles to improve protected area management” (World Parks Congress 2003a:40).

To further this direction and embed the important role of governance in achieving protected area objectives, the WPC has also endorsed a number of supporting governance attributes. The WPC pays particular attention to: “recognition of diverse knowledge systems; openness; transparency and accountability in decision-making; inclusive leadership; mobilizing support from diverse interests, with special emphasis on partners and local and indigenous communities; and sharing authority and resources...where appropriate” (World Parks Congress 2003a:40).

Institutional agencies have identified a variety of governance aspects deserving emphasis for protected areas, which testifies to dynamic growth in this emergent field (Institute on Governance 2002, United Nations Environment Programme 2004, World Parks Congress 2003a). There is almost no limit to the number and range of principles and attributes that could be legitimately used to evaluate good governance. Institutions and researchers, however, appear to be converging towards a core set of governance principles recommended by the WPC (Abrams et al. 2003, Bruch and Czebiniak 2002, Broadbent 1999, Graham et al. 2003a, Hanna and Munasinghe 1995a, Heinrich and Lynn 2000, Hockings et al. 2000, World Parks Congress 2003a). Although it may be premature to anoint the principles – Direction, Legitimacy, Fairness, Accountability and Performance - as generally-accepted, governance frameworks tend to emphasize these democratic ideals and are, understandably, a reflection of the deep roots of this tradition.

Convergence with respect to governance attributes, however, is not as strong and there is as much variety as there are disciplines with interest in matters of governance. For example, transparency, participation and accountability are the central attributes in environmental governance frameworks (Bruch and Czebiniak 2002), while agent behavior, centralization of control and staff-management relations factor large in administrative governance (Heinrich et al. 2000). Governance frameworks used for protected areas, for example, tend to stress the democratic tradition at the expense of contemporary concepts in protected area management (Abrams et al. 2003). For

example, concepts such as ecosystem management, ecological integrity and landscape approaches have yet to be explicitly incorporated into governance frameworks respecting protected areas.

Although economic and social researchers have suggested that governance directly affects economic and social outcomes (Feng 2003, Cornell and Kalt 1992), researchers in environmental and resource fields have not had as an extensive research body from which to draw similar observations and conclusions (Smith et al. 2003). For protected areas, the role and effect of good governance is only beginning to attract research attention, limiting confidence about a causal relationship between governance system and protected area effectiveness (Dearden et al. 2005). Some researchers have argued for example, that consensus – a cornerstone of legitimacy – only serves to weaken environmental protection standards (Colgiansese 1999). Governance studies of protected areas that have been conducted generally provide descriptions of decision-making processes and structures, for example, representation and authority of resource management councils, that, unfortunately, are infrequently accompanied by a coherent interpretation of the more salient governance attributes that are likely to affect long-term performance (Abrams et al. 2003). In a Canadian context, for example, governance studies often outline structures for decision-making, the relations between various authoritative and advisory bodies, and the processes for public involvement, but they remain silent on the contributory role of such elements to protected area values (Abrams et al. 2003). Research from countries in economic transition suggests that local area employment, experienced management, strong leadership and a participatory management style – attributes of good governance identified and advanced by the WPC - are critical in influencing nature reserve objectives (Langholz 1996). The research, however, faces challenges in demonstrating these conclusions empirically (Dearden et al. 2005).

Despite this nascent research field, institutions and researchers concerned with protected area management, are comfortable in advancing governance as a determinant that directly and indirectly influences effective performance which can shape conservation outcomes in protected areas, particularly over the longer term (Dearden et al. 2005, Graham et al. 2003a, Figgis 2004, World Parks Congress 2003a, United Nations Environment Programme 2004). By improving the functioning of the

governance system, these bodies argue, the capacity for management is enhanced, and, as a consequence, the performance of the protected area is also likely to improve. Given the apparent need for more elaborate understanding, it is in this light that the WPC recommends “research that supports, improves and evaluates the management effectiveness and the good governance attributes of all protected area governance types” (World Parks Congress 2003:42).

2.4 The Public Interest

Legislators of all political stripes claim allegiance to the sometimes nebulous concept of public interest. It is a commitment that motivates, or at least appears to motivate, virtually all legislators and is often used unthinkingly in modern political discourse. Although this concept is central to the democratic tradition, the term is rarely defined in any meaningful sense and, as a consequence, it attracts a variety of meanings. Even when loose definitions are advanced, they have not attracted universal consensus (Feintuck 2004). This paradox and the lack of a generally accepted definition erect a major barrier in applying the concept of public interest effectively to contemporary public policy initiatives. The lack of definition also makes the concept vulnerable to misinterpretation and misrepresentation or capture, which ironically, is contrary to the collective values that the term seems to connote.

The roots of a public interest can be traced to ancient Roman and English law. The preservation of navigation and fishing interests, for example, for the benefit of, and perpetual use by, the public ensured that such activities were legally accepted as being central to transportation and livelihood and meant that they could not be impinged upon or captured by other interests. In contemporary societies, the public interest is a similarly central and core construct, but in more complex and challenging times, is often inferred and interpreted; there are no direct signposts pointing the way. Moreover, the shape and form of the public interest is not static; as a value-based construct it is subject to constant evolution and is a reflection of the prevailing priorities and choices of society. In general, the notion of what is in the public interest is a function of the common good (“the common weal” in its more archaic formulation) rather than the sum of private benefits; it represents the common well-being and general welfare of society taken as a

whole. Terms such as the national interest, the public welfare and overriding public interest are often invoked to address its broad scope. Public interest has been defined as "community interests that transcend the personal interests of individuals or groups and express the best long-range interests of the nation" (Reimer et al. 2005). It is also submitted as "comprising whole persons who share an identity that is super-ordinate to whatever else divides them" (Curry and McGuire 2003:153). The term also invokes more procedural aspects, where it is an "expectation of deliberation informed by a vision of values beyond individual or group interests" and "where objectives of the community are being pursued" to promote the common good (Feintuck 2004:253). Conversely, the public interest is not pursued when it conflicts with the widely shared values and interests that define society. By definition, a special interest is incompatible with the public interest.

The difficulty in defining the public interest stems from fundamental differences. One approach argues that the concept of public interest is meaningless and that it does not exist (Buchanan and Tullock 1962, McLean 1987). It is argued that self-seeking behavior and the private interests of individuals, groups, and social classes merely maneuver to obtain the greatest amount of public influence and public power; this behavior merely defines public interest in its own image. In this vein, private property interests are inimical to the goals that protected areas seek to provide. Another approach suggests that public (social) well-being occurs when some people are made better off and no one is made worse off (Boadway and Bruce 1984). Yet another, based on utilitarianism, argues that the public interest is advanced provided there is a net benefit to members of society (those who benefit are better off by amount greater than the adverse affects to the losers) (Braybrooke 2004, Klymicka 2002).

There are likewise debates as to whether the public interest is antithetical to the idea of human rights, whether the ambitions of individuals should be limited if they go against the public interest and whether advancing the public interest, as is the case in majority circumstances, will hurt certain private, individual interests, thereby provoking charges of the tyranny of the majority and the exclusion of minority interests from the public interest (Ignatieff 2004). The public interest is also seen as incorporating values of the *status quo*; the public interest, it is argued, merely reflects and reinforces the values and

inequalities inherent in existing power relationships and, in so doing, entrenches and exaggerates existing social inequalities (Feintuck 2004).

Determining the public interest also invites criticism. A heavy reliance on economic modeling and market references that are based on a sum of individual interests rather than methods that identify interests common to all members of society may seriously distort the public interest and overwhelm it with commodity-based values (Feintuck 2004). Moreover, failure to take into account the interests of future generations in determining the public interest is a particular issue (Feintuck 2004). There is no confidence that individuals can be trusted to act, not only beyond their own interest or in the interest of others, but as representatives and in the interest of future generations. In this vein, determining the public interest “may variously be an ethical imperative (such as the natural law), some superior standard of rational and “right” political wisdom, or the goals or consensus of a large portion of the electorate” (Feintuck 2004:11).

Despite such debates at the abstract level, contemporary research suggests that, even if the existence of a public interest is assumed, it is being eroded and is becoming vulnerable to special interests. The role of the market is so pervasive and dominant in contemporary society, it is argued, that it allows the group interests of the powerful to be seen as the general interest (Feintuck 2004). In such instances, the state can become captured by these special or private interests and an erosion of public trust ensues (Singleton 2000).

In the context of resource management, this phenomenon becomes more probable as resource management devolves from centralized to de-centralized arrangements (Singleton 2000). Others have likewise determined that, through a diminution of the state’s conventional role by way of de-regulation initiatives, rule-making authority, which was originally the quintessential prerogative of the state, is being assumed by private and corporate interests (Cashore 2002). The allocation of values is now done by new forms of authority (Aquina 1993). Researchers respond, however, that private corporations are heeding the call that social trust is eroding and are taking steps to restore public confidence as they seek the social licence to operate (Schacter 2000). Others also contend that the problem of the public has been accommodated by specious and shrewd planning and consultation processes that are not meaningful and leave

policy decisions to technically trained professionals; the public becomes a “set of aggregated individuals” available for top-down and manipulative consultation (Curry and McGuire 2003:153).

It is not surprising that there is difficulty in finding the public interest. The complex division of authorities and control within federal and provincial governments, the rise of non-government groups that press for their social, economic and environmental interests and shifting public sentiments and perspectives makes the public interest an illusive concept. Finding the public interest is a process of “balancing, accommodating and integrating the rich diversity of culture, class, interest and personality that characterizes the earth-space arena” (McDougal as quoted in Brunner et al. 2002:14). It is suggested, however, that it is precisely such difficulties that motivates the search for good governance (Brunner et al. 2002). This unseemly paradox – whereby the absence of a public interest spawns good governance that is in the public interest – suggests that governance can become the proxy for the public interest and that its main and continuing task is to advance the public interest.

Society nevertheless continues to be guided by the ideal and expectation of the public interest. The concept has the potential to serve fundamental democratic values; the *Canadian Charter of Rights and Freedoms* and the equality of citizenship that it embodies for all within a democratic framework is a manifestation of that interest. As private interests become more dominant or as conflicts emerge amongst public and private bodies, defining the public interest takes on a renewed importance. Debates are expected around, for example, whether the welfare of society as whole is improved as private enterprises pursue profit maximization or whether the pursuit of private interests are fundamentally undemocratic. Resource debates that pit private development interests, such as forest harvesting for economic livelihood, against public protection interests, such as ecosystem maintenance for sustainability, are recurring themes in contemporary society. At issue, is highest and best use and the direction that needs to be taken to benefit society as a whole (Brunner et al. 2002).

Discerning the public interest in PPAs is a complex and challenging matter and this may account for the paucity of reference material on this topic. The inadequate articulation and institutionalization of fundamental protected area values, however, may

be contributing unwittingly to an erosion of the understanding and urgency respecting protected areas. However, if the concept of a public interest is to be utilized, its value content must be identified and its meaning must be revealed. A review of the fundamental democratic expectations of protected areas – the substantive and procedural aspects - may reveal some of the more salient features that comprise the public interest in protected areas.

The substantive test recognizes that the public interest depends on the interests of the larger community. For protection and conservation interests, scholars have suggested that deeply-entrenched values – for example, existence, option and bequest values – form the foundation of the public interest (Welchman 1999). Others have provided greater translation of this value base and posit that general society is embracing, albeit modestly, an ecological worldview; not only is a more sympathetic and harmonious relationship needed between humans and the natural environment, but that this relationship is on a direct collision course that will undermine the existence of humans and that of all other living species (Dunlap et al. 2000). Bio-centric beliefs – where plants and animals have as much right as humans to exist – is a central feature of the “new ecological paradigm” (Dunlap et al. 2000:425). Commitments to the precautionary principle, ecosystem management, ecological integrity and bio-regional landscape approach are a manifestation of this new ecological paradigm (Theberge and Theberge 2002).

For protected areas, researchers suggest that a tailored, but broad sweep of social and environmental values - notably spiritual, recreation, aesthetics, livelihood, knowledge, ecological protection and biodiversity conservation - have coalesced to promote the establishment of protected areas (Dearden 1995). Although there have been differences in the relative emphasis of particular values in the evolution of protected areas, there is no abundantly clear hierarchy. Of late, for example, there has been a deepening appreciation of the ecological and biological conservation role that protected areas fulfill and a better understanding of the vulnerabilities that protected areas are facing (Parks Canada Agency 2000). Basic ecological services – water management, nutrient cycling, air purification, biological processes at the genetic and landscape level – that sustain human life are assuming greater importance (Dunlap et al. 2000). The expression of such values not only draws explicit attention to the collective aspects embodied in protected areas, the concept of the public interest requires that

such values be taken fully into account. The challenge is translating such values into practical reality.

The expressions of interest regarding protection and conservation are not spurious and have remained steady. A recent survey of Canadian values about the environment revealed that a majority favor the environment over the economy and that claims about environmental crises are not exaggerated (National Post 2005). A recent poll on Canadian values respecting protected areas confirms that more than 80 per cent of those surveyed in the Northwest Territories want more protected areas that are free of industrial development (Canadian Boreal Initiative 2005). The Panel on Ecological Integrity reported in 2000 that over 70 per cent of Canadians view national parks as icons of our national identity (Panel on the Ecological Integrity of Canada's National Parks 2000). In the late 1990s the federal government reported that more than 75 per cent of Canadians wanted more to be done to protect species at risk (Environment Canada 1999). Although support by large numbers of citizens cannot always be treated as equivalent to the public interest, researchers caution that "unless the public and decision makers understand the full range of values that parks offer to society, then support for new parks and for ecologically sound management for existing parks is likely to lack enthusiasm" (Dearden 1995:1654).

The public interest is abundantly evident in the dedication purpose constructed for protected areas. Protected areas established by governments are intended to protect extraordinary natural resource and cultural heritage values for present, as well as future generations. Some Canadian jurisdictions, most notably Saskatchewan, Manitoba, New Brunswick and Nova Scotia have taken deliberate and explicit steps and have elected to specifically dedicate protected areas to future generations. It is asserted that this dedication creates a fiduciary and trust-like obligation upon the authority to manage the protected area so as to sustain ecological integrity for the long term (Boyd 2003). This ability to be bound to future generations, and not to take actions that would harm those interests, is a distinctive feature of democratic and ethical governments (Singer 2002). Dedication purposes, however, vary in their shape and form. For example, since 1930, the *Canada National Parks Act* has dedicated parks to the people of Canada "for their benefit, education and enjoyment...parks shall be maintained and made use of so as to leave them unimpaired for the enjoyment of future generations". Amendments to

Ontario's provincial legislation commit that parks and conservation reserves are "dedicated to the people of Ontario and visitors for their inspiration, education, health, recreational enjoyment and benefit with the intention that these areas shall be managed to maintain their ecological integrity and to leave them unimpaired for future generations" (Ontario 2005). Other jurisdictions, notably British Columbia, remain silent on a dedication.

Researchers also argue that the public interest is advanced when protected areas recognize Aboriginal rights, prohibit industrial use, permanently protect boundaries, enshrine minimum land protection thresholds and provide additional protection measures for wilderness and ecological reserves (Boyd 2002). Protected areas that employ ecosystem-based approaches also advance the integrity of areas from which the public can benefit (Slocombe and Dearden 2002). Notably, the integration of scientific information and policy values, the inclusion of humans into the environment and linkages across natural, rather than administrative, boundaries situate the protected area in a larger, whole ecosystem context (Slocombe 2004). Actions on the part of legislators, however, may work against this public interest. For protected areas, the accommodation of development interests, the ability to revoke boundaries, absence of meaningful participation and change the status of specific protected areas represents an erosion of the public interest and, consequently, an erosion of the public's trust in the state's ability to act on behalf of the common well-being (Boyd 2003).

For PPAs, where the privilege exists to exclude and set rules on who has access to which resource for what purpose and when, identification of public interest values takes on greater significance and challenge. Researchers observe that PPAs provide both direct and indirect benefits to the landowner, as well as benefits to the general public (Bennett 1995). PPAs have the potential to provide the same public interest values as conventional protected areas and can incorporate direct costs that the state would otherwise incur (Figgis 2004, Thackway and Olsson 1999). Identified limitations of PPAs, however, also undermine the public interest (Table 2). Notably, their general small size, perceived emphasis on commodity and use production at the expense of ecological integrity, the presence of human-dominated landscapes and the potential to shift from public to private goods conspire against serving the public interest (Dearden et al. 1998, Kirby 2003, Watkins et al. 1996).

Some argue that the private sector interest in protected areas comes from altruism, where there is willingness of individuals prepared to act in the interests of the whole community and without recognition; this interest is referred to as “environmental altruists” and includes the non-profit interests in PPAs (Schultz and Zelezny 1998). The pursuit of PPAs can also be rooted within an economic self-interest. In this case, although there is a willingness of individuals prepared to act in the interests of the whole community, including the self, they do so with recognized compensation; this interest is referred to as “asset managers” and includes the for-profit interests in PPAs (Stone 1995). In this latter case, PPAs can also become ultimately economic ventures where the excludable benefits outweigh non-excludable benefits (Bennett 1995). For example, game ranches and exclusive hunting opportunities are provided at the expense of general recreational activities in protected areas.

The procedural test recognizes that the public interest is served when there is meaningful and inclusive participation in the decision process, regularized reporting on the state of the protected area and incorporation of management concepts, such as precautionary principle and ecosystem approaches. These mechanisms take on greater import in the context of PPAs where there is no regulatory requirement to compel voluntary protection action. What claim can public interests have on private land rights? Is it possible to recognize property rights as well as the legitimacy of other values in private property models?

Models of stewardship require consideration to be given not only to the interests of the property holder, but also to other interested parties (Dempsey et al. 2002, Lucy and Mitchell 1996, Strong 1975). Although the privileges attendant on private property and underlying capitalistic ethics, such as profit maximizing potential, are restricted, they are not removed; the interests of the landowner, as well as the broader community are provided a degree of protection under stewardship models. Duties of stewardship also require the preservation of irreplaceable community assets for future generations.

For PPAs, governance regimes that provide for, and incorporate, interests other than, or in addition to, the interests of the private authority are presented as being in the public interest. Its notable features include, among others, provision of shared environmental and social values in association with protected areas and a legacy of in

perpetuity protection that can benefit future generations. Significantly, priority is given to the maintenance of ecological integrity where nature's needs are ahead of human demands.

If government is giving way to governance, then alternative mechanisms and regimes that account for, and incorporate, the public interest are of direct and practical interest. The ability of a governance regime to address the public interest becomes vitally important. In the absence of direct state involvement in PPA management, a governance framework that blends the democratic tradition and the public interest expression of protected areas has the potential to serve as the process where values are debated and decisions are taken. Governance becomes the means to clarify and secure the public interest. More importantly, the public interest values of protected areas – those super-ordinate values that are held in common by society - can be identified and potentially sustained by these emerging authorities when they adhere to good governance principles. What underlying theories, however, can best explain the emergence of new forms of governance forms and the principles to which they adhere?

2.5 Theoretical Underpinnings

Descriptions of governance and the effects of governance, at least in socio-economic contexts, are relatively common areas of research. However, underlying explanations and theories about governance are rare. What theoretical perspectives can predict the shape and form of governance?

One view emphasizes the importance of ideas - that is, the values, core beliefs, interests and ideas of a dominant coalition - in influencing governance. In this view, governance is shaped by, indeed is the outcome of, the cognitive struggles of coalitions that enjoy legitimacy and privilege (Hall 1993, Sabatier 1998). There are no constraints to learning or to ideas and innovation is unbounded. The struggle over ideas – from minor adjustments to paradigm shifts - is the most prominent driver of the shape of governance arrangements.

Another view emphasizes the attenuating effect that existing societal institutions have on shaping the definitions of interests and the structuring of power relations (Thelen and Steinmo 1992). In this perspective of institutional theories, governance arrangements are a reflection of the accumulation of enduring institutional forms. Institutional theories suggest that, due to the deep investment of norms, culture and values and the resulting collection of practices and rules that define appropriate behavior, institutions form and adapt slowly and are not easily changed; institutions repel pressures and contain changes. Changes tend to be incremental and evolutionary, rather than revolutionary; a muddling through occurs as arrangements reflect the deep authority of institutions (Lindblom 1959). To predict the shape and form of governance, one needs to examine the resiliency and longevity of national institutional traditions.

While idea theories may explain the dynamics of change, institutional theories emphasize a filtering effect. Neither perspective, however, offers a satisfactory explanation for the pattern and profile of governance. For matters of resource management, what may be missing in explanations of governance is an accounting of the external drivers that are challenging traditional policy paradigms, namely, the complexity that arises in the search for sustainability, the uncertainty inherent in environmental problems and the urgency for finding resolution (Pellizzoni 2004).

Given the reality of these deep structural changes, Kooiman (1993) has advanced a theory of social-political governance, which stresses the interaction between government and society. He argues that the growing complexity, dynamics and diversity of society and its systems has presented such unprecedented challenges that new conceptions and new models of governance and interactive governing are needed and are being formed. More significantly – diversity, complexity and dynamics – the hallmarks of this theory are not the mere nasty bits of problem resolution, but are central to effective governance and demand to be taken into account (Kooiman 1993). The underlying theory suggests that, in the search of a way to resolve these problems, the interactions between government and society are directed at finding a balance, often taking the form of ongoing adjustment, between governing needs and governing capacities. It is now accepted that government and society are breaking out of their more traditional forms (Rhodes 1996, Stoker 1998). Under this theory, governance should, “in contrast to what we were used to, be able to cope much better with uncertainty, instability, even chaos,

long-term perspectives, broader orientation and great diversity of life-styles and meanings” (Kooiman 1993:48).

Researchers in governance studies bring some needed flesh to the bones of this interaction theory by outlining what is termed “a logic of governance framework” (Heinrich and Lynn 2000:14). In this framework, it is the interaction among a few selected components - such as environmental factors, management, and structure - that affects the outcomes that organizations or individuals are pursuing. Its strength, it is argued, lies in its ability to serve as an organizing framework that captures relationships among variables (Heinrich et al. 2000).

2.6 Conclusions

This chapter provides the context to understanding the goals and questions posed for this research. The research goals are as follows:

1. To improve understanding about the governance profile and pattern of private protected areas in Canada.
2. To add to the general body of knowledge about governance and protected areas.

The questions that this dissertation seeks to answer are:

1. Do private protected areas adhere to principles of good governance?
2. Do private protected areas advance the public interest in conservation and protection?

The profile and pattern of PPAs in Canada is scattered and difficult to synthesize, largely due to the absence of comprehensive data and information sets. Evidence of the growing numbers of land trusts suggests however that private efforts in land conservation and protection in Canada are not to be dismissed and that Canada may be experiencing its own quiet conservation revolution. The rapid evolution of land trusts, in particular, appears to be outpacing the ability to understand the scale and scope of that governance authority and undermining its significance on the Canadian protection agenda. Analyses of private sector efficacy in land conservation in Canada are absent. Commentary on the performance of governmental jurisdictions with respect to protected

areas suggests that there is an important role that the private sector can take to fill the gaps that exist on the ground and in policy frameworks.

The relationship between governance and protected areas is beginning to attract serious attention in Canada, as witnessed by the assessment studies in some Canadian locales. These studies, however, are focused on conventional protected areas; the extension to PPAs has yet to occur. Moreover, governance studies that have been conducted have not focused on the relationship between the quality of governance and the conservation accomplishments and long-term viability of the protected area. As a consequence, the assumed relations between good governance and conservation outcomes remain unexplored.

The research literature suggests that there is tremendous variety in the subscription of protected areas to principles of good governance. Some international jurisdictions are explicitly noted as having poor governance and others appear to demonstrate a mixed adherence to good governance principles. Governance assessments, however, tend to be conceptual and comprehensive evaluations are generally lacking. This constrains a good exposure of the relationship between governance and protected areas. Moreover, there is a virtual absence of the consideration of governance principles to PPAs. Although recognized as an emerging governance authority by credible institutional bodies, studies of governance and PPAs have yet to be conducted. This limits the ability to draw any meaningful observations about the public interest in conservation and protection. The public interest in land conservation and protection can only be inferred from sources outside of the PPA domain.

Having provided this background on PPAs, governance and the public interest as well as theory to inform this research, this dissertation now turns to the presentation of a normative framework to guide description and analysis of selected case studies.

CHAPTER 3 APPROACHING THE RESEARCH

3.1 Approach

This dissertation examines PPAs and their relationship with advanced principles of good governance. This dissertation also examines the contribution these new forms of governance from private authorities make to the public interest in conservation and protection and the advancement of protected area values and objectives.

This dissertation considers six cases of PPAs in Canada. It evaluates their adherence to principles of good governance – Direction, Legitimacy, Fairness, Performance and Accountability – that have been advanced by leading researchers and it assesses the contribution PPAs make to the public interest.

The approach taken in the conduct of this research is normative. Document analysis, interviews and observational field research are employed in generating qualitative and interpretative description, in an effort to capture the subtlety and complexity presented by questions of governance and case study analysis. Such qualitative approaches are ideally suited for a phenomenon for which there is very little knowledge to date.

3.2 The Normative Framework and the Public Interest

Despite the remarkable upswing in interest and application of the governance concept, it is not obvious how one should assess whether or not a particular authoritative regime has exhibited good governance. Although there is strong convergence around core governance principles – Direction, Legitimacy, Fairness, Accountability, Performance - there is greater divergence concerning related attributes and criteria. This suggests that norms of governance have yet to reach a level of maturation to constitute generally-accepted principles. Governance frameworks advanced for protected areas have yet to fully reflect the growing theoretical approaches and empirical evidence respecting protected areas (Abrams et al. 2003, Institute on Governance

2002). A tight linkage between the democratic ideals of governance and contemporary protected area concepts has yet to occur.

Building upon the literature relating to governance presented earlier and the observations noted above, a normative framework of governance principles and attributes for PPAs is presented in Table 2. The framework reflects research respecting governance and protected areas that have been advanced to assist consideration at an operational level (Abrams et al. 2003, Bruch and Czebiniak 2002, Broadbent 1999, Graham et al. 2003a, Hanna and Munasinghe 1995a, Heinrich and Lynn 2000, Hockings et al. 2000, World Parks Congress 2003a). For this research, five governance principles and related attributes are presented. The attributes presented provide elaboration on the meaning of the principles and are by no means suggested as being all encompassing in scope. The role of the framework is to serve as a pragmatic evaluation tool that can provide useful insights and meaningful interpretation of governance principles and their relationship to PPAs. It establishes a normative baseline against which the governance of a PPA can be judged. More importantly, by specifying and emphasizing a particular set of principles and attributes – the governance requirements, the framework also calls for a proper degree of attention to be given by authorities pursuing protected areas. For example, this framework incorporates values attached to protected areas: it calls for specific attention to be given to the interests of future generations. As a management or regulatory tool, the framework has the potential to become a model of best practice.

Extensive empirical research in social and economic accounts as well as the comparatively limited research in environmental and protected areas suggests that governance is related to outcomes (Feng 2003, Cornell and Kalt 1992, Heinrich and Lynn 2000, Smith et al. 2003). These outcomes – ranging from social autonomy and self-reliance, economic growth and confident investor climates, and conservation of species at risk – are believed to provide for the well-being of citizens and to be in the public interest.

Table 2. Normative Framework: Governance Principles and Attributes
for Private Protected Areas

DIRECTION

Visible framework: sets out clear purpose, values, goals, objectives, vision, priorities; appropriate instruments in place - laws, policies, agreements, understandings, management plans and implementation strategies - regularly reviewed; secure, defined land tenure; declaration and recognition of entitlements and rules of conduct; is unambiguous in its purpose, goals and priorities with an appropriate balancing among protected area objectives.

Coherent direction: is strategic, long term, ecosystem-based; takes into account the larger community, future generations, and nature; coherent and aligned with adjacent frameworks and international directions respecting protected areas; understands contemporary protected area concepts; takes a balanced approach among competing objectives without undermining protection and conservation goals; recognizes limits and best practice guidelines; understands social, economic and environmental context and linkages.

Risk management: opportunities and issues of concern are addressed; anticipates, plans and manages; focus on priorities; is innovative and flexible.

Collaborative management: pursues cooperative partnerships in research, management, and implementation.

Effective leadership: commitment to core needs and interests; communicates direction, mobilizes support, builds teams, champions; advocacy and outreach; garners resources; is consistent, responsive and open to change; no disconnect between values and practice; necessary course corrections taken; provide a learning environment.

LEGITIMACY

Expression of protected area values: expression of a wide scope of protected area values – protection to resource sustainability, with varying degrees of human intervention- within protected area ideology; is pluralistic; unconfined respecting the area boundary; responds to interests and builds capacity.

Transparent rules of engagement: participatory processes are formal to informal participation at all levels of decision-making; provide continuity and commitment, advocacy and outreach; coordinates and communicates, works collaboratively with affected and interested parties.

Trust and reciprocity: has active, credible engagement, support and trust from direct participants and indirect observers.

Trustee relationship: answerable to and governs on behalf of those not at the table - shows a fiduciary obligation to nature, future generations and global community through instruments that provide permanent protection; accounts for bundles of rights and duties of non-owners.

FAIRNESS

Just, impartial and ethical: adheres to rule of law; provides access to right to know, right to decide, right to remedy; takes a broad definition of information; active (monitoring)/passive (timely, responsive) information provision with limited access exceptions; early and wide

Table 2 (continued)

involvement in routine and substantive matters; notice and comment; administrative and judicial remedies and appeals.

Manages conflict and sensitive issues: effective processes with a level-playing field; respect.

Equitable: respect for the rights, uses and traditional and local knowledge; understanding of historical and contemporary context; equitable distribution of benefits and costs.

PERFORMANCE

Standards and expectations: objectives are appropriate, visible, can be measured, time-dependent, supported; outcomes defined captures the intent of the policy.

Monitors, evaluates and reports: manages for results and continuous improvement; responds and adapts; attains ends; describes what good, for whom; pursues strategic, evaluation and resource monitoring programs, research and information; necessary policy and management course corrections taken, communicates and reports on performance outcomes; adheres to minimum environmental and protected area standards; long term monitoring and evaluation of key values.

Ability and capacity: power of the institution to undertake functions in regards to its mandate, responsibilities and goals; capacity for financial, administrative, policy, and a preference for protection and conservation, as well as beliefs for what are necessary actions; has capability - social, material, information - conventional scientific and traditional ecological knowledge, baselines to make informed decisions.

Progress and improvement towards purposefulness of governance: has a notable track record; builds resiliency, robustness and stability; the governance system reflects the PPA context.

ACCOUNTABILITY

Clear authority: unambiguous in the assignment of responsibilities and the necessary authority to act, with regards to, Who is accountable to whom for what?; locus of authority well-defined; appropriate authorities assigned in shared and unilateral arrangements and adopted; representation and continuity in membership. In perpetuity protection is assured.

Broad accountability: degree to which broader accountability concepts to the global community, future generations and nature are integrated with more traditional accountability concepts and private interests.

Rigorous decision-making: from routine to substantive relying upon consensus/shared/majority rules; appropriate authoritative/collaborative approaches; decisions are guided by efficiency, effectiveness, equity, political acceptability; beliefs, commitments, vision of the PPA are central to decision making at all levels.

Reliable monitoring and enforcement: active investment in monitoring and sanctioning activities by internal or external measures; graduated sanctions.

Independent checks and balances: provides access to information; disseminates outcome assessments to stakeholders; checks and balances to hold authorities accountable through private (financial) and non-private (civil society, media) institutions of accountability and monitoring oversight; self-regulation, internal accountability and evaluation mechanisms to ensure area management according to agreed-to principles; neutral third parties in the event of disputes.

There is a strong relationship between governance principles and the public interest; governance principles are the embodiment of democratic and participatory tradition, traditions which in themselves are rooted in the public interest. For this research, the definition of public interest is as follows:

PPAs that provide for and incorporate interests, other than, or in addition to, the interests of the private holder, are presented as being in the public interest. The public interest is advanced when the private authority makes commitments to protected area values, avoids actions that can undermine those values, provides in perpetuity protection that can benefit future generations, recognizes Aboriginal rights and flows benefits to the public, including access. These substantive provisions are also buttressed by procedural measures such as reporting on the state of the PPA, provision of public participation processes and application of ecosystem-based approaches that integrate the PPA into the larger landscape.

3.3 Definition of Private Protected Area

The definition of PPA is at an early stage of development; it has yet to enjoy the kind of international recognition and application reserved for conventional protected areas as advanced by the IUCN (IUCN 1994). A consensus opinion, however, emerged from the WPC that “a private protected area refers to a land parcel of any size that is predominantly managed for biodiversity conservation, protected with or without formal government recognition and is owned or otherwise secured by individuals, communities, corporations or non-government organizations” (World Parks Congress 2003a:1).

A variation on this definition has been adopted this research. It is accepted that biodiversity conservation is a critical and dominant aspect of protected areas and that without this primary parameter protected areas would be undistinguished from good land stewardship. There are, however, complementary environmental and social values that are in direct association with or flow from biodiversity conservation, provided there is no infringement on conservation and protection objectives. These values range from those that are instrumental and prosaic to those that have a basis in moral economy and extend an ethic to the non-human community. For example, values include recreation and human recovery, aesthetics and spirituality, ecological processes that are essential

to sustain life, scientific research, sustainability, bequests for protection, as well as preservation of options for the future. A definition of a PPA that accounts for the protection of biological diversity and is also explicit about the values that are associated with those protections would allow the full benefit stream of PPAs to be explored. This may be particularly important where the scope and implications of new governance forms for protected areas are yet to be fully understood.

The definition advanced by the WPC also does not specifically accommodate the reality of First Nations in contemporary protected area ideology and management. The term private advanced in the WPC definition is taken to mean autonomous and independent authorities that lie outside traditional government and have assumed responsibility for protected areas. The term private is also taken to mean authorities that have had a long-standing government tradition and culture of governance that has not been formally or widely recognized and, through settlements, are becoming a new form of governance. Specific recognition of First Nations is absent from the definition advanced by the WPC and it may be implicit in the term communities. Canada and Australia, however, have acknowledged the role of First Nations in PPA management (Figgis 2004, Institute on Governance 2002). Recognition of First Nations would accommodate the reality, and expectations, of their increasingly visible and dominant role in protected area management (Dearden and Berg 1993). This dissertation accounts for the attributes of communities and First Nations. Four distinct types of private authorities are recognized for the purposes of this dissertation: Individual, First Nation, Corporate and Non-government.

In view of these observations, the definition employed for this research is as follows: *A private protected area (PPA) refers to Individuals, First Nation, Non-government Organizations and Corporations who are owners of, or have secured, at their own volition, an area of land of any size that is especially dedicated towards biodiversity conservation and natural and associated cultural resources and is primarily managed for protected area values that are in the public interest, and remain accountable for the decisions that they make.*

3.4 Selection of Case Studies

The selection of case studies is the major challenge in this research. As in other economically advanced jurisdictions (Merenlender et al. 2004), knowledge about the scale and scope of the PPA sector in Canada is virtually absent, thereby prohibiting a selection of representative cases and restricting selections to illustrations within a PPA typology. In light of this constraint, a survey of approximately 50 organizations and experts with experience in Canadian protected area management was conducted with a view to preparing a candidate list of PPAs (Appendix 1, Appendix 2). The organizations and experts were generated by a guide prepared for stewardship donors (Habitat Conservation Trust Fund 2002). The response rate to the survey was 30 per cent. That is, those surveyed replied with various levels of information about PPAs. In addition, access to the BC Lands in Trust Registry compiled by The Land Trust Alliance of British Columbia - a professional coordination agency to more than 40 land trust organizations in the province - was undertaken (Land Trust Alliance BC 2003). This data base contains approximately 200 fee simple status land arrangements relating to approximately 182,000 ha in the province owned and managed by non-government organizations. It references, among its features, protected area values, ecological representation, ownership and geographic parameters attached to private conservation lands. Popular mechanisms relied upon by land trusts to achieve their mission, such as conservation easements and pre-acquisitions, were excluded for research purposes. Twelve candidate PPAs that met the definition advanced for this research were compiled from this survey and registry.

The governance authority comprised the primary parameter for case selection. It consists of a four-part typology of private authorities - Non-Government Organizations, Corporations, First Nations and Individuals. For this research, case illustrations for each of these authorities were emphasized. Given that PPAs under the authority of non-government organizations and land trusts are believed to comprise the majority of the private land conservation sector, a greater number of case illustrations from this authority were selected for research. Other parameters, such as protected area values and distinguishing characteristics of the PPAs, size and location were also considered, in order to encourage as diverse selection as possible. Cases were also selected to fulfill requirements for research manageability. Patton (2002) refers to this as purposeful

sampling and it is a strategy used most often by qualitative researchers. It stresses the purposeful search for information rich cases that can inform a conceptual framework.

Six case studies were selected in conformance with the definition of PPAs employed for this research (Table 3). In view of data and information constraints, the selected cases are illustrative, and not representative, of the private sector. Furthermore, they are not based on an analysis of ecological representation - an essential component of conventional protected area systems and strategies (Iacobelli and Kavanagh 1999). The cases are, however, private lands owned or otherwise secured by authorities that primarily manage the land for biodiversity conservation and protected area values and remain accountable for the decisions they make.

3.5 Research Methodology

The methodology employed for this research consists of an inductive and a multiple research approach. Research is conducted on six case studies and, through a cross-case analysis of the individual governance profiles, there is an effort to discover patterns and shared themes of governance for potential transferability to other contexts in which questions of governance and protected areas arise. Despite the constraints presented by this limited number of cases, researchers refer to this approach as grounded theory and assert that inductive case study analysis is essential to developing systematic understanding and a broad knowledge base that can build towards theory (Glasser and Strauss 1967). Geographic researchers also contend that, under this approach, "theory is also likely to be less grand than other propositions espoused as theory in geography, e.g. central place theory, laws of migration. This is because theory developed through induction and from thick description is general and contextual" (Eyles 1988:4). While induction allows large and general conclusions to be drawn from observational detail, it is also ideally suited for a field of knowledge that is nascent; it begins to build a foundation from which other enquiries may spring.

This research relied upon a multiple research strategy comprised of three interrelated parts. Document analysis, confidential discussions and informal interviews

Table 3. Case Studies: Private Protected Areas

AUTHORITY	VALUES	DISTINGUISHING FEATURES
FIRST NATION COMMUNITY 1. Vuntut Gwitchin First Nation	Ecological Conservation Cultural Recreational	14,322 hectares Ni'iinlii' Njik Settlement Lands, Yukon under First Nations ownership noted for salmon and grizzly bears located adjacent to the Fishing Branch Ecological Reserve
NON GOVERNMENT 2. The Land Conservancy BC	Ecological Conservation Habitat Mgt.	10.28 hectares South Winchelsea Island, British Columbia under non government ownership and management responsibility noted for endangered garry oak-arbutus ecosystem
3. Nature Trust of British Columbia	Habitat Mgt. Natural Heritage	4,037 hectares Hoodoo/Hofert Property, British Columbia under non government ownership noted for species at risk, critical habitat and aesthetic values located in a developing environ and adjacent to other PPAs
4. Nature Conservancy of Canada	Ecological Conservation Habitat Mgt.	6,000 hectares Tall Grass Prairie Reserve, Manitoba under non government ownership and management responsibility noted for protecting globally rare North American tall grass system and globally imperiled species at risk located adjacent to other PPAs
CORPORATE 5. Haliburton Forest and Wildlife Reserve Ltd.	Sustainable Forestry Eco-tourism	24,000 hectares Haliburton Forest Reserve, Ontario under private corporate ownership and management responsibility noted for certified forestry operations and located adjacent to Algonquin Provincial Park
INDIVIDUAL 6. Cathedral Lakes Wilderness Resort	Eco-tourism Education	56 hectares Cathedral Lakes Wilderness Resort, British Columbia under leased private management responsibility located within Cathedral Provincial Park

with private authorities and interest parties, and field observation were undertaken in each of the case studies to confirm governance arrangements. For this research, a weight of evidence approach was used for each of the research strategies. That is, information that could be corroborated and verified was relied upon to the exclusion of that which could not. Although qualitative work may be open to criticism, employing approaches that are transparent and present evidence that allows for confirmation will contribute to research that is rigorous, credible and trustworthy (Eyles 1988, Baxter and Eyles 1997, Markusen 1999).

As all the lands in the case studies are privately owned, informed consent from the private authorities, in accordance with the University of Victoria, Human Research Ethics Board, was required before research could be undertaken. A Letter of Informed Consent and a contractual understanding was entered into between the private authority and researcher respecting the scope of study, confidentiality provisions and research implications (Appendix 3).

The materials relied upon to conduct this research consisted of documents in a variety of forms. They comprised the following: published and unpublished academic studies; published government reports and plans; unpublished government public opinion commentary; legislation, regulations, organizational constitutions and by-laws; published and unpublished non-government information in the form of reports, business plans, management plans, program reviews, policy manuals, annual reports and press releases; published and unpublished corporate documents in the form of reports, management plans and surveys; information depositories from recognized institutions; materials made available pursuant to a formal request under Freedom of Information legislation; contractual signed agreements; certificates; documented oral histories; videos; newspaper articles and electronic materials.

These documentary sources enable access to matters of governance that would otherwise be difficult or impossible to research through direct contact. These independent documentary sources are not only viewed as providing credible, trustworthy sources of research information that are non-reactive to the researcher (that is, not influenced by the researcher) (Hoggart et al. 2004), the cross-reference of multiple sources (that is, triangulation) helps to establish differences and similarities for analysis

(Forbes 2000). Published and unpublished materials over various time periods are used to address coverage and overcome limitations associated with published materials, notably bias of an episodic event (Hoggart et al. 2004). The contents of the documents were analyzed according to common approaches employed in textual analysis. Key themes and associations of descriptive materials were analyzed as to their conformity with the normative framework. Manual coding of key concepts derived from the documents was conducted in alignment with the principles and attributes advanced in the framework. The selection for the recording of the key concepts, however, was a matter of adjustment and compromise and constrained the use of software materials referred to for research of this kind. That is, because documents used for this research are not constructed with regards to matters of governance and the scale of the normative framework is not necessarily related to the level at which documents are prepared, progressive refinement was required to ensure capture of key themes and associations in an appropriate and relevant manner. This approach enabled interpretation and clarification of the meaning of governance in the PPAs. Approximately fifty primary documents – for example, management plans, contracts and other documents that formed the core of independent research materials - were reviewed for this research, the evidence of which is outlined in the footnotes of this dissertation so as to assure transparency and ease of subsequent access to the relevant materials. Additional secondary documents – for example, news releases, selected data bases - were also relied upon to elaborate on particular aspects of the case study area.

Open-ended and informal confidential discussions were also conducted with the private authorities and parties having interests in the case study at issue. Discussions were guided by a framework questionnaire structured around the principles and attributes presented in the normative framework (Appendix 4). This type of questionnaire elicits responses to specific questions while also allowing an opportunity for expansion on ideas held by the interviewee. The discussions assisted the researcher in the governance analysis and provided a source of interpretative materials. In particular, in discussions with participants, the researcher sought clarification of matters that arose in the review of primary documents and probed for insights and additional references to governance that would not otherwise be readily apparent merely through available documentation. Where matters of this latter type arose, further documents were accessed to corroborate the views and opinions expressed. The interviews were

transcribed and the text from the interviews was coded to the normative research framework. Although discussions with participants sensitized the researcher to different perspectives respecting the PPA and provided substantial qualitative information for analysis, personal communications, attributions, views and opinions of research participants are expressly not provided for in this research. Where independent documentation and evidence is limited in emerging research areas, sole reliance on such accounts, however, may be particularly valuable.

The opinions, beliefs and perceptions of participants are not directly accounted for in this research as they were held in confidence for two reasons. First, there was a demonstrated reluctance by a number of private authorities to participate in this research unless confidentiality was assured. From discussions with participants, private interests or livelihoods could be compromised through the expression of views or opinions that could harm those interests. Mitchell argues that research should be abandoned when it creates harm (Mitchell and Draper 1982). Assurances were given that personal views and opinions would not be a direct source of research material, but, where appropriate, would be relied upon to inform and provide background context to the researcher. To ensure transparency and credibility, only written and available materials are relied upon for this research. Further assurances were also given regarding the potential infringement on private interests. On the understanding that the analysis of content remained solely the responsibility of the researcher, private authorities were given the opportunity to review the case studies pertaining to their area of governance so that they could rebut any errors of fact. All authorities, with the exception of one, conducted a review of their relevant case study and editorial corrections were made by the researcher; in no instance did any substantive issues emerge.

Second, discussions with direct and third party participants were held in confidence and in anonymity so as not to unduly constrain any participant expression; participants were free to express their views and opinions without the possibility of recrimination. Researchers conducting analysis of the voluntary sector have found, for example, that maintaining confidentiality was not only a central ethical issue, but also that the absence of confidentiality had the potential to significantly compromise the research results (Beattie et al. 2002). Researchers have also cautioned that a more positive interpretation of events is likely to come from a primary coordinating authority and that

this may be mitigated by surveys that include secondary participants who are able to have confidence in the procedures (Leach 2002).

The research participants came from a variety of management and technical backgrounds and included those with direct and indirect interests in the PPA. They included the following: private land owners; management authorities; permanent and contract employees; non-government representatives, including those in executive management and program capacities; land managers; government officials and visitors to the private areas. A technique referred to as snow-balling - identification by key actors of players who have interests in or operate within the area - was used to identify additional potential participants (Neuman 2003). Discussions were held with 25 participants. Each participant had a varied history in, and knowledge of, the private area ranging from extensive to brief. Discussions with participants were structured to adhere to the framework questionnaire and were conducted at a site office or in the field. Discussions varied in length – from ½ hour to over 3 hours - and in substance – from general overview to extensive detail in select areas - and were conducted in accordance with the particular participant's interest and availability (Patton 2002). Subsequent and follow-up discussion was conducted by telephone or e-mail.

With one single exception, field visits were made to each of the case study areas to confirm scale and scope of the PPA and governance arrangements. Field visits averaged 4 days each and took place during the late fall 2004, early winter 2004, late spring 2004 and early summer 2005. They were conducted during a time that enabled accessibility to the private area, as well as an opportunity to hold discussion with the private authority. A field visit was not made to the Ni'iinlii' Njik (Fishing Branch) Settlement Land, Yukon, due to prohibitive costs. As an alternative to a field visit, the researcher did attend a Committee Management Agency meeting between the respective authorities who are charged with governing the PPA at issue.

Special mention must be made about the case study Ni'iinlii' Njik (Fishing Branch) Settlement Land and Ecological Reserve, Yukon. Three types of approval were required to conduct research in relation to this particular case study. First, a license under the Yukon *Scientists and Explorers Act* is required of researchers conducting enquiries that are the sort addressed by this dissertation. Application is made to the Yukon

Government with review and approval from a number of participating agencies including the Yukon Renewable Resources Council. Terms of the license require, among other things, submission of a final report of research, no unnecessary disturbance of wildlife and, if there are irreconcilable objections from First Nations, a stay of research proceedings is sought. In the case of this dissertation, a license to conduct research was issued on April 1, 2005. Second, approval from the Vuntut Gwitchin First Nation Chief and Council was also required before the case study research of the Ni'iinlii' Njik Settlement Land could be undertaken. The Letter of Informed Consent referred to above served in this capacity and was issued on April 22, 2005. Third, application to the Vuntut Gwitchin Department of Natural Resources was required in order for the researcher to be granted access to the Oral History Collection. This collection consists of transcripts of Vuntut Gwitchin Elders views, opinions and experience, in this case, of the study area. Interviews are conducted by a recognized ethnographer, transcribed and stored in archival record in the Vuntut Gwitchin Government office. Terms of approval include, among other things, time limited access to the oral collection, restrictions on use of oral materials to the dissertation only, separate application process for subsequent related reports, right of review by Vuntut Gwitchin First Nation and the ability to suggest corrections, and the right to publish a rebuttal in the event of a dispute about accuracy of information. In the case of this dissertation, approval to access the Vuntut Gwitchin Government Oral History Collection was issued on June 7, 2005. No substantive issues have been raised in relation to any of these approvals.

To strengthen credibility, particularly in qualitative research, triangulation is suggested as one of the most powerful techniques (Baxter and Eyles 1997). Triangulation is based upon the convergence of multiple sources and methods that, when they provide similar findings, their veracity is considerably enhanced. To strengthen the credibility of this research, objective and independent information, as well as subjective materials have been relied upon. This research also used a multiple research method comprising document analysis, semi-structured and open interviews and field observation. Source triangulation - noted as being the most common type of triangulation – refers to “the use of more than one report from a data set to corroborate a construct” (Baxter and Eyles 1997:514). Triangulation is also aided when different types of sources and methods are used, for example, empirical field work and evaluation. This

research has relied upon a variety of reports and documents to corroborate findings respecting the adherence of PPAs to principles of governance.

3.6 Research Challenges

This research brings together a number of complex and disparate themes, including voluntary stewardship and altruism, private authorities contributing to the public interest, the capitalization and privatization of nature, the shift from government to governance, and contemporary schools in protected area management. The central task is to conduct an interpretation of these themes in order to provide an enhanced understanding about the significance of governance in PPAs.

A geographical perspective is ideally suited for this research. With its focus on humans and their relationship to the natural world, the discipline of Geography brings meaningful interpretation to phenomena. A reliance on descriptive regional studies that integrate disparate elements and the use of analysis and synthesis to discover patterns that can further illuminate the human-environment relationship is a hallmark of a geographic perspective that seeks to understand and explain reality in specific contexts (Gould 1999). The natural extension from descriptive studies lies towards prescription and an improvement of human betterment (Smith 1998). What is obviously lacking at such an early stage of enquiry into PPAs is a spatial and temporal representation at a national level. A geographic basis of this kind would not only encourage an explanation of the why and how of PPAs, but would also call for an explanation as to how protected area institutions and land use patterns are influenced by the growth and prevalence of PPAs.

While a geographical perspective can certainly aid research on governance, there are, however, no plainly stated theories regarding governance, nor is there a substantial body of empirical work that assesses governance and protected areas and the contribution to conservation outcomes. This research will confront at least five challenges.

First, in view of the poorly documented information respecting PPAs in Canada, case study selection will be circumscribed to the available materials. The lack of fair representation not only invites potential misinterpretation of a sector, purposeful selection also constrains the ability to make broader generalizations that may be applicable to a sector as a whole.

Second, a governance system encompasses an arrangement of distinct, but interrelated elements: for example, the rules and norms, mandates, organizational structures, customs and practices that evolve. This complex structural and procedural configuration also exists at multiple levels. The study of governance implies, then, not merely a summing up of these defining elements, but rather an understanding of the influence of a dynamic configuration over space and over time. Time-limited research can only provide a snapshot of causal and very complex relations.

Third, assessing the dynamic requires one to demonstrate the presence and quality of attributes – in effect, the evidence of governance – against a principle for which there are no benchmarks. Descriptive study of governance begs the question: How are the attributes to be measured and at what point are they satisfied? There are no objective measures of success or failure. The complexity of the evaluation process is also made all the more challenging as certain principles are not only held in higher relative regard, but can also conflict and are not absolute. The fairness of intergenerational equity, for example, may be paramount to that of performance and efficiency and is not open to reconciliation. The solution to such normative dilemmas invites value judgments and a focus on different attributes that are pertinent to the area being studied. As a consequence, comparative analysis between cases may be constrained.

Fourth, governance entails the distribution of authority, resources, and responsibility. Taking into account the political nature of the governance configuration – that is, the balance among competing interests and values - represents a significant challenge, particularly when relations among actors cannot be fully assessed.

The last, and perhaps one of the more difficult tasks in governance studies, is to explain the results chain and performance outcomes. For protected areas, relating the on the ground results to governance principles and attributes is a challenging task,

requiring considerable investment in establishing measurable objectives, as well as confidence in the interpretation of causal relations. The complexities of social, economic and ecological processes often preclude the ability of determining cause and effect relationships. For this dissertation, quantitative empirical research on conservation outcomes has not been conducted and, where available, primary documents are relied upon. Making the link between governance and conservation outcomes is a major challenge, not only for PPAs, but for protected areas in general (Dearden et al. 2005).

In conclusion, evaluation studies that must consider complex dynamics are, in the final analysis, judgmental, interpretative and value-laden in nature. Moreover, the ethical dilemma of conducting an evaluation of a case study that was not requested or initiated by the private authority, invites bias in interpretation. Verification and meaningful research can be best achieved through careful practice, analytical rigor and an emphasis on transparency, thick description and richness and studies that are conducted over space and over time (Baxter and Eyles 1997, Beattie et al. 2002, Conley and Moote 2003, Markusen 1999, Martin 2001).

This dissertation now turns to the findings of the selected case studies.

CHAPTER 4

CASE STUDY DESCRIPTION

4.1 Introduction

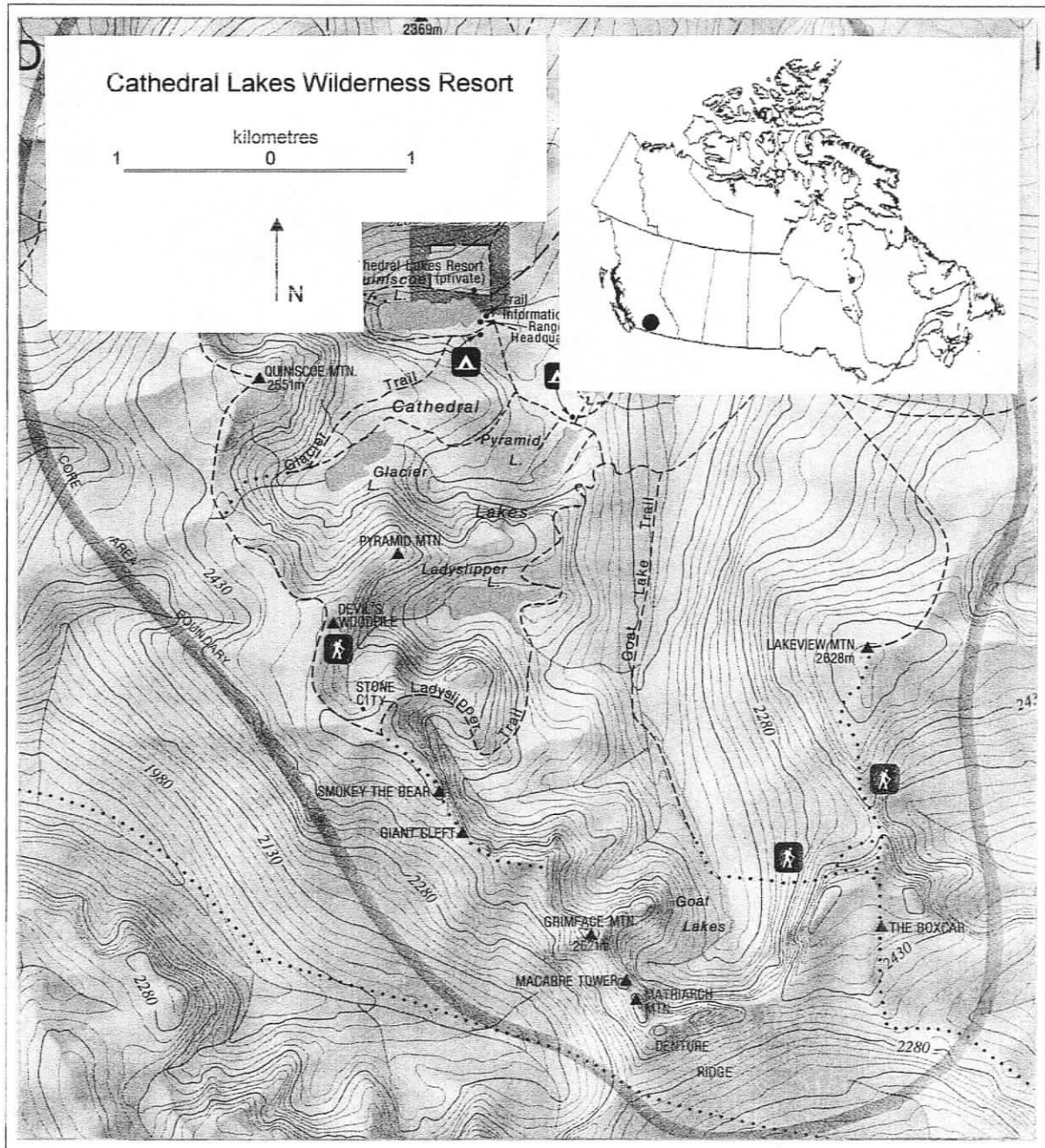
This chapter analyzes the governance of six PPAs in Canada, presented in order of increasing complexity. Each case presents background context, protected area values and a description of the governance regime. The governance of private and public interests is also presented to provide further elaboration on the governance regime. A case summary, noting adherence to distinctive governance principles and the contribution to the public interest, is offered by way of conclusion. Greater case detail is presented in Appendix 5.

4.2 Cathedral Lakes Wilderness Resort, British Columbia

4.2.1 Background

The privately operated and managed Cathedral Lakes Lodge Ltd. and Wilderness Resort (CLWR) occupies 56 hectares inside British Columbia Cathedral Provincial Park in south central BC (Figure 2).¹ The privately managed CLWR on the shores of Quiniscoe Lake has changed ownership infrequently.² In 1990, a new purchaser departed from the longstanding business strategy of servicing regional clientele and made a commitment to increase domestic and national clientele with a view of improving the financial standing of the wilderness resort. In 1996, unsuccessful efforts by then private owner to find suitable private financial investors that would support the scale and scope of the current operation for recreational purposes, as well as the conservation and protection values of the surrounding park, culminated in a sale to, and long-term lease agreement with, Okanagan University College, the now registered land owner of Cathedral Lakes Lodge and Base Camp.³ Although the private land is now not owned by a private individual, management of the land has been secured through a lease agreement between the previous land owner (now the current land manager) and current land owner.

Figure 2. Cathedral Lakes Wilderness Resort, British Columbia



Source: British Columbia. 1997. *Cathedral Provincial Park Map*. Victoria: BC Parks.

The lease agreement provides for a 10 year term, with renewal for 30 years, to be accompanied by a rental of \$470,000. The responsibility of negotiating any necessary permits, for example the transport road, remains that of the land manager and reflects historical arrangements. Should the lease expire, or if either party abandons the lease, contingencies to sustain the area as wilderness resort remain uncertain, particularly as operational costs increase. Potential owners include, among others, the Provincial Crown or “any other body...in receipt of substantial public funding”.⁴

Although land ownership has been transferred to a public institution via a renewable lease arrangement, the management responsibilities and accountability for implementation and delivery rest with a private individual. Larger policy matters remain the purview of the current land owner. Operational management is dedicated towards the provision of conservation, tourism and recreational values, as evidenced in implementation activities. Facility operations are limited in scope, generally non-mechanized or temporary and private interpretative and natural history programs are offered to park visitors, filling a gap left by constrained public sector funding. Private, commercial transportation is provided to willing private and public interests.

The provincial park is located at the confluence of the rain forest of the Cascade mountain range and the more arid Okanagan valleys. As a mid to large size provincial park at 33,625 hectares, it is noted for its deep alpine lakes, sub-alpine fir and western larch and its pre-glacial rock formations – the park name apparently inspired by the jagged peaks and rugged walls reminiscent of a ruined abbey - that enable extensive views to the surrounding landscape. Its quiet grandeur has attracted thousands of visitors since it was first established as a Class A Park in 1968.⁵ It was considerably expanded in 1975 and 2001 at the urging of conservation enthusiasts.⁶ Limited government and academic studies have been conducted in the area and it has served as a site for the commercial film industry.⁷ Under current provincial policy, park management and campground maintenance of Cathedral Provincial Park have been contracted out to private operations.

Relative to the provincial park, the private area is small, representing 0.17 per cent of the total provincial park area. Its size and location, however, belies its historical significance and strategic impact as an entry point to the park; it has a dominating

presence with tremendous potential to shape views and perspectives about the park characteristics and values.

The provincial park most likely owes its genesis to a guide and horseback operation established in the late 1930s that used the Cathedral Lakes area as a staging area. At the time, two local guide outfitters petitioned the provincial government for two 16 hectare parcels of Crown Land in the Cathedral Mountains at the cost of \$500 for use as a horse pasture and cabin area, the site of the current lodge and resort operation. This afforded public exposure to an environment that was extremely difficult to access and which eventually led to a growing appreciation of the surrounding area and resistance to commercial logging operations in the general environs. A 16 km transport road, developed in 1965, linked private operations located at lower and higher elevations. The road opened the area to more commercial visitors, who were previously unable, or unwilling, to negotiate the 1,300 M hike over steeply graded terrain to the upper elevations.

Although land ownership for CLWR is now under a public institution, operational management remains with a private party – an arrangement that is becoming more common in public-private partnerships governing public lands. In such arrangements, tension between private and public interests is often at issue.⁸ In 1987, the Background Report for Cathedral Park anticipates the potential for tension and refers to “a strong sometimes uneasy relationship has existed between the Park and the resort” and that “the operation of Cathedral Park ...is considerably affected by Cathedral Lakes Resort Limited”.⁹

In 1989, the Master Plan for Cathedral Provincial Park – the most recent management plan for the area - attempted to deemphasize potential tension and stressed the need to maintain, indeed enhance, a symbiotic and mutually compatible relationship between the public and private sectors, provided the quality of the park experience is not detrimentally affected and that conflicts between the resort and general park visitors are minimal.¹⁰ The plan states “...the comforts, convenience and security offered by Cathedral Lakes Resort plays a major complementary role in attracting and providing for recreation use in the Park” and “the backcountry lodge accommodation is an unique recreation opportunity supported by BC Parks...BC Parks will encourage this

special role by incorporating use from the Resort in Park planning, development and management".¹¹ The plan also states that its key objective is "to allow private sector involvement in the provision of recreation services which are compatible with park objectives and would not otherwise be provided by BC Parks" and will be achieved by "encouraging Cathedral Lakes Resort in providing a variety of lodge-based outdoor recreation facilities".¹² Furthermore, the plan states that "use levels and activities that result from the Resort and the easy access have impacted on the original wilderness character of the Park" but that private services and facilities "do not detract from the typical visitor's perception of wilderness" and that "the task of management is to retain this balance of naturalness".¹³

Despite this attempt to minimize tension between two competing parties, the now fifteen year old plan, nevertheless points to, and underscores, the potential for future uncertainty, tension and cross-pressures between public and private goals and interests.

4.2.2 Protected Area Values

The informal, that is, not formally documented, management objective of Cathedral Lakes Lodge and Wilderness Resort is to manage visitor use and to provide recreational and tourism services that can profit from access to the surrounding natural features of outstanding aesthetic value. Although the lease agreement is generally silent on management objectives, it outlines obligations with respect to recreational and tourism services. Protected area values have not been documented in the private area. The adjacent Cathedral Park is noted as containing provincially significant landscape features and recreational opportunities.¹⁴ As the Park Management Plan acknowledges, the place of the private wilderness resort is instrumental to advancing the objectives of Cathedral Provincial Park. Application of IUCN protected area categories to this area is constrained and there are no classifications that can be readily used. However, typologies specifically advanced by researchers pursuing PPAs, such as an Ecotourism Reserve where nature tourism is combined with conservation, may offer classification potential for this privately managed area.¹⁵

4.3.3 Governance Regime

Direction

The governance regime for this privately managed area is not complex. Direction is not made visible in any organizational framework; statements of goals, priorities and values are not articulated in a prepared management or business plan document. The lease arrangement entered into in 1996 is the only formal instrument governing the operation of the privately managed area. It stresses that the area be used as an Alpine Wilderness Lodge and it sets out specific accommodations that may be made of the lodge, purposes of which are administrative.¹⁶ Long term management objectives are not defined. It does contemplate, however, the “promotion of understanding of the more intellectual aspects of ecological and environmental concern” through an environmental education centre that has yet to be established.¹⁷ The main focus of the current operator is providing tourism accommodation and a base from which visitors can explore the surrounding environs. Volunteer interpretation services, albeit limited, are offered to paying lodge clientele as well as to provincial park visitors. This service was introduced by the operator after it was diminished considerably in the provincial park. The lease is silent on specifics relating to the adjacent provincial park, preferring consultation with BC Parks as the means to determine appropriate use and direction.¹⁸

In the absence of any stated and visible direction, effective leadership can provide an effective proxy. In this case, a practiced constraint, whereby economic development opportunities are foregone, and a commitment to a stewardship ethic that takes care of the land for British Columbians, directly shapes governance for the area. CLWR area has been under consistent operational management for 15 years, 6 of which were owner-operator, providing an indicator of commitment to area objectives and a capacity to undertake effective management and stewardship.

Legitimacy

CLWR has legitimacy, as evidenced by the 10 year lease arrangement entered into with a major public sector institution. The option to renew arrangements, up to a 30 year term provided both parties are satisfied, services the administrative interests of parties, but injects uncertainty around the longer term ecological and conservation role of this managed area. Materials related to the promotion of the natural history objectives of the

area are readily available to private clients. This service, provided by the lease holder during the peak season, serves to build attachment by private and public visitors to the environs.

Fairness

There are no major observable conflicts burdening the privately managed area, suggesting fairness and equity. Although the Background Report points to “the lodge setting, 4 wheel public transport to the core area and the formalized campground facilities...do not conform with provincial zoning policies and criteria for wilderness”, it nevertheless acknowledges that visitor surveys suggest that respondents are comfortable with arrangements.¹⁹ Outside interests and third parties are not currently active or engaged in shaping the direction of the privately managed area. There is no evidence, however, that they would be prohibited from doing so by the lease holders. Although formal participation processes for the CLWR have not been struck historically, such processes, have been, and would likely be accommodated by a renewal of the now dated Management Plan for Cathedral Park under the auspices of the provincial government. As the wilderness resort generates local employment opportunities – under 10 employees engaged in seasonal service delivery for the hospitality industry - in a depressed economic area, the place and role of the CLWR is generally accepted by surrounding communities.

Performance

Monitoring studies have been conducted in the provincial park and very limited reference baselines were set in 1987.²⁰ The collection and analysis of park inventory data could not be determined. To date, there has not been any formal monitoring of the CLWR and, as a consequence, environmental integrity for the wilderness resort remains uncertain. This aspect is made more problematic by the lack of regularized performance reports by the provincial government on the achievement of outcome goals for Cathedral Park. The setting of standards and reporting on outcome results for conservation, tourism and recreation objectives would serve to readily communicate performance and progress. The capability to undertake such programs remains uninvestigated. The ready position of the current land owner in an academic setting with access to resources and skills, however, suggests untapped potential.

Accountability

The Lease Agreement is the only formal document governing accountabilities and was negotiated by two parties, the Landlord (Okanagan University College) and the Tenant (private operator). The agreement did not involve other parties in its construction and, as previously noted, is largely administrative in nature. As land owner, the Landlord retains authority to set policy direction and is responsible for resolution of management conflicts, for example, between the private operator and park authorities. As a private operator, the Tenant retains authority for day to day management and implementation matters. Although the separation of powers may make for efficient administration, the absence and declaration of long term protected area objectives, obligations to future generations or the broader environmental community surrounding CLWR situates decisions by the parties in an isolated context. Opportunity to inject parameters respecting the governance and management of CLWR has not been pursued in a formal way. Transparency would be enhanced by outlining the results to be achieved, as well as reporting on their evaluation. The underlying ethical and moral construct of the current management regime nevertheless suggests that accountability, beyond those that directly benefit from the private operation, exists.

4.2.4 Governance of Private and Public Interests: Provision of Access

As noted, this case study area is no longer privately owned by an individual, but private rights and responsibilities have been secured through a renewable lease agreement with a public institution; private interests nevertheless remain a central component of this privately managed-publicly owned area. Under such arrangements it is expected that private and public interest goals will be accommodated. When these expectations are not fulfilled, potential issues are predicted to arise, such as, charges of private sector free-riding on the public trust. More subtle forms of tension can also occur. For example, where public and private bodies have a mutual interest and shared fate in a common area, discerning, and making bright, the fine lines of governance becomes all the more necessary.²¹

Of the many pressures that are brought to bear upon protected areas, transportation roads are often cited as being the most significant, inviting direct and indirect impacts.²² Initially serving as a route for horse passage, a 16 km transportation corridor linking the

lower elevation staging area and higher elevation base camps, was established in 1965 to serve private clients at the wilderness resort. The public was not provided transportation unless the vehicles were already occupied by private guests who were staying at the lodge. In 1990, at the instigation of the private owner, the service was expanded for regular and frequent public use. For those park users, however, who are prepared to hike 7 hours over a steeply graded terrain of 1300 metres in elevation, or not able to afford the current \$65 return transportation fee, following a hiking trail that traverses the transport road has potential to significantly diminish the wilderness experience and potentially affect perceptions about the character of the park. Other longer, hiking routes that do not transect the transport road are available.

Surveys in 1986 suggest that 72 per cent of park visitors elected to use the transportation service. It was also determined that over half of those surveyed would not come to Cathedral Park if the only access mode was by hiking.²³

The road, currently accessible only by commercial four-wheel drive vehicles, is managed and maintained by the private operator and governed by 5 year Park Use Permit, the purpose of which "is for the use and maintenance of an access road, approximately 16 km in length within a 20 meter right-of-way and the commercial transportation of the public".²⁴ The annual fee for the permit is \$321.00 and it expired in 2005. The Lease Agreement does not guarantee access to this permit and this remains the responsibility of the current operator. A number of obligations that must be met by the permit holder are outlined in a Management Plan Schedule that accompanies the Permit. Its notable aspects include that the "the public shall at all times have the right to unrestricted foot access over the Permit Area", that the Province has a right of access, and that scheduling of traffic use shall be established jointly.²⁵

The control and management of the access road by the Crown, however, also serves a more important function. Permit constraints serve to indirectly control the scope of any future private land development. Although not currently relevant, subdivision and intensive strata development had been briefly contemplated for the area when it was under private land ownership.

Although the Master Plan has suggested that increased visitor use and easy access may contribute to decreased visitor satisfaction as the original wilderness character of the park is impacted, the Master Plan acknowledges that “there is presently little perceived conflict between the resort and general park visitors, however, economic factors could force changes in the resort and its operations which could detrimentally affect the quality of the park experience”.²⁶ Although dated, no formal public complaints respecting the permit for transport road access from the base camp to the Cathedral Lakes Lodge and Wilderness Resort area have been lodged over more recent periods.²⁷ Inspection reports from 2003 report that the permittee has complied fully with the *Park Act* and *Ecological Reserve Act* and the terms and conditions of the permit.

Despite the existence of a permit outlining rights and obligations of the private and public parties, a number of interpretation issues have been raised by government officials and the permit holder. Issues include: vehicle operations without proper licensing; fee levels; road maintenance responsibilities; and the degree of access benefits that flow from the permit. Although the permit does not grant any private interest in the land for transportation, historical disputes on this important point have arisen between the parties. Correspondence between the parties reveals some of the uncertainty attached to the authority and governance of the road. In 1996, the provincial government indicated that it would take advantage of a permit renewal to “limit the number of campers transported up the road”, effectively interfering with a primary source of revenue for the private operator. In 1998, the private operator indicated that “we do not make money on the transportation business but rather it allows us to transport guests to the lodge on a cost free basis and to increase the number of visitor days in the Park. The increase in use of the park, made possible by the road, justifies budgets for trail and campground maintenance and thereby is a direct benefit to lodge guests, the Lodge and the Park”.²⁸

It is government policy that older aged visitors, families and inexperienced backcountry users - demographics not normally associated with wilderness parks - will be encouraged to visit Cathedral Lake Provincial Park through the provision of a commercial transportation service.²⁹ Although recent visitor statistics and demographic profile is not available, it has been observed that “by the mid 1970s the transportation

service had dramatically changed the character and use of the core area” and that there is “heavy use by proportionally high number of family groups and older aged visitors”.³⁰

The concept of a carrying capacity is advanced in the management plan for Cathedral Lakes; thresholds, however, are not defined for operations purposes. There has been a moderate expansion of campsites in recent times and any overflow of park visitors is accommodated on site. Efforts are also made to coordinate transportation scheduling with core area capacities and to redirect use pressure to adjacent recreation areas outside the provincial park during peak use times. Zoning – intensive recreation, natural environment (including a special features subzone) and wilderness - within the park is relied upon to direct and manage visitor use.

Implications arising from the highly used trails and facilities have also spilled over to the US, pitting jurisdictional philosophies about park management against one another and underscoring differences about the type of development acceptable in wilderness areas. Popular American views, for example, have been expressed about the benefits arising from, what is seen as, a more relaxed philosophy regarding development in Canadian parks; provision of facilities and services is seen to improve substantially the outdoor experience and encourage visitor use.³¹ In view of the perceived high levels of visitors to Cathedral Provincial Park and surrounding areas, the US National Forest Service has expressed opposition to any trail connection from British Columbia to the adjacent Pasayten Wilderness in Washington. The US National Forest Service has indicated that they have “concerns about possible impacts of increased use from Canada” spilling over into areas already highly visited by Americans.³² The US *Wilderness Act* prohibits, for example, mountain bike trails and there is concern that such trails in the adjacent E C Manning Provincial Park to Cathedral Provincial Park will spill into the adjacent US wilderness.

The transportation corridor – either as a symbol of wilderness erosion or an operational necessity – has potential to become a magnet for acrimony between public and private parties that could undermine their evidently mutual interest in preserving the park environment of Cathedral Lake. Improved governance arrangements that provide clear documentation of the management vision for this transportation corridor, clarity on respective roles and responsibilities and stakeholder views would enhance

environmental and social integrity. It would also serve to strengthen relations between the various parties and build on the complementary role that is referenced in the Management Plan.

4.2.5 Summary

The CLWR does not demonstrate full adherence to governance principles. A lease agreement is the key administrative document that sets the framework and direction for the area. The Cathedral Park Management Plan, however, is unequivocal about the complementary and special role of CLWR in advancing the objectives of the Provincial Park. Despite the fact that private facilities and private land ownership were in place well before the Provincial Park was established, governance of CLWR will be heavily shaped by the interests and values of the adjacent surrounding public area. This may explain the absence of robust and visible governance for CLWR. Compliance with permit and lease conditions, a focus on operational management and the absence of substantive conflict also militates against investment in tailored and visible governance arrangements for the private area. The distinctive feature of this case is the commitment to a stewardship ethic that guides day-to-day decision making and, by default, appears to serve as the proxy for good governance principles. The spirit of governance, rather than the letter of governance, shapes the direction for this area.

Through the advancement of eco-tourism pursuits, CLWR contributes to the provision of recreational opportunities in the surrounding Park and is acknowledged as providing opportunity to visitors that would otherwise be unable or unwilling to negotiate access to the mountain environment. To that extent, CLWR assists in serving the public interest. Conservation and protection outcomes, however, have not been set by the private or public authorities responsible for CLWR. In the absence of formally stated objectives and transparent results, the balance that must invariably be struck between private – that is, CLWR, and public interests – that is, maintenance of the ecological integrity of Cathedral Park, remains speculative and open to criticism. The fulfillment of permit conditions respecting environmental aspects is but a first step in strengthening the accountability for CLWR.

Opportunity exists to develop a contemporary and updated management plan for Cathedral Park that accommodates the reality that the ecotourism reserve presents. Confirmation of the benefits that flow from the area, now under new land ownership, would enable the development of a shared and equitable governance regime for the entire private and public area. A fully integrated and collaborative approach between the two major parties would directly shape public interest goals and remove the uncertainty that currently surrounds the future of CLWR.

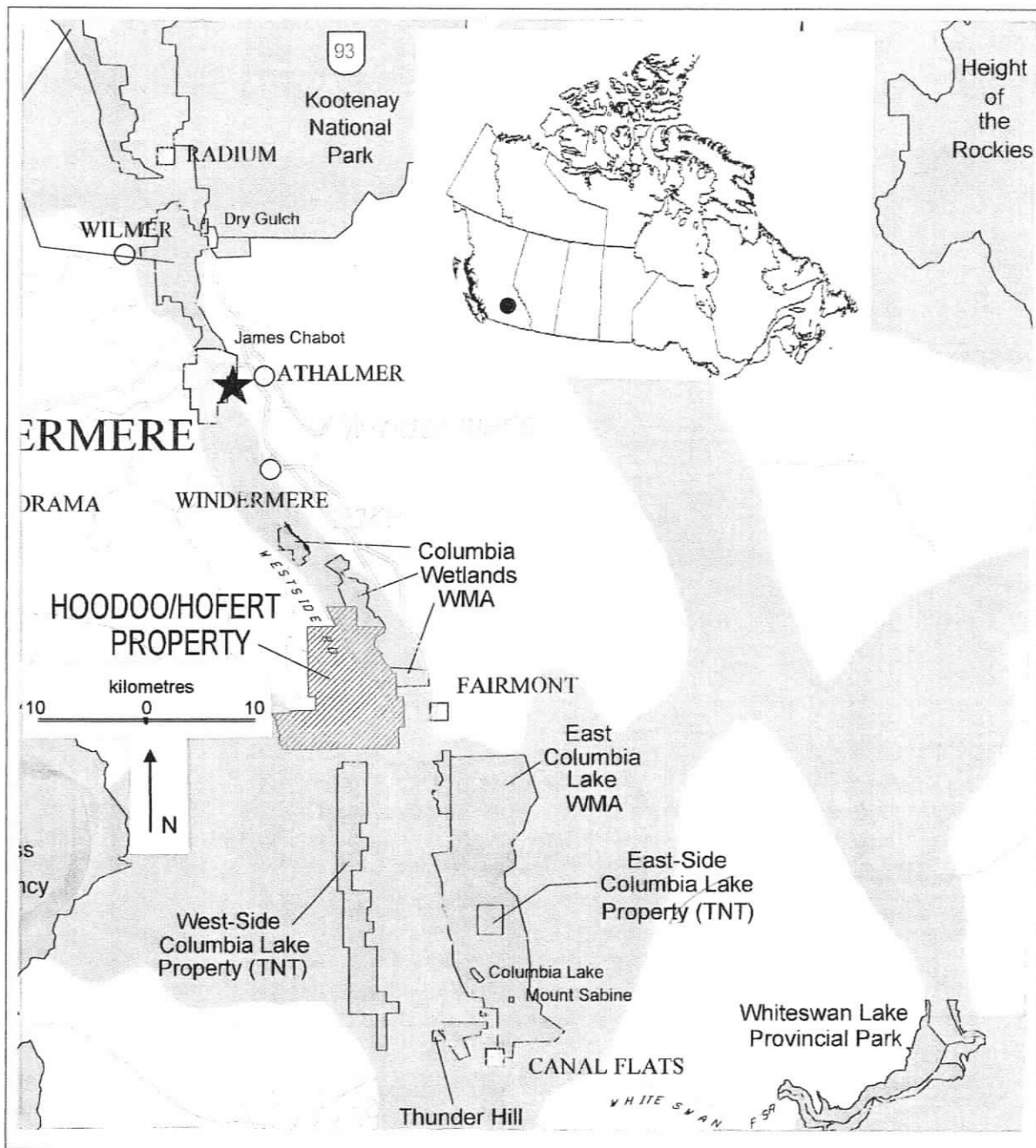
4.3 Hoodoos/Hofert Property, British Columbia

4.3.1 Background

The Hoodoos/Hofert Property, (HHP) at 4,037 hectares lies in the Columbia River Valley of British Columbia and is acknowledged as providing wildlife habitat and migration corridor for the Pacific flyway (Figure 3).³³ It is an important site for biodiversity and is particularly noted for representative grasslands and lowland wintering habitat for ungulates. It is also one of the largest undeveloped parcels of private land in the East Kootenay region of the province; the property serves to help offset the loss of habitat from nearby hydro dams and the increasing impact of subdivisions, resort and recreational developments.

The establishment of the HHP was led by The Nature Trust of British Columbia (NTBC) in collaboration with a number of non-governmental conservation organizations, funding partners, local municipalities and public interest groups.³⁴ The land was initially owned by a private owner and was purchased by the NTBC in 2003 for nearly \$4 M with the purpose of securing the area from increasing land development and loss of regional biodiversity.³⁵ In view of the area's strategic location in a rapidly growing recreational and investment climate, a number of competitive bids for the HHP were tabled, but failed, largely due to land zoning restrictions. In its initial role of providing leadership and negotiation expertise, the NTBC successfully coordinated the involvement of various interested parties. In its subsequent land ownership role and owner of fee simple title, the NTBC retains responsibility for establishing long-term direction and the scope of operational management.

Figure 3. Hoodoos/Hofert Property, British Columbia



Source: The Nature Trust of British Columbia. 2004. *Hoodoo/Hofert Property Management Plan*. Vancouver: The Nature Trust of British Columbia.

The NTBC was established in 1971 with a mission “dedicated to the conservation of habitats and the naturally occurring plants and animals...areas of ecological significance and scenic beauty”.³⁶ It has invested more than \$65 M in 420 properties covering some 60,000 hectares of private land solely within the province of British Columbia. The NTBC owns the land and is responsible for the assurance of long-term conservation and it does so, in a majority of cases, through 99 year partnership leases with the provincial Crown. This administrative arrangement allows the NTBC to offset ongoing insurance and liability costs and to concentrate its limited funds towards acquisition. More importantly, this double conservation indemnity from two authoritative bodies provides prospective donors with the assurance that lands will not be sold or transferred to another use.

Unlike other provincial land trusts that pursue cultural and heritage features in addition to ecosystem values, the singular emphasis of the NTBC is on the protection and conservation of biodiversity. As British Columbia is acknowledged as being the most biologically diverse province in Canada, the NTBC maintains that protected areas are essential to conserving biodiversity and that the protection of biodiversity yields a suite of many benefits - economic, medical, scientific, public values and ideals - a majority of which remain undocumented. Further, it takes the position that the provincial Protected Areas Strategy, albeit constructed in 1992, is restricted to provincial Crown land and that 13 per cent of this land base is too small to maintain viable populations of many species. Therefore, the protected areas “may be inadequate to prevent extinction of threatened species that occur primarily in low elevation areas where the land is privately owned”.³⁷ To that end, particular attention is given by the NTBC to areas that can serve as a complement to the broader provincial strategy.

With a mere 7 per cent of the provincial land base in private ownership, however, opportunities to purchase conservation lands that meet NTBC criteria of richness, variety and risk are relatively rare, and becoming more so as land prices increase. At the policy level, considerable investment is made in species inventory, research on biodiversity structure and function, classification of threats, and prioritization of regions for protection. Priorities for conservation are determined by identifying negative or positive hotspots; that is, areas with high species diversity or a significant number of species at risk, gaps and complementary areas. In view of its limited financial resources to purchase lands,

the organization has adopted the complementarity method whereby areas are identified as representing “the maximum of biodiversity in the minimum amount of area”.³⁸

When opportunities arise, the organization must be able to move rapidly. It has done so, acquiring properties in most regions of the province. The emergence of an ecosystem approach, however, has attenuated the intensive phase of acquisition and there is now a palpable shift within the organization towards management and maintenance at the property and landscape level to meet conservation and protection objectives.

Like most private lands in the province, the HHP were originally part of large Crown grant made to the BC Southern Railway in 1901. In 1911, this land was subdivided and title for one of the lots was transferred to the Columbia Valley Irrigated Fruit Lands Limited, ostensibly for soft fruit production. In 1946, the title was transferred to J. Hofert Ltd. - the last private owner before its transfer to the NTBC. Since 1946, the property has been subject to a variety of resource uses and extractions, including, grazing, hunting, Christmas tree cultivation, motorized recreation and gravel extraction. The area has also been subject to various forest activity including firewood cutting and logging; a portion of the area contains remnants of an old logging camp. Notable wildfires occurred in 1971 and 1985. In 1997, the area was subject to removal of an extensive amount of timber to reduce the fuel load. The Columbia River borders the property and numerous surface and ephemeral subsurface creeks are found in the area and are subject to water licences for irrigation, livestock watering and domestic use; the points of diversion, however, lie outside the boundary area.

The area is located in the Agricultural Land Reserve and Forest Land Reserve and it sits on the 200 year flood plain of the Columbia River. The local Regional District has zoned the area as A-1 Rural Resource, which permits activities, such as agriculture, ranch, equestrian, forestry, wood milling and rural retreats. Rights to subsurface mineral are not part of the fee simple property entitlement and the area is subject to the laws of general application, such as the *Mineral Tenure Act* which allows for exploration and development in connection with mining. Currently, there are no mineral or placer claims on the property.

The HHP are bisected by many corridors, including a highway, public road, hydro transmission line and CPR rail line. Adjacent to the HHP is a tourist resort, golf course and airport, sewage treatment facility and residential development. It is also surrounded by First Nations reserve lands, provincial Crown lands and undeveloped rural properties.

4.3.2 Protected Area Values

The HHP contain a high diversity of habitats, as well as recognized aesthetic and recreational values. The area also supports a number of species at risk. Recognized authorities list at least three species at risk, including the badger, Lewis woodpecker and great blue heron, and note that there is potential in the area to contain a much greater number, including plant species and vegetative communities.³⁹ The area is also acknowledged as having geological significance. Glacial and silt deposits have given rise to wetlands, grassland and forest ecosystems, as well as distinctive rock outcrop and hoodoo formations located on the boundary of the area.

Wetland habitat on the property is not extensive, but that which has been conserved forms part of the Columbia River Marshes and contributes to North America's longest contiguous wetland, providing rich habitat for a number of mammals and amphibians. Local conservation groups have been active in installing goose-nesting platforms to take advantage of the wetland kettles in the area. Although it is expected that the wetlands contain a number of species at risk, confirmation studies have yet to occur.

Bunchgrass habitat is not well-represented in British Columbia's current network of protected areas. The representative grasslands in the HHP motivated the Land Trust to purchase the property.⁴⁰ The general absence of fire, the subsequent encroachment of forest and other factors, however, have reduced the availability of this rich forage for wintering ungulates. A central management thrust is to restore the grassland community.

The area is also noted as providing many values that are appreciated by outdoor enthusiasts. Moderately varied topographical terrain, open conifer-grassland habitat and a series of off-road vehicle trails provides easy access for motorized and non-motorized recreationists, campers and hunters. Visitor statistics are not available. The HHP are

claimed, however, to be a very popular destination for hikers and tourists. The general public is not restricted in having access to the area; in fact, the public is welcome to enter onto the property and enjoy its natural values by using a light footprint conservation presence on the land.

Current management efforts intend to regulate access by employing education and non-interventionist methods that will concentrate users in selected areas. Activities not permitted include refuse dumping and firewood cutting. Activities permitted include Christmas Tree extraction, and, until recently, cattle grazing.

It is generally accepted that habitat fragmentation is the largest factor contributing to the loss of biodiversity.⁴¹ The NTBC argues that impacts on biodiversity, which it has defined as the “the number, variety and variability of all living things”, can be offset by maintaining habitat connectivity through appropriately designed corridors and habitat patches. To that end, the HHP were purchased to provide an important connection to lands previously purchased by the Land Trust and to expand the network of protected areas in the locale under the authority of a variety of government and private land trust programs (Figure 3). The network includes wildlife management areas, national and provincial parks and working conservation landscapes on adjacent lands. The Nature Conservancy of Canada recently purchased the remaining, and larger, hoodoo area outside the boundary of property held by the NTBC.

The evidence of a protected area network, as well as the momentum for intensified conservation efforts, will allow the various authorities, including that of the NTBC, to not only provide significant habitat at the species level, but to also contribute to biodiversity conservation at the landscape level. To that end, efforts are underway to set regional ecosystem management objectives in which the various authorities can participate.

The primary objective of the HHP is to maintain its biodiversity values in perpetuity and to maintain and restore ecological integrity. The vision for the area is boldly presented at the beginning of the management plan and simply states that: “To maintain, restore and enhance the ecological integrity of the Hoodoo/Hofert property in order to ensure the property’s biodiversity values are maintained in perpetuity”.⁴²

As the area is no longer subject to natural fire disturbance cycles, active restoration, intervention and habitat enhancement form the management foundation. Consideration is to be given to compatible revenue generation and cost recovery to offset restoration costs. While the concept of a conservation area has been loosely advanced by the Land Trust, the HHP property is not formally referred to as a protected area and neither does the authority subscribe to a formal classification typology. The NTBC does view its acquisitions and management approach as directly complementing the provincial protected areas strategy. In view of the current management strategy and objective, the IUCN Category IV Habitat/Species Management Area offers classification potential. It is defined as an “area of land subject to active intervention for management purposes so as to ensure the maintenance of habitats and/or to meet the requirements of specific species”.⁴³

4.3.3 Governance Regime

Direction

The direction established for the HHP is outlined in a comprehensive and strategic 5 year management plan that was recently developed after the property purchase. The authority for the plan rests with two central parties: the NTBC and the Province of British Columbia. Its main purpose is to outline management objectives and prescriptions for the property at the species and site level. For example, the restoration of riparian habitat areas and the enhancement of grasslands are areas of strategic focus. It is intended that more detailed operational planning will subsequently accompany the management plan.

The plan also provides objectives and prescriptions for the longer term horizon - the future management direction - with the purpose of emphasizing long-term goals and strategies that focus on the bigger picture, such as biodiversity conservation at the landscape level. The primary objective of the HHP is “to maintain the integrity of the ecosystems on the property in a manner that is consistent and coordinated with other conservation initiatives in the region”.⁴⁴ The articulation of a larger landscape approach is a salient feature of the management plan and the authority is intent on managing beyond the boundaries of its PPA. This direction is not a vague or idle one for the authority. It is given substance by the articulation of eleven ecosystem-based principles.

These principles include: coordinated management with adjacent protected areas; adoption of a goal-oriented, adaptive and precautionary approach; maintenance of ecosystems functions; incorporation of diverse forms of knowledge; accommodation of humans into the environment through restoration activities; and a commitment to results-based and outcome evaluations. Notable actions also include developing collaborative relationships to determine the impacts of climate change; protection of ecological integrity for water management; options for cost recovery and revenue generation; and demonstration projects for conservation land management. Thus the planning framework adopted by the NTBC can be construed as a nested, complementary and comprehensive organizational structure that addresses values in the property at a broad policy to specific operational level, over the short to long term. Although the authority does not formally adopt the term ecosystem-based management for HHP, the management direction is very much rooted in contemporary concepts governing protected areas.

Complementary vision and mission statements focus on the commitments to preserve the HHP natural legacy. The mission statement that accompanies the vision also provides a focus on conservation values: it is “dedicated to conserving BC’s natural legacy, in part, through management of the biodiversity values on the Hoodoo/Hofert property”.⁴⁵

The key concepts that anchor the Land Trust and its management direction are ecological integrity, biodiversity, landscape connectivity and natural legacy. Although definitions for these concepts are not advanced in the management plan, nor are they defined explicitly elsewhere by the NTBC, the concepts have assumed the more popular and general interpretations widely adopted by non-government conservation organizations.⁴⁶ For example, the NTBC posits that “scientists report that the effect of habitat fragmentation on biodiversity may not be fully realized for decades after habitat is degraded. Therefore, habitat connectivity must be considered in current management practices to prevent the devastating effects of fragmentation on Biodiversity”.⁴⁷ The private authority also suggests that maintaining the connectivity of the landscape could offset impacts on biodiversity.⁴⁸

Before the property was purchased in 2003, a number of studies were undertaken to determine the risk that the property presented. Assessments respecting wildlife inventories, habitat assessments, land and merchantable appraisals, and biodiversity values were undertaken. An assessment was also taken to determine the environmental status with respect to contaminated sites as required under provincial regulations. The studies generally concluded that, while the area contained high biodiversity values, it also faced serious threats posed by land development.

In view of the risks that development presents, the management plan takes a pragmatic approach and simply states that its task is “reversing the impacts of previous human activities and preventing future impacts”. A collaborative technical process of private and public sector interests identified four major threats to the HHP: uncontrolled motor vehicle access; non-functioning ecosystems; wildfire; and domestic cattle range use.⁴⁹ Uncontrolled access is seen as the highest priority short-term management action.

For each of the threats, a coherent framework consisting of goals, strategies, priorities and implementation timing is outlined. For example, motor vehicle access is to be immediately controlled through physical barriers, signs and public communication. Responding to the pressing risks is justified as failure to manage such threats may result in irreversible change, such as the loss of rare or endangered species or will incur more costly restoration treatments, such as reducing forest encroachment on the grasslands.

Legitimacy

The relatively small staff complement of the NTBC and its adopted management ideology demands that it enter into collaborative partnerships to achieve its objectives.⁵⁰ Its management plan states, “as part of the long-term conservation strategy on this property, the NTBC is dedicated to working with neighboring regional and national conservation agencies to coordinate landscape-level biodiversity management in the region”.⁵¹ For the HHP, different partnerships were established with a variety of organizations at three critical stages: establishment; technical advisory; and management steering. Generally, authority representation on each of the administrative structures has been consistent throughout each of the stages.

The partnerships created for the establishment of the HHP are also affiliated with the East Kootenay Conservation Program; the HHP are noted as being one of the early purchases under that program. The program was established in 2001 with the mission of facilitating the efforts of some thirty organizations committed to stewardship and land purchase for conservation purposes, largely on private lands within the East Kootenay region of British Columbia. The mission of the program is to facilitate and coordinate a focused partnership of a wide variety of public and private conservation organizations and authorities to advance “biological diversity and ecological processes, support economic and social well-being, and have communities that demonstrate the principles of environmental stewardship for future generations”.⁵²

That the NTBC has engaged with at least eleven recognized authorities sympathetic to its mission in the HHP, demonstrates legitimacy and support from a wide conservation sector. In addition, it has partnered in a program to achieve regional ecosystem objectives, which further strengthens its authority to govern the HHP. The working relationship established with the Centre for Biodiversity Research at the University of British Columbia to determine conservation priorities also provides benefits to an organization pursuing larger public interest goals. By employing a scientifically based, independent research agency and by developing a transparent process for setting priorities, the organization is able to resist any charges of political expediency and to pursue those areas that offer the greatest potential for meeting its conservation objectives.⁵³

Fairness

The area was purchased under a willing buyer and willing seller regime, suggesting a just arrangement, at least under market conditions. It has been noted that a number of other interested purchasers were unsuccessful in securing the HHP property largely due to zoning restrictions that would not accommodate planned activities.

Conflict management of sensitive issues has required some attention of the NTBC. As discussed below, agricultural interests, with a vested history in the HHP, have been temporarily suspended so as to allow recovery of the grassland ecosystem. An ethical approach may call for greater recognition and accommodation of a cultural tradition and economic livelihood of surrounding landowners than may be considered otherwise so as

to avoid charges of albeit, non-contractual, takings. Failure to manage this issue effectively could ignite a much larger controversy in the region where philosophies and ideologies of use interests and environmental directions are at issue.

First Nations interests in the area have not been thoroughly explored, suggesting limitations respecting equity. The area is noted as having significant potential to contain important archaeological sites of the Ktunaxa Kinbasket First Nation. Although sites have not yet been discovered in the HHP, sites over 12,000 years old have been isolated in surrounding areas. Representatives from the Ktunaxa Kinbasket First Nation are members of the Management Steering Committee and, in theory, have an opportunity to shape management direction for the HHP.

The potential of the HHP to generate revenue is a clear strategy commitment and is seen by the authority, and its partners, as consistent, and potentially equitable, with the mission and objectives for the private area. Various options include selective forest harvesting to restore grasslands, sustainable cattle grazing, Christmas tree harvesting and native plant seed collection. It is not a requirement that funds generated be re-invested into the HHP; it is a requirement, however, that any activities be complementary to its management goals.

Performance

For the HHP, the commitment to results-based performance management and continuous improvement is a principle to which the trust organization has aggressively subscribed. The plan states the “management accomplishments will be measured in terms of the conservation outcomes not the completion of management tasks” and that “the focus of monitoring is to determine if management actions are accomplishing what they intended to accomplish”.⁵⁴ The results of performance monitoring are to be communicated to the Management Steering Committee on an annual basis so that any necessary course corrections can be made.

For the NTBC, performance monitoring is important. It provides feedback on the effectiveness of management actions and whether or not it is meeting its goals and it communicates to outside investors the success of its conservation efforts and acts to build investor confidence.

In theory, comprehensive performance monitoring has been outlined for the HHP. For each theme area, three performance components are to be defined: the setting of measurable outcomes; reliance on cause and effect models, and use of monitoring and evaluation systems. Although conservation outcomes are yet to be defined, the goal statements provided for each theme area will likely serve as the foundation for performance monitoring. For example, the goal, "To ensure that the general long-term trend of the grassland condition is toward good to excellent", provides a basis for setting measurable indicators which can be regularly reported. As the land authority moves from property acquisition to management, it is anticipated that performance measurement will comprise a significant resource investment. The practice of performance monitoring, however, has yet to be implemented for the HHP; as a consequence, progress respecting conservation outcomes remains uncertain.

To further buttress the commitment to performance, it is the intention of the land trust authority to employ locally selected community stewardship monitors at the individual, organization and school level to serve in an oversight capacity for the private land area. Although the monitors will not have regulatory enforcement powers, their engagement is intended to foster a sense of community ownership and respect for the area through selected monitoring and reporting responsibilities.

Accountability

The NTBC holds fee simple title to the property. However, due to liability concerns, insurance costs and other financial charges, such as property taxes, all of which are associated with land ownership, the NTBC has elected to enter into a 99 year lease agreement with the provincial government where these costs, and management responsibilities, are borne by the transferee.⁵⁵ Although the appraised value of the HHP has increased at least three times since its negotiated purchase by the NTBC, the impetus to enter into the lease arrangement was not precipitated by crippling taxes, but, rather, was entered into as part of a long-standing arrangement between the Land Trust authority and the provincial government. Since both parties have an interest in conserving and enhancing critical wildlife habitat, these interests are viewed as being best served through a mutual and cooperative relationship and, in practice, the NTBC regularly enters into such lease arrangements. Rather than invest scarce capital in management, such as habitat improvement and liability insurance which can be

extremely expensive, the NTBC enters into lease arrangements where these costs are generally borne by or shared with the provincial government. This arrangement frees up capital that can then be invested in further land purchases and acquisitions.

The lease agreement for the HHP, prepared under the auspices of the provincial *Land Title Act*, is currently under development and is expected to address the cooperative management and the roles and responsibilities of the two parties with respect to the private property. The way in which conflict will be resolved, should it arise between the two parties, however, remains uncertain.

Given the reliance of the private land authority on outside investment to meet its conservation management goals and to maintain investor confidence, the management plan for the HHP calls for independent conservation audits, at least once every five years. Such audits, however, have yet to be conducted and their scope and impact remains uncertain.

Unlike many public interest organizations, the NTBC is not a member-driven body. Rather, responsibility for direction rests with fifteen appointed Directors who are not accountable to members, but remain accountable to the Board, to those with whom it has entered into lease agreements, including land donors, as well as the larger public purpose that the organization seeks to fulfill. At the inception of the organization, and as a consequence of the availability of federal seed funding, Directors were appointed by the Prime Minister's Office. Recent changes, however, now allow Directors to be appointed on the invitation of the Board of the NTBC. Directors can serve for two four-year consecutive terms.

4.3.4 Governance of Private and Public Interests: Protection of Biodiversity

The NTBC has made a commitment to the protection of natural legacy in perpetuity. However, after decades of human intervention and resource extraction in the HHP, restoring ecological integrity is a central challenge. Continuous, unsustainable cattle grazing and indiscriminate access have directly contributed to the degradation of grassland ecosystems. Decline of native grass species and vegetative cover for species

at risk, compaction of soil, introduction of noxious weeds and degradation of riparian areas have been identified.⁵⁶

Given the location of the property in a rapidly growing area, the management philosophy is “meant to be flexible and to reflect a broad range of human values and changing social, economic and environmental conditions”.⁵⁷ Cattle grazing has been a traditional and accepted activity undertaken by surrounding land owners and, through agreements with previous and current land owners, the rangelands have provided forage for a number of cattle, as well as a source of revenue. In recognition of the historical precedent that grazing represents, incremental steps have been taken to minimize impact.

However, recent acknowledgement by the land authority of the extent of degradation, as well as a failure on the part of cattle operators to meet performance standards, such as fencing and provision of water holes, has resulted in the suspension of the grazing privileges of nearby landowners. A permanent closure is not contemplated at this time and opportunity to develop a sustainable and rotational grazing regime appears to be limited due to other priorities. It is anticipated that this matter will be a continuing source of tension and a growing social management issue for the NTBC as it navigates towards restoration of the grassland habitat. It remains to be seen how the treatment of this matter will affect the specific management of uncontrolled public access in for recreational activity in the HHP or how it will shape general views of surrounding private land owners towards conservation trusts.

The tension between historical agricultural practice and contemporary environmental directions is, nevertheless, anticipated to grow in this region. Unless careful management is exercised around the treatment of agricultural interests in the HHP, there is a possibility that tension will spill into larger arenas and the reputation and integrity of all land trusts in the region will become sullied. In the HHP, there is considerable potential for a seemingly minor matter to grow into a larger and intractable conflict where resource use interests are directly pitted against environmental directions.

4.3.5 Summary

The HHP adheres to a number of governance principles. The extensive collaborative relationships, the expression of contemporary ecosystem principles, a focus on selected management priorities and the commitment to performance and outcome-based monitoring augur for good governance and a likelihood that the authority will meet its conservation and protection goals and advance the public interest. More importantly, the future engagement of an independent third party conservation auditor is one of the strongest governance principles to which the authority has committed itself.

The purchase of HHP by the NTBC was established to advance goals in the public interest; that is, to maintain, restore and enhance ecological integrity and biodiversity values. Although a formal term or protected area classification has not been adopted by the land authority, it is acknowledged by the NTBC and participating land conservation organizations in the region that the HHP is a high priority conservation area.

As land managers, rather than preservationists, considerable management emphasis is placed upon active restoration and enhancement. The sustainability of financing is a pressing reality. A significant challenge that the authority faces is finding the appropriate balance between generating sustainable revenue from its properties to cover the costs that restoration invites and the protection of biodiversity values. For example, unless impacts can be mitigated, future revenue from controlled cattle grazing appears limited. As the forest is cleared to allow for grassland recovery, revenue may be generated from the harvesting of pine for fencing. Fees from recreational activities also offer potential.

The use of a certified conservation authority, presumably similar to that employed for forest certification, may also have an unintended consequence. Given the close relationship between the land authority and the Crown in their respective owner and management capacities, certified status may help to alleviate any potential questions about the degree of independence and autonomy of the land authority in an area that could be characterized as neither fully private nor fully public. The findings of an independent evaluation, presumably, would be directed towards both parties. However, in the absence of an independent certification of conservation, a poor performance record, should one be advanced, is likely to raise pointed questions about appropriate

accountabilities and roles and responsibilities between the two parties and invite inter-agency tension.

4.4 Tall Grass Prairie Preserve, Manitoba

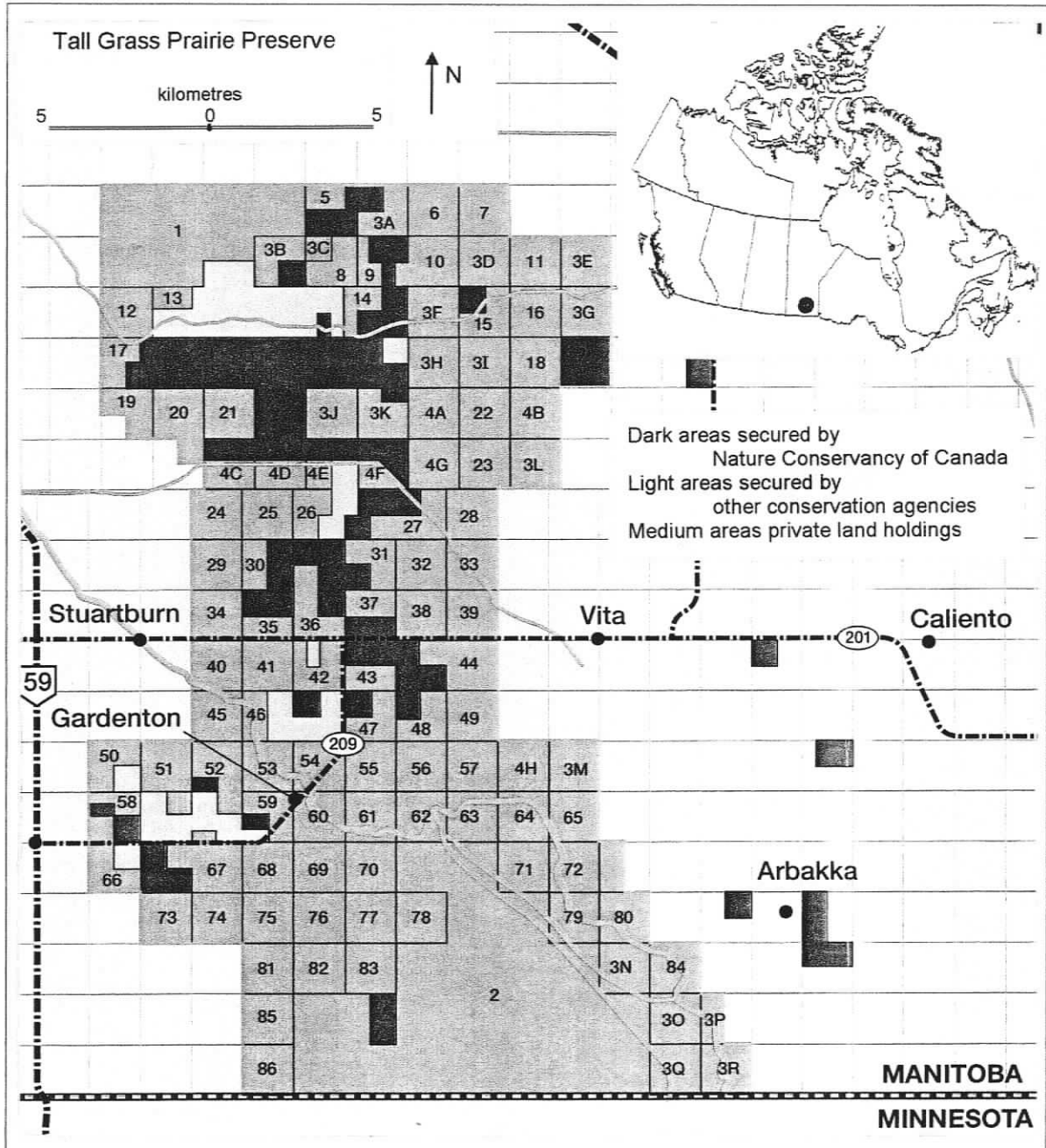
4.4.1 Background

The Tall Grass Prairie Preserve (TGP) is located in south-eastern Manitoba, adjacent to the Canada-US border (Figure 4).⁵⁸ The first parcel of land to be protected as part of the TGP was secured in 1989 in the Tolstoi-Gardenton area by The Nature Conservancy of Canada (NCC). The parcel was acquired in a cooperative partnership with a number of agencies and organizations that shared a goal of preserving the last remnants of tall grass habitat in the region.⁵⁹ This early mosaic of partner groups gave rise to a dominant role that is still played by the NCC, which now holds fee simple title to approximately 6,000 hectares of land for conservation purposes in the region.

The NCC, established in 1962, is a national, non-profit, non-governmental land trust organization and charity “dedicated to the conservation of ecologically significant land through private action, and to its long term stewardship through monitoring and management agreements”.⁶⁰ It claims that it is currently the largest private steward of lands conserving species at risk in Canada that keep the land safe forever.⁶¹

To date, NCC has acquired approximately 73,000 hectares of land and has representation in every province. Most holdings are concentrated along the international border where most land development is occurring. A 1998 inter-agency agreement with the US-based, The Nature Conservancy, also emphasizes the protection of threatened natural landscapes that span the border between the two nations. The NCC maintains assets of \$200 million and has 25,000 supporters. In the last seven years the national organization has nearly doubled its assets, its supporter base has increased threefold and agency capacity has been considerably strengthened across the country. It is believed by the NCC Executive that this momentum is largely attributed to the establishment of regional offices and to an aggressive communication and management

Figure 4. Tall Grass Prairie Preserve, Manitoba



Source: Nature Conservancy of Canada. 2005. *Manitoba's Tall Grass Prairie Map*.
Winnipeg: Nature Conservancy of Canada.

strategy. Although a national goal regarding quantity of land preserved has not been defined by the NCC, its central challenge over the next twenty years is to purchase additional lands in identified priority areas, either in partnership or in autonomous arrangements, to provide effective stewardship and to increase public awareness of its mission. Moreover, the goal of the NCC is to situate itself as an information leader on private conservation and to become the public's organization of choice for land conservation.

Until relatively recently, it was believed by provincial naturalists that the Tall Grass ecosystem was almost extinct. The federations of Ontario and Manitoba naturalists, however, revealed a small habitat area and remnant of an ecosystem in Canada that once extended from southern Manitoba to northern Texas. Historically, the area was dominated by tall grasses of two metres in height and supported a robust ecosystem. The area also contains some of the most demanding agricultural land in the province and is burdened with heavy soils and stone outcrops. Through pasturing and other agricultural activity, the tall grass prairie habitat has been dramatically reduced to 1 per cent of its original distribution; the TGP protects one half of this remaining habitat.⁶²

This area is noted for a number of plant and bird species at risk, including the western prairie fringed orchid, small white lady's slipper, eastern loggerhead shrike and yellow rail. The western prairie fringed orchid is also acknowledged as a globally imperiled species – the only known location occurs in the TGP, which further highlights the importance of the preserve.⁶³

Since 1989, the NCC has worked with various partners to establish the TGP protected area and the area has progressed through three distinct stages. From its relatively modest beginnings as a protected site under 500 hectares in size, the TGP underwent considerable expansion after 2001. Efforts are underway to further extend the TGP to the Manitoba/Minnesota border with the intent of making the TGP a “world class preserve truly viable”.⁶⁴ By working with its American counterpart, the NCC is establishing an international corridor of remaining Tall Grass Prairie that will extend into the Midwest United States.⁶⁵ A \$3 million Campaign for Conservation has been launched to enable purchase of private lands once they become available, which could

potentially provide a link to the prairie corridor already established in the north-central United States.⁶⁶

The TGP was also identified as one of 50 in a portfolio of Natural Masterpieces that were identified by a NCC advisory science team as biodiversity hotspots and priority areas for protection in Canada. At the regional level, the TGP stands as the flagship operation and is one of three areas deserving critical management attention by the regional NCC office to advance its conservation mission.

4.4.2 Protected Area Values

The TGP is located in a Aspen parkland that, although open and relatively dry, is interspersed with permanently wet meadows and fens that supports hundreds of species of plants, mammals, birds and insects. It is described by the NCC as an “extremely diverse ecosystem“, that provides habitat for moose, white-tailed deer, black bear and grey wolf, as well as the Sandhill Crane.⁶⁷ An extensive baseline inventory has been prepared, with varying levels of verification, and forms part of the Manitoba Conservation Data Centre. The TGP is also noted for its specialized habitat that has adapted to unique environmental conditions. Historic periodic and widespread fire and intense summer precipitation that fuels explosive growth have directly shaped this ecosystem.

One species at risk has particularly served to encourage the establishment and expansion of the TGP. The Western Prairie Fringed Orchid is found in the TGP - the only known location of this species at risk is in Canada.⁶⁸ The plant grows in wet, low lying lands and it is highly adapted to a prairie environment that was once subjected to periodic fire. It is extremely sensitive to deep soil disturbance arising from drainage, spraying or overgrazing. Although population estimates fluctuate widely, likely due to varying climatic conditions, current surveys by the NCC suggest that approximately 20,000 plants are located in the TGP.⁶⁹ Recovery goals and a sustainable population have not yet been determined for the Western Prairie Fringed Orchid and recovery programs of the NCC are generally restricted to habitat protection. An inter-agency recovery team, of which NCC is a member, has been struck to enhance field augmentation.

The Manitoba *Endangered Species Act*, and the federal *Species at Risk Act*, legislation applies to the protection of this species; it is listed as endangered under both statutes. For the former, it is an offence to “kill, injure, possess, disturb or interfere with an endangered species” or “with the habitat of an endangered species”. Penalties exist under both statutes and include imprisonment and fines; no prosecutions, however, have been launched under either statute to date.

The TGP is available for year round public non-motorized access, which is limited to recreational, educational and scientific endeavors. Self-guiding interpretative stations have also been recently established. Vehicle access and camping is prohibited.

The mission of the NCC for the TGP is two-fold: to protect and manage habitat for species at risk and to engage surrounding private landowners in a shared conservation and stewardship approach. The objectives for the TGP are as follows:

1. “to secure and protect ecologically sensitive lands which are important habitat for species at risk;
2. to increase landowner awareness of the value of residual cover for species at risk through workshops, consultations, increased information and the development of grazing management systems;
3. to enhance and manage critical habitat for species at risk; and
4. to promote long term change in land management practices through stewardship activities and communication with landowners”.⁷⁰

Habitat management activities on the TGP include prescribed burning, rotational grazing, fencing and control of exotics. The central management thrust for TGP is to control encroachment of woody growth and reduce litter that interferes with the tall grass ecosystem. It is estimated that approximately 10 per cent-20 per cent of the area is burned annually during the spring and fall seasons.⁷¹

Although the TGP is often referred to as a preserve, this phrase is an artefact of previous collaborative efforts and not one that is part of a formal classification scheme adopted by the NCC. The NCC does not subscribe to, nor recognize, a formal protected area classification scheme such as that advanced by the IUCN where various types of protected areas and tailored definitions are advanced. Rather, the NCC tends to rely upon geographical place names to distinguish natural areas within its “network of protected areas across Canada that are protected for the long term”.⁷² For example, areas are referred to as the Yeske Property, Saskatchewan, Cowichan Valley, British

Columbia or Gaff Point, Nova Scotia. Terms such as conservation areas, parkland and working landscape are invoked by the NCC for general communication purposes and are not directly attached to the place name.⁷³

In view of the objectives and management strategy advanced by the NCC, the TGP is a potential candidate as an IUCN Category IV, Habitat/Species Management Area. Within this classification, the protected area is mainly managed for conservation through management intervention and “requires specific human manipulation for optimum management”.⁷⁴ Other potential classifications to be considered for this area include IUCN Category II where the protected area is managed mainly for ecosystem protection and recreation. Although the IUCN classification for this type calls for “ownership and management should normally be by the highest competent authority of the nation having jurisdiction over it” – in reflection of the national standing and significance of the protected area to national objectives - it also contemplates the vesting of authority in a “foundation or other legally established body which has dedicated the area to long-term conservation”.⁷⁵ In view of the national significance of the TGP and the emphasis on protection, this classification offers considerable potential.

4.4.3 Governance Regime

Direction

Working at a national level, the vision of the NCC is to create a permanent natural legacy: “The Nature Conservancy of Canada will protect areas of biological diversity for their intrinsic value and for the benefit of future generations”.⁷⁶ Its mission is to preserve, manage and enhance ecologically significant land and to advance areas of exceptional aesthetic and educational value across Canada. To achieve its mission, the NCC pursues the “power of private action to leverage conservation”.⁷⁷ The NCC also commits to nature conservation for the enjoyment of future generations; to create solutions that benefit nature; to keep the land safe forever; and to ensure sound permanent stewardship of the land as a permanent nature preserve. The mission for the TGP is consistent with this direction and is dedicated to the preservation of ecologically significant areas and educational interest in Canada, and to the long-term stewardship of the living natural communities that inhabit them.

A three-tiered framework provides the direction for the TGP. The framework consists of a national policy, regional management and site operations that shape the protection and conservation directions for the NCC. A national strategic plan - the overarching strategic framework - includes statements of priorities and directions for a five year term and guides the National Board of Directors, as well as professional staff. It is intended to serve as a “flexible management tool”.⁷⁸

The strategic plan is complemented by a national Conservation Framework that identifies priority sites for protection. The framework is based upon internationally understood approaches to classifying and ranking species, ecosystems and landscapes; an ecoregional approach is employed. For example, the Ecological Blueprint for the Mixed Grass Prairie, is intended to provide strategic direction for the TGP and future targets for conservation. The Constitution of the NCC states that the goal of the blueprint is to “identify a portfolio of sites that, if conserved, could collectively sustain those various elements of biodiversity”.⁷⁹ Access to the Conservation Framework and Blueprint could not be obtained, prohibiting assessment of these strategic documents.

The NCC stewardship program - The Stewardship Blueprint: Taking Care of Precious Places and the NCC Stewardship Manual – although national in application, is intended to provide operational direction for on the ground management and is referred to in NCC materials. The program focuses on maintaining and enhancing the occurrence of key target species and habitat types most important to each site. Access to this document, however, could not be obtained, prohibiting assessment of scope and content.

A Manitoba Business Plan for 2004-2005 also situates the TGP in a regional context and brings attention to the particular administrative challenges that the region must confront in order to achieve its objectives. Key challenges include enhancing public awareness, alleviating funding constraints, managing the back-log of data and coping with the practicalities of mounting land stewardship activities. The Business Plan for Manitoba stands as the central strategic document that ensures that the TGP contributes to the national mission and vision.

At the site level, a Habitat Stewardship Program for Species at Risk, outlines a detailed workplan for the TGP. Objectives, activities, results and deliverables, including performance indicators, provide a clear and coherent operational outline. A budget plan is also presented to enable stewardship implementation in the TGP.

Five commonly-held strategies shape the direction of the NCC at the national, regional and site levels. The first, and central emphasis of the NCC, is to secure and manage ecologically significant lands through fee simple arrangements or conservation agreements. This strategy is similar to that of most land trust organizations. Second, the NCC pursues “creative deal making” and partnerships with “any individual, corporation, community group, conservation group or government body” that is sympathetic to its mandate.⁸⁰ Collaborative efforts are a hallmark of this organization. Third, the NCC takes a non-advocacy, business-like and science-based strategy to land conservation. The strategy of marrying business with conservation in a non-confrontational manner is a distinguishing feature of the NCC that “differentiates it from other conservation organizations”.⁸¹ Structurally, it has aligned a highly respected scientific advisory body with representatives from across the country to a decision-making forum comprised of the captains of industry and representatives from the business community. Fourth, it has also recently embarked upon an aggressive communications campaign to increase its brand awareness and to attract public support for the protection of priority areas, largely in the vicinity of the international border.

Finally, the NCC has also recently adopted a strategic, long term and ecosystem approach that requires moving away from a management focus exclusively at the site level and moving towards the landscape level where ecological contexts, relations and linkages can be better appreciated. As the instrumental planning framework, the purpose of the Stewardship Blueprint, referred to in the Manitoba Business Plan, is to identify a portfolio of sites which, if conserved, will secure the long-term survival of viable native species and community types of the region. The system is also intended to serve as a policy framework that enables priorities to be set, partnerships to be built and strategies to be implemented. As a consequence of this direction, science is assuming a much greater role in defining the direction for the agency than it did in the past. As noted previously, direct access, however, to the Blueprint could not be obtained, prohibiting a thorough understanding of its significance and role.

Although land costs are relatively low in this region, land availability is also relatively scarce. This constrains the extent to which NCC can achieve its mission. Given relatively low land costs and protection guarantees provided by fee simple purchase, a majority of funds are dedicated to this preferred method. In other regions, for example, prohibitive land costs generally restrict the flexibility of administrative instruments. In those cases, conservation agreements and easements with landowners tend to be relied upon. A comparative analysis of administrative instruments and their protection effectiveness has yet to be conducted, however, and it is assumed, given the pursuit of this instrument by the NCC in its overall land portfolio, that fee simple arrangements provide the greatest effectiveness at the least cost.

Protection alone of the TGP, however, will not ensure the sustainability of species at risk in the grassland ecosystem. The tallgrass prairie continues to be degraded by the invasion of exotic and woody species and over grazing.⁸² The absence of natural fire, periods of extended drought and grazing demands necessitates active habitat management. As a consequence, NCC is not only involved in land protection, but is engaged in rotational grazing, prescribed burns, fencing and control of invasive species. Mechanical methods and bio-control techniques, for example, integrated pest management, are relied upon in many of the hectares that comprise the TGP. However, unlike other areas under NCC ownership and management where stewardship costs are generally estimated at 20 per cent of annual management costs, the demanding soils in SE Manitoba call for 40 per cent of financing and consequently restrict the scope and extent of stewardship activities that can be undertaken.

The progression from acquisition of property to management at the landscape scale also requires engagement with surrounding landowners in stewardship activities and working beyond the borders of the protected area. To this end, the NCC has initiated a number of field workshops to improve the awareness of landowners about the value of residual cover and the important role that grazing management systems can have on habitat improvement. It is argued that "it is only through the protection and stewardship of landscape scale projects that species at risk can realistically be expected to flourish".⁸³

The NCC has also entered into a number of collaborative partnerships with academic institutions and government agencies to understand better the dynamics of the prairie ecosystem. Studies have included agricultural impacts, restoration of degraded lands, control of exotics and assessments of prescribed burns.⁸⁴ For example, counts of Western Prairie Fringed Orchid are being compiled by seasonal staff, courtesy of a grant from the Canadian Wildlife Service. A system of monitoring protocols to determine a baseline reference and long term ecological change is being prepared by the University of Manitoba. Volunteers are also encouraged to participate in the conservation of natural areas and are likewise involved in restoration and limited monitoring activities.

Before a property is purchased by the NCC, a risk assessment is conducted, to determine its ecological significance and management costs. For the former, four criteria for acquisition include: diversity and ecological integrity; lack of disturbance to the habitat; degree of risk or threat from development; and presence of imperiled species or features of natural significance, including areas of special beauty or educational interest. For the latter, stewardship needs and ongoing costs are detailed.

A scientific advisory body, established at the national and regional levels, makes recommendations to a Board of Directors on acquisition. For TGP, Biodiversity Rank Criteria were applied to determine its level of significance at a global, national, provincial or regional scale. TGP was ranked as having global significance, largely due to the presence of the last remaining North American tall grasses and the globally-imperiled Western Prairie Fringed Orchid, a species that occurs only in this locale. Subsequent administrative costs, such as those pertaining to the purchase, related legal expenses, title registration, and development of conservation agreements are also taken into account before a decision is made to purchase by the Board of Directors.

Legitimacy

Although the NCC did not engage surrounding local land owners in a formal participatory process to determine the policy of TGP or its scale and scope, the legitimacy for the TGP has remained relatively stable since its inception. The NCC purchased the first parcel of land in 1993 from a willing seller and little opposition was encountered from surrounding land owners at that time. This approach has generally continued to the present time. For example, recent land donations to the NCC for

conservation purposes are seen as evidence of continued community support for the mission and objectives.

Support for the mandate of NCC is also evidenced by the number and diversity of donors, who are broadly representative of a broad community of interests. NCC has solicited funding from government and private foundations, as well as from over 300 individual donors, to purchase and steward the TGP.⁸⁵ The support witnessed at the local TGP level is also buttressed by the national campaign. Support for the national policies and direction of NCC, more often by those not familiar with the local area, is also translated to the site level, confirming a mutual and synergistic arrangement between local and national interests. Although the absolute number of supporters is viewed as being relatively small relative to other conservation campaigns under the NCC banner, the fact that the TGP has received external acknowledgement as being socially useful and has won a degree of social recognition has nevertheless aided its legitimacy. More importantly, this legitimacy attenuates opposition that may arise to the mission of NCC. Despite this tremendous level of visible and active support, however, the local municipality is nevertheless beginning to express certain reservations about the impacts arising from the conservation initiative.

Legitimacy is also conferred when formal administrative instruments are entered into, conveying the acceptance of responsibilities and obligations by the signatory parties. The NCC relies on three administrative instruments for the TGP: 1. fee simple acquisition; 2. land donation from private owners; and 3. conservation agreements.⁸⁶ Currently, the majority of land is held in fee simple title by the NCC and the organization maintains management responsibility for protection and conservation. The NCC, as an eligible conservation agency, has also accepted the donation of two land parcels under the federal Ecogifts Program and it has entered into two long term conservation agreements, as well as one 10 year conservation lease in the TGP.⁸⁷

Each of the instruments shares a common expectation that effective land stewardship will be realized. They also call, however, for different roles and responsibilities from the NCC. Depending on the instrument, the NCC must act as land owner, trustee, manager, facilitator or equity partner and attempt to achieve the same goal of effective land protection. Each instrument also calls for different degrees of

transparency. For conservation agreements, objections may be filed with the Conservation Agreement Board, a forum to assist in the resolution of disputes as provided for in the provincial *Conservation Agreements Act*. For objections arising in fee simple arrangements where no tax incentive has been sought, objections may be registered with the NCC. Although there may be no similar legislative obligation to resolve the dispute on the part of a fee simple private owner, maintenance of organization reputation and credibility is a strong motivator to peaceful resolution.

To build trust for the mission of NCC, the organization goes to great lengths to engage surrounding land owners in its stewardship operations and in leased grazing. A number of workshops, tours and consultations have been conducted with adjacent land owners on the development and maintenance of rotational grazing systems, on the implementation of prescribed burns and on providing education packages on sustainable management practices. The NCC has specifically advanced a two-rotational system for the TGP with a view not only to improved root development of species at risk on the lands that it directly protects, but also to encourage the acceptance of this grazing system by the surrounding land owners and to promote sustainability at the regional level. Participation rates have been moderate, however, and it remains uncertain as to what extent these participatory activities have influenced changes in the land practices in the surrounding region. External audits of the rotational system have not been conducted.

The NCC has also entered into a limited number of leased grazing arrangements on TGP lands, not only to elicit support, but also to acknowledge the practical realities and limited availability of pasture land. The NCC also employs outreach measures and education activities beyond the local area. For example, interpretative programs are brought to the classroom under the sponsorship of a dedicated foundation.

For the TGP, however, it has already been noted that a majority of TGP lands are held in fee simple status by the NCC. As the registered owner, NCC, is at liberty to determine the terms of permanent protection, which is of course the privilege attendant upon private ownership. In the unlikely event that the organization is unable to administer or is dissolved, for example, the NCC Constitution provides that "its remaining property shall be distributed to or disposed of to one or more government agencies

and/or charitable organizations, which carry on the same or similar work in Canada”.⁸⁸ Through this provision, the long term sustainability of the organizational mission is assured and a commitment to permanent protection can be stated with assurance and confidence, provided that willing and sympathetic organizations or agencies exist to accept the responsibilities that NCC has so willingly adopted. In view of the stature and prominence of the NCC as a national institution, should the stability of the organization ever be in doubt, it is likely that much larger events are also undermining other land conservation agencies as well.

Fairness

The values to which the NCC subscribes are diverse and are derived from a variety of contemporary environmental concepts. These values pertain to sustainability, an ecosystem approach, and a bio-centric world view. The NCC is unabashed about its value set and regularly communicates its commitment to making decisions on the best available science and to working in a non-confrontational manner, managing lands and waters for their intrinsic natural values, and respecting the processes of growth, succession and interaction in nature. The NCC is also committed to finding a balanced approach between the inevitable conflict that arises between environment and economy issues. The NCC recognizes the need to create avenues for people to sustain themselves and live productively while conserving biological diversity. Significantly, the NCC states that it is making a commitment to the future and that the goal is “nature conservation for the enjoyment of future generations”.⁸⁹

In presenting a clear statement of its values, the NCC stands apart from other land trust organizations, whose values are often deeply embedded in operational activities and can only be inferred.⁹⁰ The NCC has adopted the values as set out above since it believes that as biological diversity is lost, the quality of life is increasingly diminished and future survival of the human species is threatened.

For the TGP, land exchanges are between willing partners and donations are conducted on a voluntary basis. Once a contract, such as a conservation agreement, is entered into, however, it is expected that both parties will remain accountable to satisfy its terms and conditions. Although to date no contracts have been openly contested in the TGP, there are instances elsewhere where legal action has been taken on behalf of

NCC to enforce contractual obligations. In view of current events, it has not been necessary for the NCC to rely upon mediators or arbitrators, nor does its constitution specifically provide for this capacity. Organizational growth and land expansion, however, may give rise to future calls for alternative dispute resolution.

There are no specific land claims for the TGP. First Nations are believed, however, to have used the TGP for food, shelter, transportation, clothing and medicine. Although First Nations have historically participated on the Board of Directors, First Nations are not currently represented on any management committees or boards.

Performance

The standards that the NCC are expected to meet exist in a variety of forms. It is obligated to comply with applicable provincial and federal statutes, including finance reporting and audit requirements contained in the legislation. Tailored standards and measures of success are outlined in the Strategic Plan. For example, the NCC will be measured by its organizational performance to “enhance monitoring procedures”, “complete stewardship plans”, and “northern representation on the national Board”. The Land Trust Standards and Practices that have been formally adopted by other land trusts in Canada are currently under review by the NCC National Board of Directors. The NCC is also developing its own internal stewardship standards that will provide a reference point for appropriate levels of service.

The annual workplan for TGP also provides a standards framework. It presents clear objectives and sets out anticipated results, which makes it difficult to depart from planned activity. For example, one of the key objectives for TGP is to secure and protect ecologically sensitive lands for species at risk. The list of anticipated results includes the acquisition of 3-6 properties in the TGP by purchase, donation or conservation agreement. Indicators that will be used to measure this objective include the number, size and value of properties acquired, as well as the number of landowner contacts. Another objective is to enhance and manage critical habitat for species at risk. Results include prescribed burns, sustainable grazing program and uncontaminated well water. Indicators include the number of prescribed burns, numbers of landowners assisted and confirmation of the presence of good quality water.

Monitoring of fee simple lands and enforcement of conservation agreements are critical to achieving long-term conservation results. The conservation value of agreements, for example, is undermined if property owners do not comply with the terms. In the TGP, stewardship evaluation and monitoring represent a major program component which commands a sizeable portion (14 per cent) of total annual operating funds. A TGP monitoring report, composed of results, evaluation and recommendations, is under preparation and its completion is anticipated in 2006. Systematic monitoring, however, remains a challenge for the NCC. Efforts are underway to develop a standardized checklist and monitoring program that can be applied at a generic scale.

The NCC is staffed by professionals who are located at a national headquarters and at seven regional locales. The national office supports forty-one staff with responsibilities for policy, management and administration and for the delivery of services that are central to the overall operation of the organization, such as membership. Lack of coordination and consistency between regional and national offices is not an issue. Since the inception of the NCC, skills in negotiation, diplomacy and suasion, as well as access to a sound knowledge base, have taken on greater import than previously. As a consequence, the operations, development and science program areas of the NCC have witnessed a greater rate of growth than other program areas.

A field presence is critically important to NCC, since visibility on the ground is a prerequisite to successful outreach programs. The Manitoba Region was established in 2000 with a fledging operation that has grown over the last five years to include five full-time staff including a Regional Director, a Director of Land Conservation, a Director of Development, a Land Securement Representative, and an Administrator. It is the smallest regional office in Canada and has only recently moved to a permanent office facility, which has considerably aided credibility to its professional reputation. A satellite office has also been established in Brandon that houses the NCC, Ducks Unlimited and Manitoba Habitat Heritage Corporation. This arrangement has enabled information sharing and a consolidated and harmonized approach to land protection. In view of constrained resources available for field monitoring, it has been contemplated by the NCC that a fee for service arrangement may be an option with organizations that have mutual interests.

The TGP is directly managed by a field supervisor whose role is to oversee the implementation of stewardship programs for both fee simple and conservation agreements and to assist in additional land protection. Land owner contact programs are major component of this role. Seasonal staff are regularly employed.

The major costs for the TGP include land protection and stewardship management. Although previous years had witnessed a budget surplus, ongoing funding capacity remains a central challenge. For the Manitoba region, it is estimated that an endowment fund of \$2 million is needed to generate 50 per cent of annual stewardship costs, with the remaining amount to be generated from ongoing programs and grants. Major funding contributors for the TGP include Environment Canada, the Manitoba government, and the US Fish and Wildlife Department, of which the largest source of funding, and dependency, is derived from the federal Habitat Stewardship Program. Corporations and individuals also provide funding, generally to be dedicated to protection of lands, rather than stewardship management.⁹¹

The ability to steward the lands effectively is a constant challenge for the NCC. Restoration and enhancement of the TGP requires continuous management on a large scale and, relative to other areas for which the region is responsible, the TGP calls for the most demanding stewardship regime. It is anticipated that as land protection progresses in the region that this aspect will present an increasingly difficult management challenge.

Data management also is a central challenge. A considerable backlog of data exists at the Province of Manitoba Conservation Data Centre, limiting the ability to track and monitor species at the TGP.

For many years, NCC has measured the success of its efforts in terms of the number of areas of ecologically sensitive land held in fee or controlled through agreements. It has also regularly reported on the scope of donations and the number of supporters. Progress towards the goal of conservation and stewardship in the TGP, however, is not as easily communicated. Reporting on conservation outcomes is an area in which the NCC is very much aware. However, only very halting steps in this direction are taken. Results, deliverables and performance indicators currently form a regular component of

annual stewardship programs. For example, in view of the objective to increase land owner awareness of the importance of residual cover for species at risks, the results include reports on workshops or tours and performance indicators include number of workshops and number of participants. Although these may be seen as output rather than outcome indicators they are nevertheless an important step to better understanding the recovery of species at risk.

Accountability

In the wake of accountability crises affecting private corporations, the public has also turned to the non-government sector with similar questions and expectations of rigor and accountability. Substantial assets, financial and otherwise, as well as significant political influence rests in the non-government sector. There is increasing concern that the voluntary sector refrains from conflict of interest and remains accountable and transparent.⁹²

In the US, The Nature Conservancy recently came under intense scrutiny for its accountability practices. Reviews suggesting collusion with corporate interests in exchange for questionable tax incentives, as well as practices that appeared to undermine the Conservancy's mission, such as the development of environmentally sensitive lands, culminated in a request for clarification of accountability by a US Senate Finance Committee.⁹³ In particular, the selling of the US Nature Conservancy's sensitive land to its own trustees and the provision of tax benefits raised serious questions about its accountability practices and use of the tax-code by the non-profit agency.⁹⁴

The Nature Conservancy, US responded to these perceptions and conducted a major external and internal review of governance within the organization. It established an advisory panel that made recommendations on the role and structure of the board, programs, as well as of its field operations.⁹⁵ The Nature Conservancy accepted the recommendations and is currently undertaking reforms in the organization.⁹⁶

Despite the similar name and shared mission, the Nature Conservancy of Canada is not directly affiliated with the US agency. The lessons in accountability, however, are nevertheless recognized as instructive for large, non-profit organizations in command of a large asset base. Of particular note is the need for an independent board with a broad

base of competencies, a culture of transparency and a prohibition on financial benefits to board members resulting from land transactions or substantial cash donations. It is accepted that the acumen, culture and conduct of a Board are central to the accountability and governance of an organization.⁹⁷ It has been recommended by the advisory panel, for example, that the “board serves as an active and objective body for monitoring management activities” and that because it receives public benefits, it is essential that assets are used for their intended purpose and that the Board operate in a transparent, lawful and ethical manner.⁹⁸

The structural accountability for NCC is governed by three interacting units that are responsible for policy direction, scientific advice and professional support. Boards of Directors, Scientific Advisory Committees and professional staff exist at national and regional levels.

The NCC is governed by a National Board with support from seven Regional Boards, of which over 100 representatives are derived from the scientific and business community. The NCC Constitution governs the establishment of the Board of Directors that is comprised of thirty directors for staggered three-year terms; voting arrangements typically call for a show of hands by a majority of those present.

The Manitoba Region of NCC is led by a Board of Directors of eleven individuals who are drawn from a variety of backgrounds. The Board generally meets eight times per year. The Regional Board was founded in 2000 with the responsibility of setting direction for the region that aligns with the vision, mission and principles set at the national level. This Board, however, is constituted as a committee and does not have fiduciary responsibility, but a delegated advisory capacity. Although direction is centrally driven and NCC is a single non-profit entity, the fundamental core of the institution nevertheless rests in the regional offices. As a place-based organization, it is the delivery at the site level where the NCC mission is manifested and the regional level remains accountable for pursuing the NCC strategy within its boundaries. Because of the interdependence between national and regional boards, each board can be seen to share accountability for future outcomes in the TGP.

The regional Board is also responsible for approval of the budget, the business plan, all property transactions, large scale project areas and special events that pertain to the TGP. The role of the Board is to consider all the materials before it and to assert its best judgment. The regional board is supported by five professional staff that are charged with preparation of materials for the Board's review and consideration. For example, the identification of indicators in the annual workplan provides a strong accountability measure and it is assumed that results are communicated to the regional Board of Directors for any necessary course corrections.⁹⁹ Ad hoc committees are also struck under the auspices of the Board, the most recent being a Campaign Committee.

The final decision-making authority for the regional NCC rests with the Board of Directors. This Board is also supported by a Scientific Advisory Committee that consists of six volunteer scientists who meet on a monthly basis. This regional committee also has access to a national network of scientists who advise the NCC. The Committee reviews and approves project areas and specific properties, provides scientific research on specific species and recommends future project priorities. This Committee, although advisory, is the source of decisions that are scientifically based, and, as a consequence, retains considerable authority on project approval and priorities; it provides a critical review function. To date, there has been general consistency and alignment between the recommendations of the Scientific Advisory Committee and the decisions of the Board of Directors respecting directions in the TGP.

Two other committees provide direction for the TGP. At a provincial level, the NCC is a member of The Tall Grass Prairie Management Committee, which provides a forum for addressing management concerns and issues. Although the committee has no real fiduciary responsibility, it nevertheless provides a sounding board for NCC operations and policy. As a repository of information sharing, it provides an essential asset in the pursuit of NCC mission and creates the potential for achieving additional efficiencies among the organizations. Partners in the committee include both national and local representatives, such as the Canadian Wildlife Service, the Manitoba Habitat Heritage Corporation, the Rural Municipality of Stuartburn, the Wildlife Branch of Manitoba Conservation, Manitoba Conservation Data Centre, Prairie Farm Rehabilitation Administration and United States Fish and Wildlife.¹⁰⁰

At the local level, a Management Advisory Committee has been established by the NCC to provide advice on annual stewardship activities. Representatives include the local municipality, adjacent conservation organizations and agricultural associations.

4.4.4 Governance of Private and Public Interests: Balancing Private Agricultural and Public Interest Goals

Securing land for conservation and protection purposes was first undertaken in southeast Manitoba in the late 1980s. A collaboration among the provincial government and a number of land trust organizations, of which NCC was a partner, led to the first land purchase in the area under the auspices of the then Critical Wildlife Program. The first exchange and purchase of a few sections of land between a willing seller and a willing buyer led to a more frequent resort to this conservation approach in the region. In 1993 NCC, operating as an autonomous and independent land trust organization, made its first land purchase.

Subsequent land purchases, including the purchase of relatively large areas from the Municipality of Stuartburn, as well as individual farm lands as they became available on the market, firmly established the presence of NCC in the region. In 2004/5, for example, the NCC secured 7 properties. The amount of land registered in the name of NCC and held in fee simple title, currently amounts to approximately 6,000 hectares. Other land trust organizations, notably the Manitoba Naturalists Society and the Manitoba Heritage Conservation Corporation, also hold land in the adjacent area, albeit to a more limited extent.¹⁰¹

The availability of federal and provincial financial benefits may be an incentive to potential land and financial donors. However, field experience in the TGP suggests that incentives are not actively pursued. When lands are purchased from private owners subsequent tax-creditable receipts are issued. Only two land parcels in the TGP, however, have elected to use the federal Ecogifts Program where ownership title is retained, administrative requirements may have dampened enthusiasm for this particular instrument.¹⁰²

For fee simple purchases, the NCC is compelled to conduct an independent and certified land appraisal to determine the monetary value of the land. It is the policy of the NCC not to depart from this assessment when making an offer to purchase. In a completed exchange, owners lose their title to the land and gain financial benefits through a reduction in capital gains. A majority of land purchases by the NCC in the TGP have been from non-residents of poorer agricultural lands, which may explain the relative dominance of the fee simple instrument.

In view of the ecosystem and landscape approach adopted by the NCC, the extent of lands held with a view to protecting species at risk and sustaining ecological integrity in the TGP may be insufficient. To this end, the NCC is working to acquire additional hectares of land to make the world class preserve truly viable. By working with the US Nature Conservancy, its goal is to preserve an integral part of an international corridor of the remaining Tall Grass Prairie that will extend into the Midwest United States. Future plans include the protection of an additional 6,000 hectares in Manitoba.

Land owners and farmers in the area have historically been quite supportive and sympathetic to the mandate of NCC. Landowners have partnered in grazing demonstration projects on NCC lands and have also donated lands and financing to advance conservation goals. Given a depressed agricultural economic climate, relatively limited options faced by landowners and a soft mutual political alliance between rural and urban interests in sustainability, these collaborations are rather modest. Landowners, however, are beginning to express concern about the direct and indirect impacts of land purchases for conservation purposes by land trust organizations, in general, and by the NCC, in particular.

A recent survey conducted by the local agricultural association suggests that the landowners adjacent to the TGP are very concerned about the amount of land being purchased by the NCC and the reduced availability of this land to local farmers for grazing purposes.¹⁰³ Farmers have also suggested that early purchases of land by the NCC were supported because the lands involved were not suitable for agriculture, but that more recent purchases have impinged upon potential grazing opportunities and have made it difficult to secure easily accessible and guaranteed forage for the agricultural and beef industry. There is also a perception that, as land is purchased by

the NCC, prices are becoming artificially inflated. It is widely perceived that this not only results in lands being removed from potential purchase by landowners who are looking to expand their operations – farmers who are unable or unwilling to compete against the land prices offered – it also has the unintended consequence of raising property taxes for all.

Prescribed burning, the central management tool of the NCC, is also contested as a viable management strategy. The concerns voiced in the survey are wide ranging and include the impact from smoke, the loss of potential forage, impacts on wildlife and risk to property. Opinion has been expressed about the increasingly restrictive terms and conditions of grazing leases, which are eroding pasturing opportunity and the general economic impact this creates on the community, since short and long-term investment in goods and services are foregone. Although the residents have been willing to sell their lands, there is an increasingly frequent lament about the loss of the human-face in the community. General complaints have also been registered about the lack of potential revenue from environmental tourism and an often asserted bias against farmers about their perceived lack of land stewardship acumen, particularly in regards to sustainable grazing.

Although a litany of concerns has been registered in the survey, it remains uncertain as to how widely held and entrenched such views are among the general farming population or if a tipping-point is imminent. The fact that a survey was conducted by the local agricultural association, however, suggests that a certain threshold of concern has indeed been reached in the evolution of the TGP and that its almost 15 year history may have reached a critical juncture in seeking the balance between agriculture and conservation.

As the registered private land owner with a conservation mission, the NCC retains the authority to make decisions about the degree and type of activities that can be conducted on its land. In a majority of cases, it has relied on fee simple title as the administrative instrument to achieve its conservation objectives; it has entered into a very few conservation agreements, where the landowner retains title to the land and agrees to meet certain terms and conditions for a specified term. With respect to its fee simple lands, the NCC has entered into a very limited number of grazing leases with

landowners that specify the terms and conditions that the operator must meet. Through this administrative vehicle, the NCC is attempting to inject a new system of rotational grazing, referred to as twice-over rotational grazing, which will not only provide forage, but also enable the protection of species at risk and improve the ecological health of the tall grass ecosystem. Prescribed burning currently occurs on approximately 20 per cent of lands annually to deter aspen encroachment and encourage re-growth of the grasslands.

Two community pastures, located in the northern and southern block of the region and administered under the authority of the Prairie Farm Rehabilitation Administration, are also currently being managed under a voluntary sustainable grazing regime and are considered by the NCC to be complementary to its conservation strategy. Concern exists however that these pastures could be subjected to intensive agricultural use that undermines regional protection objectives. The NCC has expressed interest in pursuing a conservation agreement to ensure continuity as community pastures with sustainable management practices.

Due to its recent implementation, the effectiveness of the rotational program in achieving the protection of species at risk has yet to be assessed. Performance benchmarks are currently being established. Any dramatic departure by the NCC from a precautionary approach that errs on the side of caution is not likely in the immediate to short term. For example, the NCC has not adopted a working landscape concept for the TGP, along the lines of what it previously implemented in southern Alberta. In that case, open and extensive ranchlands adjacent to Waterton Lakes National Park were seen to have a compatible co-existence with wildlife, particularly grizzly bear. As the ranchlands became threatened by residential subdivision development, the NCC began working with the community to keep the ranches intact. In June 2004, NCC announced the establishment of a working landscape zone of about 11,000 hectares surrounding the Park, designed to not only benefit wildlife, but to maintain the "ranching way of life".¹⁰⁴ It is expected that this declaration has gone some distance to maintaining, and strengthening, good working relations between conservationists and ranchers.

One of the key values that the NCC subscribes to is recognizing the need for people to sustain themselves and live productively while conserving biological diversity.

Although the Waterton Lakes working landscape may be illustrative of this value, the inherent tension between human use and environmental protection is considerable. It may be instructive to note that The Nature Conservancy in the US recently issued a directive affirming human use on TNC preserves in limited circumstances. Use may occur where there was little predicted impact and no identified threat, the educational or other value outweighed the predicted impact, the use is designed to mimic or restore ecological processes and the use contributes significantly to learning opportunities for compatible use and biological preservation, when weighed against potential impacts.¹⁰⁵

In view of the potential economic implications that conservation lands can create, the NCC has also agreed to pay the full property tax assessment for this southern Manitoba region, and to forego a much-sought after tax incentive offered to organizations to encourage conservation. As a generous goodwill and relations gesture, the NCC has declined to take advantage of the incentive program and ensure that much needed capital continues to be injected into the municipality. Local residents, however, are concerned that this approach may be a temporary, and not a permanent, action.

Are the interests in the TGP on a direct collision course or will further refinements emerge that will permit mutual solutions to be found? Can a viable balance be achieved between protection and sustainable use of the resources at issue? There is potential for preservationists to be pitted against those with resource use interests, the outcome of which could jeopardize the objectives of both parties. However, the generally extensive governance groundwork that has been established by NCC suggests that there is much potential for a common and long-lasting resolution. There are regular forums in which different interests can participate, there are on the ground activities that encourage changes in historical practices and there is a culture of working with surrounding land owners. Additions to the governance framework include a Sustainable Agricultural Code of Ethics prepared jointly by the NCC and local farmers, tailored conservation agreements, financial incentive programs provided by the provincial government that will reward sustainable behaviour, demonstration projects and joint best practice awards. Paid conservation agreements, where the landowner retains ownership, and commits to terms and conditions respecting sustainability, may also provide a potential alternative to fee simple purchases. This route may also limit stewardship costs that are directly borne by the NCC. The effectiveness of paid conservation agreements as compared to fee

simple arrangements, however, has yet to be determined. Performance benchmarking and regular monitoring and reporting of selected indicators would provide a basis for measuring progress by all parties. In the absence of a clearly defined state interest in this matter, voluntary and market mechanisms, rather than regulatory approaches, are likely to have the greatest effect. The challenge for the NCC, as a private land owner, will be to implement those actions that are within its authority and mandate and do not undermine the very goals that they are ultimately seeking to achieve.

4.4.5 Summary

The TGP appears to generally fulfill the principles advanced for good governance. Direction is provided in a series of documents ranging from the national level to the site level and these documents demonstrate consistency in the conservation mission. Although no single administrative instrument is relied upon, the majority of management effort is placed upon fee simple purchases between a willing buyer and seller, and since monies are provided from a wide variety of sources, this suggests that the area at issue enjoys broad legitimacy. Concern, however, is beginning to be expressed about the scope and extent of the conservation mission and its implications for the agricultural community. Perceptions and informed understandings that are held about the agricultural community and its role in ecological management will likely shape any strategies that are taken to address this matter. Nonetheless, there is no evidence to date that conflict in the TGP will be unmanageable.

In an effort to provide a measure of fiscal fairness in a depressed economic region, the NCC has elected to pay full property taxes and forego other options available to land trust organizations to encourage conservation. This action, however, may not be perceived as compensatory, particularly as more private lands come to be acquired under the NCC mandate.

The NCC is committed to performance measurement and a very significant effort is currently devoted to output measures. Land purchase, for example, is a surrogate for conservation goals. It is the intention of the organization, however, to move towards performance outcomes and provide regular reporting on its progress in moving towards its stated conservation goals. The mission of the NCC is the protection for future

generations and to safeguard lands forever; formal documentation, however, could not be accessed in order to assess the extent to which this commitment is being realized in practice.

The most distinctive governance feature of the TGP is the commitment to a landscape ecosystem approach. By working in a collaborative manner with national and international partners, the NCC is establishing a Tall Grass corridor that will span jurisdictional boundaries and improve the ecological viability of the preserve.

The NCC has not adopted an internationally-accepted protected area typology, preferring a place-based approach that is ecologically-based. This approach, however, has not distracted from its contribution to the public interest in protecting ecologically significant lands of special beauty and educational interest.

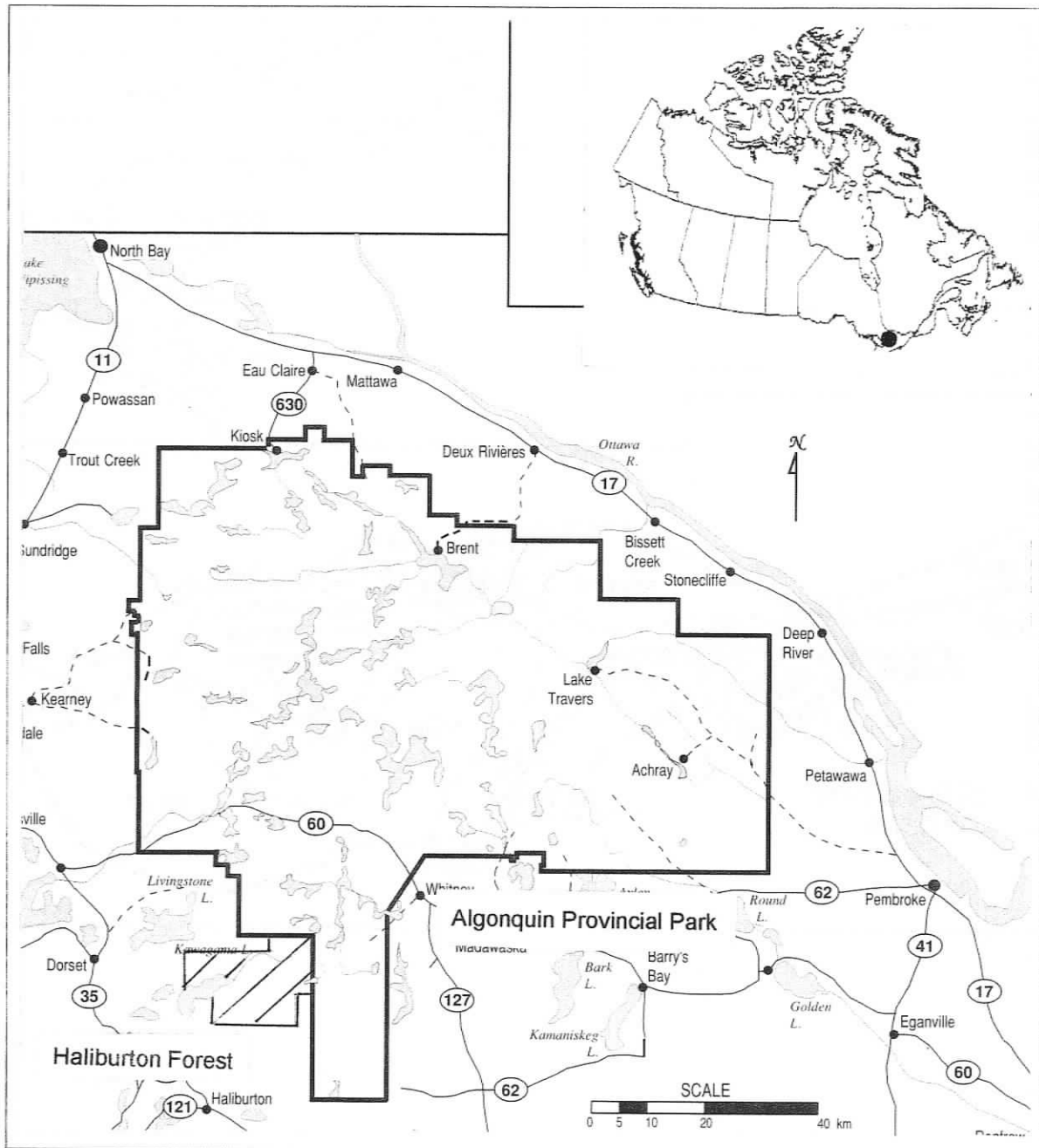
4.5 Haliburton Forest and Wildlife Reserve Ltd., Ontario

4.5.1 Background

Haliburton Forest and Wildlife Reserve Ltd. (HF) consists of 24,000 hectares of mixed hardwood and softwood forests and borders the southern boundary of Algonquin Provincial Park in south-central Ontario (Figure 5).¹⁰⁶ HF has been owned and operated by a private corporate landowner since 1962 and, while subject to numerous federal, provincial and municipal regulations, as a private woodlot, it is not subject to forestry standards that apply to Crown forest lands. As a consequence, actions that are taken to advance larger public interest goals in conservation and protection are voluntary.

HF occupies a transition zone between the temperate deciduous and boreal coniferous forests. The gently sloping plain on the southern edge of the Precambrian Shield supports some 50 lakes, ranging in size from 5 hectares to 180 hectares. The forest is the headwater for three major southern Ontario watersheds. Established in 1962, HF is believed to be the largest private corporate land holding in Canada, pursuing integrated, sustainable and nature-oriented forest management within the over-riding goal of maintaining ecological integrity.¹⁰⁷ Permitted activities include sustainable

Figure 5. Haliburton Forest and Wildlife Reserve, Ltd.



Source: Ontario Parks. 1998. *Algonquin Provincial Park Management Plan*. Ontario: Queen's Printer. Haliburton Forest and Wildlife Reserve Ltd. n.d. *Trail Map*.

forestry, hunting and fishing, outdoor education, motorized and non-motorized recreation. The area supports a more intensively developed base camp, as well as a number of areas that are dedicated primarily to recreation, including hunting camps, outdoor shelters and recreational sites that are accessed primarily by local and regional visitors. Visitors to the area have access to a series of roads and trails of various difficulties which are heavily interspersed throughout the forest. A Protection Forest – an area set aside by the landowner not available for harvesting - comprises approximately 7.5 per cent of the total forest area. For comparison, protected areas comprise 10.3 per cent of Ontario (World Wildlife Fund 2003).

In 1998, HF became the first managed forest in Canada to be certified by the independent, international Forest Stewardship Council (FSC), based upon its commitment to forest sustainability and its achievement of ecological, economic and social objectives.¹⁰⁸ Forest stewardship standards are constructed on 10 principles respecting compliance, tenure, indigenous peoples, community relations, benefits, impacts, management plans, monitoring, HCVF and plantations. For example, the principle, Benefits from the Forest, states that “Forest management operations shall encourage the efficient use of the forest’s multiple products and services to ensure economic viability and a wide range of environmental and social benefits”.¹⁰⁹

Unlike alternative forest assessment schemes that are available, FSC is distinguished by three key parameters. It is recognized as being result-based, that is, certification depends on the actual impact of practices in the forest, it includes a detailed complaint process for dispute resolution and it adopts a precautionary approach that addresses the need to protect and maintain ecosystem functioning and species habitat before they become endangered.¹¹⁰ The FSC certification for HF has recently been extended to 2008 in recognition of “conscientious land stewardship”.¹¹¹ The area is acknowledged by the forest industry and stewardship association as a “healthy forest(s) providing an equitable sharing of benefits from their use while respecting natural forest processes, biodiversity and harmony amongst their inhabitants”.¹¹² The mission of the Stewardship Council is forest sustainability and the achievement of integrated sustainable resource management. The overall goal for the Council is “to promote environmentally appropriate, socially beneficial, and economically viable management of the forests of Canada through standards and application”.¹¹³ Operations must meet

harvesting standards, as defined by the certification process, provincial regulations and guidelines, as well as standards set by the landowner. For example, actively used nesting trees are avoided, riparian setbacks are observed, regular and timely communications with local residents are undertaken, and low impact logging, such as horse logging, is employed.

Under the auspices of a resource plan, the management regime governing HF is currently moving towards an expansion and investment in non-timber revenue activities, notably outdoor education, which are compatible with the sustainability goal. Unlike traditional forestry operations that spatially separate potentially mutually exclusive activities such as logging and recreation, HF pursues an environmental management strategy that purposefully integrates such activities. Researchers proclaim that this approach allows HF to pursue a more compatible and successful management regime than what would otherwise exist.¹¹⁴ Under the current income stream, 65 per cent of total income flows from a variety of recreational and outdoor educational activities, involving approximately 100,000 visitor-days; the remaining 35 per cent of total income flows from sustainable logging activities.¹¹⁵ Of the total revenue stream, seasonal camping, timber sales, logs for homes bearing Forest Stewardship Certification, snowmobiling and the wolf centre respectively account for 21, 18, 18, 11 and 8 per cent.¹¹⁶ Rents are re-invested into the company for land purchase and development.

Although the present management is focused on achieving a sustainable balance among ecological, social and economic objectives and improving forest quality, the history of HF suggests a vastly different approach. Logging provided a major, if not, dominant force over much of its developmental history. It was first logged exhaustively in the 1860s for white pine – a species for which a harvesting moratorium and recovery plans have subsequently been directed by the current landowner. Hardwood clearcuts were also conducted until 1945 to service chemical wood plants and the production of charcoal, wood alcohol, acetate and wood oil, as well as to meet the growing regional demand for furniture manufacturing. The establishment of a saw mill directly on site in 1944 encouraged the processing of some 150 million board feet of lumber by Weldwood during its 27 years of operation and is now the site of a logging museum. Land ownership from the private forestry company to a private land owner occurred in 1962. However, unlike the wilderness wars that have been waged elsewhere in the northern

part of Ontario, notably in the Temagami and Algoma areas, there has been relatively little land use conflict in the area. During the 1960s, public interest groups did express opposition to private ownership of such a large area of forest land and calls were made to incorporate the forest into the adjacent provincial park.¹¹⁷ It is speculated, however, that the history of sustained and continuous high-grading of the HF had allowed attention to be turned elsewhere and the opposition and issue interest was short-lived. This is not to suggest that there are no values in the HF worthy of special interest groups, but that the absence of a largely pristine and unmodified forest has caused environmental groups to concentrate on other areas.

4.5.2 Protected Area Values

The location of HF in the headwaters of three southern Ontario watersheds – Ottawa, Georgian Bay, and Lake Ontario - provides important ecosystem and environmental services, including watershed maintenance, water supplies and quality, soil stabilization and mitigation of local climate events. Publications documenting the conservation value of the HF have been conducted by various researchers.¹¹⁸ Inventories and studies have assessed, among others, canopy insects, indicator species for old growth, groundwater upwelling, forest management and biodiversity. The area is rich in wildlife and is particularly well-known for its abundance of wolves, bears and moose. While the abundance of all species has not been authoritatively determined, a conservation gap analysis suggests for mammals, the confirmation of 34 species out of a theoretical inventory of 56, birds 149/207, reptiles 20/36, fish 28/73, and plants 18/57. In view of the inventory, it was concluded that, notwithstanding the absence of important information and knowledge gaps, “the flora and fauna of HF is highly diverse and natural”.¹¹⁹

Vulnerable, threatened and endangered species have not been confirmed in the HF. Although specific assessments and inventories have not been undertaken, general assessments, however, have been conducted and it is understood that between 1.9 per cent to 13.8 per cent of known and indigenous plant and animal species are likely to be at risk in the HF.¹²⁰ The Management Plan for HF lists 25 Species at Risk – including plants, insects, reptiles, birds, and mammals – that may exist in the HF.¹²¹ The Golden Eagle and Eastern Cougar, two species believed to be at risk, have been reported, yet

not confirmed, in the HF.¹²² Genetically unique populations of Lake Trout are believed to exist within the 810ha of wetlands in the Forest.¹²³ As a condition of forest certification, HF was required to confirm the list of species at risk likely to occur in the area with the Natural Heritage Centre in Ontario and to make this list available to staff and tree markers on an ongoing basis; this condition was deemed to be fulfilled in 1998 by the Forest Stewardship Council.¹²⁴

A Red Spruce Reserve – a tree common only in the Appalachian area of North America – has been established by the land owner. Special geological features of eskers – glacial sand and gravel deposits in the form of ridges – have been protected from resource extraction by the land owner. The area is also noted as an important migration route for white-tailed deer and providing calving grounds for moose.

The objectives for HF cover a vast range and address ecological, economic and social areas in a sustainability context. They include:

- “Protection of ecosystems, biological diversity and ecosystem functions.
- Provision of ecological reserves for habitat and species protection as well as research purposes.
- Sustainable resource use.
- Support of research on local ecology and resource management.
- Provision of educational opportunities for the public concerning natural resources”.¹²⁵

In view of the biodiversity values established by university researchers noted above and the important role that protected areas provide as reference and as species habitat, a system of protected areas has been advanced for HF. The World Wildlife Fund Canada Gap Analysis Methodology and the ecological land classification for Central Ontario have been used to identify representative ecological areas.¹²⁶ More recently, a Forest Conservation Concept, in place since 1996 and conceptualized by the land owner, has also guided the establishment of protected areas and lands to be set aside from sustainable harvest. The emphasis is on the protection of natural processes and stages of forest succession, as well as species and habitat areas. Approximately 1200 hectares of Conservation Areas – the core protected areas, referred to as Natural Forest Reserves, and 204.7 hectares of Protection Forest have been removed from productive forest lands; no timber harvesting is permitted in these areas and only low-impact recreational and research activities are allowed. The 21 Natural Forest Reserves range

in size from 1 to 177 ha, with an average size of 57 ha; this area represents 6.9 per cent of the total forest area. Specific ecological, scientific and conservation values have not been specified for each of the Conservation Areas. The areas, however, are intended to provide protection to species and their habitats, and to serve as sites for information and scientific research, the overall aim of which is to develop “the natural baseline scenario and development of a natural forest model”.¹²⁷ Other lands, notably Nature Reserves, which are “complex and linked protected areas integrating forests, wetlands, lakes and other water bodies”, Forests out of Regular Use, which are “non-productive forest stands with limited or no use” and Ecologically Sensitive Areas are also removed from timber harvesting, bringing the total area in protection to approximately 1550 hectares or 7.5 per cent of the total forest area. Buffer zones are also established around riparian areas. Although the variety in terminology employed by the Forest Conservation Concept has potential to invite confusion regarding the application of conservation objectives, it is anticipated that the area designation of protection forest will increase and representation, for example, of old-growth forests will improve, as finer integrated forest inventories are applied.

However, given that less than 10 per cent of HF is currently designated in a protected area status, an assessment concluded that the “area of representative protected areas for enabling natural processes as well as habitat and species conservation” is of neutral sustainability standing, suggesting that much more can be done to improve protected area status within the forest environ.¹²⁸ For comparison, the adjacent Algonquin Provincial Park employs a system of “nature reserve zones” that cover 5.1 per cent of the park and are designed to “protect representative and significant earth and life science features”.¹²⁹ It must also be noted that the provincial park is an anomaly in the protected area system in terms of land available for forest harvesting.

In its recent assessment, the Forest Stewardship Council (FSC) observed that, while HF generally meets the requirements for the maintenance of HCVF – a FSC term, the methodology employed by the HF does not align with that prescribed by the Council. The approach suggested calls for consultation with independent parties to determine a formal and visible system of protected areas and use of the precautionary principle to protect environmental, social and cultural values.¹³⁰ It has also been recommended that HF expand its network of protected areas to at least 10 per cent of the total forest area

with the view of improved representation and size and that wildlife species of concern be better managed.¹³¹ The future management direction towards recreational activities may contribute to an increase in protected areas in HF.

One of the central challenges the private landowner faces is to find the right balance between timber harvesting and recreational activities, which, for the HF, is determined through an experimental and incremental management approach. Forestry operations are managed under a selective silvicultural management system that calls for the harvesting of 1000 ha per year – an annual allowable cut determined to be sustainable, as well as resulting in minimal impact upon associated land uses. Various strategies for recreation are pursued in conjunction with timber harvesting and include: 350 long and short term campsites; fishing, hunting and trapping; biking and snowmobiling; dog sledding; canopy and underwater tours; astronomy observatory and, a wolf and interpretation centre. Self-guided interpretative trails are found in the area. Average annual recreational use is approximately 100,000 visitor days and is managed via a recreational use zoning system of high to low intensity. Carrying capacity for HF has not been determined. However, studies have been conducted to determine negative impacts of some recreational activities, such as snowmobiling, upon the environment and social areas.¹³²

Visitors to the forest are regulated through the payment of a daily or seasonal fee that permits access to the forest. Fees are higher than those typically levied by nearby provincial parks and are justified by providing a higher quality recreational experience to selected users. Fees (daily access and camping per adult) charged by HF are \$30 versus \$22 at the Algonquin Provincial Park. Higher fees also fulfill revenue targets and achieve cost recovery. For example, to reduce environmental conflict and improve the recreational experience, the number of snowmobiles was recently reduced from a daily use level of 400 to 100, which was accompanied by a commensurate fee increase.

The HF Wolf Centre must also be noted. The centre was informally established in 1993 by means of relocating a pack of wolves from a captive facility in Michigan, but higher than expected levels of public interest - attracting some 30,000 visitors annually - resulted in the formal establishment of an interpretation centre in 1996. A captive wolf pack in a 6 hectares enclosure is fed by staff. The centre is consistently rated as the

number one tourist destination in the regional area offering an outdoor education experience.¹³³ However, unlike wildlife sanctuaries where visitors are placed within the habitat of the species, public observation of the wolf pack is conducted by means of a protected, one-way glass enclosure to minimize disturbance. Little empirical research has been conducted on the wolf centre; researchers have commented that the centre and its associated infrastructure “arguably perpetuate(s) the objectification of nature and its inhabitants”.¹³⁴

Identifying activities, however, that are compatible with the overall sustainability goal is a constant challenge and opportunities that may be financially lucrative, but in competition with the long-term direction, are likely to be rejected. For example, a proposed winter luge run and associated permanent facilities was rejected by the land owner. Ventures in outdoor orchestral music, however, are pursued. It is anticipated that general regional growth in tourism, in conjunction with an exploding seasonal cottage industry, will result in growing recreational interest in, and use of, the HF.

In HF there is an explicit and formal attempt to link conservation and sustainable resource use; ecosystems are conserved in order that they may be used sustainably. This approach is contemplated by the IUCN protected area classification guidelines. However, it challenges conventional definitions and assumptions respecting protected areas. There is a general fear that forging an acceptable alliance between conservation and use would erode or intrude into areas with strong protection measures and there is a perception that sustainability is the poor relation of protection (Phillips 1999). Property theory, at least, suggests that dependency on the benefits that can potentially flow from sustainable use ensures that interests will maintain the area so that it remains productive.

This approach, in conjunction with the values and management objectives adopted by HF can be considered to be in alignment with the IUCN Category VI Managed Resource Protected Area. In this classification, an area is managed mainly for the sustainable use of natural ecosystems and is defined as:

“Area containing predominantly unmodified natural systems, managed to ensure long term protection and maintenance of biological diversity, while providing at the same time a sustainable flow of natural products and services to meet community needs”.¹³⁵

The degree of modification of the Haliburton landscape, however, exceeds the thresholds that have been established for a protected area of this type. For example, IUCN suggests for this category, that an area may contain modified ecosystems, that it should be at least two-thirds in a natural condition and that it should be large enough to absorb resource uses without detriment to its overall long-term natural values. Considerable modification has occurred at HF, largely through historical forest extraction and the inclusion of a captive Wolf Centre. However, two assessments have also determined that contemporary activities are sustainable and are not undermining long-term ecological and biodiversity values.¹³⁶ To this extent, HF is making a contribution to biodiversity conservation. The primary intent of HF as outlined in the management plan is “protection of ecosystems, biological diversity and ecosystems functions”. It is instructive to note, however, that these assessments have also indicated that the amount of land protected (under 10 per cent) and the manner in which the protected areas have been determined (absence of recognized methodology and engagement of expert opinion) constrain unequivocal support for the protected area system within HF.

The degree and type of modification that has occurred in the HF provides a useful entry into the debate and dividing line between protected area categorization and conscientious land stewardship. Unlike public sector protected areas, which may have greater flexibility to pursue cost recovery (for example, general revenue can flow to agencies with responsibility for protected areas), private areas are generally confined to cost recovery within its prescribed boundary. The reality of flowing benefits from HF is in conflict with the objectives that have been advanced for protected area classification. The Wolf Centre, while contrary to traditional concepts of protected areas, generates significant revenue that is injected into HF. In terms of this issue, it is important to note that state protected areas also had captive animal enclosures (for example, the buffalo paddock was removed in Banff National Park in 1996). The challenge that private land owners face in generating revenue that may be contrary to protected area objectives suggests that a more flexible definition of protected areas may be required if the contribution of this sector to public interest protection and conservation goals is to be acknowledged and encouraged. Formal recognition of these private types of protected areas may go some distance in encouraging behavior in other private actors.

4.5.3 Governance Regime

Direction

The governance direction for the HF resides in a comprehensive five-year Resource Management Plan that is regularly reviewed and updated. This document represents the visible framework for achieving direction, control and coordination for the area. The genesis of the plan lies in negotiated Crown Woodlot Improvement Agreements that were prepared and negotiated in the late 1970s and early attempts in planning. However, dramatic shifts in forest management from timber harvesting towards integrated, value-added, ecological approaches, that include public participation, have manifested a vastly different ideology and perspective. Contemporary landowners are becoming increasingly obligated to exercise their private and exclusive tenure within the modern-day realities of new forest management policy.

The management plan for HF acknowledges this new reality and takes a sustainability approach as its clear purpose and goal. The primary mission is “to protect ecosystems, ecosystem functions and biological diversity in all its facets”.¹³⁷ The goal for HF is:

“Engaging in the long-term integrated and sustainable management of the diverse natural resources at Haliburton Forest in order to provide for a profitable, stable economic basis to the long-term benefit of owners, employees and local community while maintaining the ecological integrity of resources in perpetuity”.¹³⁸

The management plan provides coherent direction; there is alignment between mission, goals and management activities over the short to long term. The apparent conflict and tension, however, that can arise between the pursuit of economic and environmental goals is addressed and it is contended that, “maintaining the ecological integrity...this long-term goal is the foundation of business conduct...within the context of time, only an ecological sound management approach will provide for maximized benefits over the long-term”.¹³⁹ The balance between environment and economy is also manifest in practice. Recreational user-fees are set to inject a dependable source of revenue into HF, value-added products, rather than the selling of raw timber, are developed to diversify the revenue base, and an investment in research and education invites indirect economic and social benefits.

The management plan specifically calls for ecological reference points, application of contemporary concepts in ecological management and a commitment to low impact activities. Field-based resource inventory, implementation strategies for forest harvesting and recreation, and research programs constitute the foundation of the plan. Particular attention is given to wetland areas, and the plan anticipates risks arising from acid rain and climate warming.

HF commits to an ecosystem and adaptive approach, so as to attenuate and accommodate unanticipated impacts, risks and allow for contingencies. It is fully accepted by HF that management of a forest environment calls for flexibility, quick response and departure from planned direction. However, evaluation and assessment of the difference between planned and actual direction does not figure large in the administration of HF and, unless levels of acceptable deviation are defined, there is potential for tremendous movement from planned management performance.

Collaborative management and partnerships with various organizational and administrative bodies are frequently entered into. Among them, a 15-year Conservation Agreement with Ducks Unlimited seeks to restore a series of wetlands noted for their potential ecological value. Work is now proceeding on site. Joint and long-term research initiatives with universities and colleges have also been developed with institutions in Canada, the US and internationally.¹⁴⁰ As part of a 25-year Long Range Transportation of Atmospheric Pollutants program, the Canadian Wildlife Service has identified the area as being acid-sensitive. To that end, monitoring and survey sites in the HF have been established to understand better the response of aquatic ecosystems to reductions in acid rain.¹⁴¹ Involvement with civil society has also extended to The World Wildlife Fund, which conducted a preliminary gap analysis for protected areas.¹⁴²

The HF management plan borders the northern and eastern boundaries of Algonquin Provincial Park. The plan, however, is silent on its relationship to the Park and provides no direction on the management of activities in the area bordering the Park. The Provincial Park plan, which likewise fails to explicitly address its relationship to HF, does provide general commentary on management development proposals surrounding the park perimeter that may impinge upon park values. Unrestricted access, aggressive development and contamination of water supplies originating on private land and

impacting the provincial park are key areas of concern potentially affecting environmental, aesthetic, and social values. The park plan merely indicates that such cases will be reviewed as they arise, and, where warranted, mitigation plans prepared. It also notes that land use activities at the park perimeter will not be unduly restricted and those that are compatible with the park will be encouraged.¹⁴³ Illustrations of best practices respecting the integration of public and private goals are not provided in the park plan.

The lack of a direct reciprocal relationship between the two administrative bodies, ostensibly striving towards mutually compatible goals of resource management and protection, suggests the need for an eco-system approach that is unconfined to private/public tenure boundaries and can take into account the larger regional context. Algonquin Provincial Park commits to five objectives – protection, recreation, heritage appreciation, tourism and resource management, all of which are also outlined for HF.¹⁴⁴ The lack of convergence around mutually shared policy objectives suggests, at best, a tension between the public and private bodies, which may be unwarranted and, at worst, an approach that undermines each party's policy goals. Mutual and explicit recognition of shared boundaries would lend legitimacy and support to common goals and would encourage cohesion rather than isolation. Recognition of the private sector contribution to public sector goals would improve governance for this shared area.

Leadership at HF is provided by the owner-operator who is responsible for initiating the Management Plan, re-directing the focus of HF away from timber harvesting to nature-oriented and sustainable forestry and positioning HF as a progressive management operation. HF has been under family control since 1962 and in the late 1980s the current owner-operator became more actively engaged in forest management and, to a large extent, began re-directing the historical emphasis of the forest from harvesting to sustainable management. Researchers have noted that the land-owner has made a "commitment to rehabilitate the long-term health of the forest".¹⁴⁵ Considerable investment is made in providing a learning environment and building professional teams that will work effectively. Considerable outreach and communication occurs with community groups and local forestry associations. A recent information exchange on autonomous and self-directed sustainable management occurred with the Haida Gwaii First Nation.

Legitimacy

The management plan was prepared after consultation with a broad spectrum of interested parties and community representatives, inside and outside the tenure area. An informal advisory process was conducted by means of open houses and workshops. Business and community interests also shaped the plan and continue to be consulted as issues arise. The HF, it is claimed, is recognized by local and regional forestry associations as a model forest for sustainable development.¹⁴⁶

Opportunities for informal engagement and public participation in annual meetings by core forest uses and stakeholders are also available, aiding legitimacy and support for resource management strategies and reducing opportunity for conflict. Opinion has been expressed by forest visitors, however, that participation opportunities are insufficient and that transparency of decision-making processes are constrained.¹⁴⁷

A survey conducted of 516 visitors to HF in 2000 indicated that non-timber products and services – such as ecological and aesthetic values, wilderness and opportunities for future generations, were extremely important. A majority of forest users believe that HF is well managed and that their values are considered in forest management. Despite criticisms regarding participation processes, these findings suggest general public support for the protection and sustainability direction.¹⁴⁸

HF is a privately owned shareholding company that is controlled by a Board of Directors. The Board of Directors remains directly responsible to its shareholders with an obligation to flow financial benefits. HF, however, is also committed to providing benefits to its employees and to the local community. Commitments to future generations, the global community and to nature, while not explicit in the management plan, are inferred as being important and necessary in the delivery of its mission. Despite the commitment by the current land owner to these obligations, there is nothing, however, that binds future land owners to a similar conservation mission.

Fairness

An eastern portion of the HF is affected by a 1983 land claim of the Algonquins of Golden Lake. This area of HF falls in the catchment of the Ottawa River Valley – the area subject to the entitlement request. The 1994 Framework Agreement between

Canada, Ontario and the Algonquin First Nation specifies that the rights of private owners, including rights of access and use of land, will be protected. Negotiations are continuing and a Final Agreement has yet to be completed.¹⁴⁹ The hunting of moose in and around Algonquin Park is governed by a First Nation and government agreement; challenges however to the allocations in the agreement have been raised by the Metis and Algonquin people in the land claim area.

It is generally believed that, although HF was not a site of permanent residence by First Nations, it was used for hunting and fishing activity.¹⁵⁰ Operations safeguard two historical First Nation hunting and fishing grounds that are believed to have been in use until the 1860s. Logging is not permitted in these areas. The use of traditional ecological knowledge is not evident in management strategies and the Management Plan is generally silent on building and strengthening modern relations with First Nations.

Recreational campsites and hunting camps are regulated via lease contracts that specify access, rights and limitations. Some 320 campsites and 22 hunting camps exist in the HF and they are charged an annual fee of \$1,000 – \$1,600. A majority has elected to consistently renew their lease arrangements, suggesting arrangements are fair and reasonable, at least to those who are prepared and willing to pay. Annual game harvest levels for deer and moose have ranged, respectively, from 0-120 and 0-20, for the period of record 1968-1998.¹⁵¹ Two trappers have also been provided regular access. Recreational day use permits are set at \$12.00 and winter snowmobiling is set at \$20.00. These activities generate approximately 1/3 of the total revenue for HF. Opinion expressed at meetings suggests that general visitors perceive opportunities for access to recreational activity as fair. It is acknowledged that “those who cannot pay are not welcome in the Haliburton Forest” and that private ownership and a private fee-for-service use have served to create an enclosure of what has historically been regarded as a forest commons. However, researchers also argue that the paying clientele directly bear the costs of sustainability actions and generate benefits which accrue to the general public.¹⁵² Media and scholarly reviews have not provided any criticism respecting lack of fairness in the HF.¹⁵³

Intense conflicts are minimal. With the exception of a fair taxation dispute that is currently before the courts and a historical issue involving surrounding land owners, no major conflicts with parties or stakeholders outside the forest boundary have occurred requiring formal mediation processes. Within the forest area, the unregulated recreational access and trespass made possible by a series of roads remains a concern for the landowner, requiring ongoing management attention. Complaints are occasionally registered to the landowner about high user fees relative to that charged at nearby Algonquin Provincial Park and about limits imposed on recreational activity.

One of the key principles of private ownership and management of the HF is to flow social and economic benefits to the local area. Specifically, the landowner attempts to employ local contractors, provide for processing at local mills and plants and acquire goods and services locally whenever competitively available.¹⁵⁴ In a depressed socio-economic area - the per capita income transfer income for the area is 45 per cent higher than the provincial average - the commercial operation of HF and its involvement in community outreach is viewed as having a positive benefit.¹⁵⁵ Revenue that is generated is re-invested back into the operation. Employment has increased steadily since its inception and, currently, HF provides 29 full-time, 13 seasonal, 40 contract and 30 indirect positions, making it the largest employer in Haliburton County. Internships have also been established. As a leader, it is acknowledged as a major contributor to employment and growth to the local area. For example, hardwood harvested in HF is sold to a local lumber mill that manufacturers hardwood flooring under the Forest Stewardship Council certification label.¹⁵⁶ Through taxes, direct spending on goods and services and charitable donations, it is estimated that HF contributes \$1 M annually to the regional community of Haliburton.¹⁵⁷ Through its marketing and public relation activities, HF also provides indirect benefits that spill to the regional recreation and tourism sector.

This contribution to the local and regional economic sector, however, is not without some criticism. In a highly forested area, the sustainable management of HF stands in stark contrast to more conventional harvesting methods. Logging contractors, employed within the forest area, have complained about meeting higher standards of performance, concerned that expectations will impinge on their financial returns.¹⁵⁸

Access to very general and educational forest management information – brochures, information sheets, maps - is generously provided to the public on a regular and cost-free basis. Freedom of Information policies have not been prepared, but there is no evidence that any request for specific information would be denied.

Performance

A comprehensive indicator system respecting sustainable forest management has been developed by academic researchers for application within the HF.¹⁵⁹ The system has been adapted from regional and international forest management regimes for use at the local level. Four principles guide system parameters: 1. ecological integrity is maintained; 2. yield and quality of goods and services are sustainable; 3. society accepts responsibility for sustainability; and 4. enabling conditions for sustainable forest management are present. The system outlines 58 sustainability indicators relevant to the HF.¹⁶⁰ They include, for example, protection of unique landscape features, aboriginal participation, inclusive public participation processes and clear responsibilities to inter and intra-generations. Trend or base-line information is presented for each of the indicators and norms, established by the researcher, serve to guide assessment. For example, for the indicator respecting responsibilities, comprehensive regulation and acceptance of those regulations by the landowner is established as the performance standard. An evaluation of the proposed system for HF revealed a very good sustainability assessment score of 89.9 per cent, with 41 indicators yielding a positive rating and 17 as neutral; no negative results were derived.¹⁶¹ The proposed system, although developed in consultation with the private authority, has yet to become a regularized performance component.

A number of objectives established by the private authority are outlined in the Management Plan and have been presented earlier. They are not, however, expressed as easily measured standards and expectations that can be regularly reported upon.

In the HF, there is active investment in performance monitoring at three assessment levels: the immediate measurement of forest harvesting impacts with independently derived indicators to ensure compliance with, for example, retention of nest and cavity trees; the medium to long term environmental monitoring in established transects for comparative purposes of different disturbance regimes, for example, of soil compaction;

and the long term monitoring of representative eco-sites, within a network of Conservation Areas, with a view to creating base line data and benchmarks for a variety of forest conditions, for example, vegetative communities and animal populations.

The monitoring program is primarily self-directed and augmented by resource inventories undertaken by third parties. Recently, a monitoring system was established by the land owner that measures trees reaction to environmental stress. Monitoring results are incorporated into active forest management strategies, and when necessary, course corrections are adopted. An extensive blowdown area, for example, resulted in increased harvesting.

The capability of HF to undertake sophisticated sustainable forest management has increased in recent years. It employs a number of professional staff with responsibilities in field forestry, forest planning and harvesting, wildlife biology and outdoor recreation and interpretation in a low organizational hierarchy that enables easy oversight and direction by the owner. A Geographic Information System serves as an interdisciplinary clearing house for monitoring information and thematic studies conducted at the field and satellite level. A complete inventory cycle for the entire HF is expected in 2005. Notwithstanding this investment, the rapid creation of data from a variety of sectors requiring integration and evaluation is posing significant challenges for management.

The absence of easily measured objectives and targets frustrates understanding of the progress that is being made towards the sustainability goal for HF. The Indicator System that has been proposed by academic researchers for HF, however, provides a potential suite of reference points that could be formally adopted by HF and regularly reported upon. A commitment to performance reporting would also influence the scope of data collection and analysis.

Accountability

Accountability and authority for HF rests with the private landowner. HF is, however, a shareholding company and control by a Board of Directors shapes the direction of the private landowner. In this case, the private landowner is a member of the Board, the General Manager of the company and owns 50 per cent of the shares. Accountability, from the private landowner, lies directly to the Board of Directors and, through them, to

the shareholders. Forest certification also entails accountabilities to bodies vested with the authority to determine compliance with certification standards. The desire to pass a legacy to direct family descendants is a strong motivating force underlying the commitment to sustainability. In this case, accountabilities do not directly extend between HF and general forest users; this is predominantly a business relationship and is market driven.

This is not to suggest that the demands and interests of visitors will be ignored. Fulfilling the direction outlined in the Management Plan requires that a respectful relationship between owner and user or customer is cultivated.

In addition to basic regulatory requirements, HF must comply with the county bylaw respecting tree harvesting.¹⁶² This bylaw promotes good forestry practices and restricts the number and size of trees that can be harvested and impingement on riparian areas, Provincially Significant Wetlands and areas of Natural and Scientific Interest.

Ownership confers the ability to implement rules of operation, such as annual cuts for timber harvesting, limits on recreational use and the setting of fees, as well as the ability to determine long-term policy direction, including access to information and compliance with voluntary codes of practice, such as Code of Ethics and Forestry Codes of Practice, prepared by the local Stewardship Council and national standards set by the Forest Stewardship Council respecting the boreal forest. Internal reviews and harvest audits are conducted annually.

Private sanctions and penalty provisions are rarely used by the landowner. The revocation of user permits, as provided for under the provincial *Trespass to Property Act*, offers the only reasonable mechanism available to the private landowner for containing inappropriate behavior and reducing liability risk. In this case, this remedy has been used infrequently, largely due to administrative requirements.

Decisions and resolution of conflicts, internal to the forest area, however, remain the sole responsibility of the private landowner - a direct result of the privilege that accompanies land tenure ownership and management. Researchers have noted the benefits that flow from an autonomous arrangement, where "the owner can make quick

decisions and implement them with speed. The compromises which typically plague public decision-making processes, and which often compromise ecological integrity, are absent. Private ownership may also instill forest stewardship”.¹⁶³ Considerable formal and strategic control is retained by the authoritative decision-maker. Routine and minor management matters are delegated to staff.

The decision to engage an independent evaluator, however, provides one, if not, the greatest measure of accountability. The certification recently granted to the HF by the Forest Stewardship Council (FSC) provides a significant analysis of the extent to which ecological, economic and social sustainability has been achieved. As a third party evaluator, the role of the certification body is to engage with interested parties outside the boundary of HF to hear any concerns they may have and to conduct an evaluation as to whether the HF is in compliance with internationally recognized forestry certification principles and criteria. Most notably, these principles span a broad spectrum including: legal and financial commitment; tenure rights and responsibilities; indigenous peoples’ rights; community relations and workers rights; forest benefits; environmental impact; management plan; monitoring and assessment; and maintenance of HCVF.

While generally meeting most certification principles, it has been noted that HF had not followed the recommended convention for identifying and approving HCVF.¹⁶⁴ Identification of conservation values, consultation, use of the precautionary principle and monitoring are necessary to meet the requirements of this principle. Subsequent assessments indicated “no major concerns” and HF received a 5-year FSC certification, subject to annual audits.¹⁶⁵

The involvement of a third party conducting a rigorous assessment and providing independent oversight is very much a part of the checks and balances that are a cornerstone of governance. Self-regulation is an important component of a good governance regime. However, it is significantly augmented by the standing, authority and command of certification bodies that confers trust and credibility, providing the social license to operate that corporations seek. Certification can also provide a competitive advantage to those certified and it brings added-value to forest ecosystems.

Independent certification is a cornerstone of good governance. The advancement of HCVF by the Forest Stewardship Council may also be synonymous with more traditional protected area designation and classification advanced by the IUCN, suggesting potential convergence of concepts concerned with land protection. Principle 9 of the 2004 National Boreal Standard states “Management activities in High Conservation Value Forests shall maintain or enhance the attributes which define such forests. Decisions regarding High Conservation Value Forests shall always be considered in the context of a precautionary approach”.¹⁶⁶ The principle also stresses that HCVF possess attributes, such as, significant concentrations of biodiversity values, landscape level ecosystem processes, ecosystem/species at risk, and areas fundamental to meeting basic needs of communities. The focus of HCVF is sustaining “the values that make a forest important” and its intent is to manage forests in order to maintain or enhance the identified High Conservation Values.¹⁶⁷ The IUCN advances that a protected area is “An area of land and/or sea especially dedicated to the protection and maintenance of biological diversity, and or natural and associated cultural resources, and managed through legal or other effective means”.¹⁶⁸ Setting aside major differences in adopted terminology – protected area versus high conservation value forest - at issue are the types of management approaches and eligible practices for sustainable production contemplated by the respective authorities.

The emergence, however, of a plethora of environmental approval systems in Canada - namely the Sustainable Forestry Initiative, the Canadian Standards Association and the International Organization for Standardization 140001 Environmental Certification, as well as the Forest Stewardship Council - with their differing procedures, standards and perceptions of rigor, as well as inconsistent treatment in the chain-of-custody, may serve to undermine consumer and producer confidence, as well as potentially affect forest ecosystems and dependent communities.¹⁶⁹ Protected areas, however they are conceptualized in these systems, may also be affected. Until there is greater maturity of certification systems and general acceptance of certification principles and standards by the buying public, the role of certification on private lands committed to conservation and protection will likely be debated, particularly when costs of complying with certification standards are perceived to exceed financial returns. For HF, the role and effect of certification, in general, and its ability to encourage establishment of HCVF consistent with recognized protocols for protected areas, more

specifically, may face an uncertain future. Although the landowner has elected, since 1998, to pursue certification, this may not be a predictor of a future management approach.

4.5.4 Governance of Private and Public Interests: Financial Incentives and Sustainability

The key challenge facing the private owner is to enhance forest values and to derive an income. As a managed forest pursuing sustainability and land stewardship, HF is eligible for, and has received, a property tax reduction - 75 per cent lower than the rate applying to residential properties – as provided for by the Ontario Managed Forest Tax Incentive Program.¹⁷⁰ Eligibility, however, does not extend to lands surrounding the many lakes in the HF and which are integral to the sustainability mission and provision of ecological and recreational values. Lands surrounding lakes are taxed at municipal levels, and in the case of HF, have attracted 80 per cent of the tax assessment.

The goal of the tax incentive program is the greening of Southern Ontario and the attenuation of natural land conversion to more lucrative commercial and recreational/residential development. Its role is to encourage the conservation and stewardship of private forest land and its contribution to societal and ecological values. Noted values include ecosystem stability, biodiversity enhancement, spiritual and psychological health, environmental barometer, recreational opportunities and climate maintenance. Under the program, land owners are required to prepare and follow a Managed Forest Plan and comply with standards of good forestry, such as abstention from high-grading, soil removal and degradation of the forest ecosystem.

Although the number of program participants has increased since its introduction in 1998, the policy has come under criticism by the Ontario Environmental Commissioner's Office, which has alleged that the policy "is no longer achieving its stated objectives...that failure of this policy will lead to significant environmental harm".¹⁷¹ As required under the Ontario *Environmental Bill of Rights*, a recent review of the policy, with particular attention to the assessment methodology, was inconclusive as to its harm to the environment. The review, however, does acknowledge that property assessments are increasing and that there is likely to be a higher incidence of intensive forest

harvesting, poor forest management, severing of land into smaller parcels, or selling land to manage the increase in tax burdens, but that “a reduction in taxes alone, may not be a significant enough incentive to offset financial gains by converting the land to other uses”.¹⁷²

The tension between ecological maintenance and financial prosperity is a common conundrum facing private owners and financial incentive programs that encourage voluntary conservation on private lands play a crucial role. It is estimated that 80 per cent of Vulnerable, Threatened and Endangered Species are found on private lands in Ontario.¹⁷³ The Managed Forest Program currently involves some 10,000 properties of .72M hectares of private forest, representing slightly over 10 per cent of total private forest.¹⁷⁴ Approximately 11 per cent of Ontario is held privately for forest, urban and farming activities. Participation goals in the Managed Forest Program have not been established. However, current low participation rates do suggest that more could be done to encourage uptake. Reforms are now underway to extend program eligibility to land trusts and conservation authorities.

For private forest lands, few incentive opportunities are available that allow the private landowner to retain decision-making autonomy and pursue options to generate income from sustainable operations. The growing popularity of the Ontario Conservation Land Tax Incentive Program, for example, grants almost full property tax exemptions for, among others, provincially significant areas of natural and scientific interest and is available to those land owners who maintain the property in a natural state and who do not carry out activities that degrade, destroy or result in loss of natural values of the site. The activities and uses that are not permitted under the Program depend on the type of land being conserved. Lands under the Program must conform to operational requirements and are subject to inspection. In Ontario, some 14,000 properties have registered conservation easements over 177,000 ha, an average of 12 hectares per conservation easement.¹⁷⁵

A survey of landowner attitudes and behaviors in Ontario has also confirmed that property tax regulation has an impact on land use decisions and that landowners are open to spending money on conservation, even though economic considerations are important to them.¹⁷⁶ There is strong consensus that tax dollars should be used to

provide financial assistance to rural landowners who undertake improvements that will protect the environment. The survey, however, also determined that the greatest obstacle preventing landowners from doing more to conserve wetlands and forests are pressing alternative land uses and the cost of conservation activities. Of those surveyed, 10 per cent participated in the Managed Forest Tax Incentive Program and 7 per cent participated in the Conservation Land Tax Incentive Program.¹⁷⁷

The perceived costs of program compliance relative to the benefits of not participating may be a barrier to program uptake. That is, participation rates may also reflect the belief that greater financial value is derived from traditional economic development that can proceed in a relatively unfettered manner, as compared to sustainable stewardship that must meet prescribed guidelines and standards. In Ontario, the average value of the tax incentive is estimated to be \$696 per property.¹⁷⁸

For private landowners interested in pursuing conservation and protection goals and in maintaining decision-making authority, programs such as Managed Forest Tax Incentive Program, may provide an answer. To encourage the establishment of PPAs, and to build upon the foundation already set by conservation easements, it may be necessary to create distinct property tax classes at a very low or an exempted tax rate for those private landowners who have a demonstrated commitment to the sustainable management of land and wish to retain decision-making autonomy.

4.5.5 Summary

The governance for HF generally fulfills the principles and attributes advanced in the normative framework. Strong and effective leadership, substantive knowledge, and a dedication to the vision of sustainability provide a firm foundation for good governance.

Direction is made visible by means of an extremely comprehensive resource management plan with clearly stated goals and objectives. While decision-making remains the purview of the landowner, there is active and collaborative engagement with outside parties in the pursuit of mutual interests, which secures trust and legitimacy for the area. Further involvement, however, with third parties in the establishment of nature reserves has been recommended and, if followed, will not only add considerably to the

recognition of conservation values it will also further legitimize the stated management goal for HF of protecting ecological integrity of resources in perpetuity. Greater management coherence with the adjacent provincial park would also strengthen the values to which the HF subscribes. The creation of HF has not been at the expense of other interests and there has not been any protracted conflict, which suggests that fair and equitable arrangements have been struck.

Despite the deep commitment to sustainability and biodiversity conservation in HF by the current land owner and operator, fiduciary obligations to future generations and a larger trustee relationship are undermined by the absence of contracts or commitments that would compel any future owners to at least the same vision and direction. Unlike land trusts, should HF experience tenure difficulties, there is no safety net to ensure protection in perpetuity and transfer of the forest to a sympathetic agency. Although market indices will certainly guide the shareholders to pursue lucrative, or least financially stable, directions, shifts in recreational behavior and values respecting sustainability could make the HF vulnerable to more development related, and potentially unsustainable, activities.

There is tremendous commitment to performance monitoring at various temporal and spatial levels and thematic areas. However, the absence of formally adopted and visible performance benchmarks for HF creates uncertainty about progress towards the goal of the sustainable use of natural ecosystems. Much of the foundation for this effort has already been laid; objectives have been defined, potential indicators have been advanced and information has been gathered. Measurable outcomes and expectations need to be set and regularly reported upon. Such performance results would deepen comprehension of the area and contribute to an enriched policy learning environment.

The most distinctive governance feature of this private area is the fulfillment of the accountability principle through the solicitation of an independent and recognized agency that grants stewardship certification. Rather than rely solely on self-regulation and adherence to government regulatory standards as a measure of accountability, the owner has chosen to comply voluntarily with sustainability principles and actions for greater rigor that lie well outside conventional management frameworks. By default, stewardship certification also serves as a proxy for performance monitoring.

By participating in the provincial Managed Forest Tax Incentive Program, HF has received a financial benefit from society to advance forest stewardship goals that are seen to be in the public interest. HF subscribes to protected area values - ecological protection, sustainable use and recreation - and has taken demonstrable action, such as, establishment of nature reserves, provision of recreational services and sustainable use of resources that also advance the public interest for which little direct financial incentive is provided. Whether the for-profit, private venture invites commodification of environmental goods and services or is a showcase of sustainability in practice is the reality that private landowners must face when they venture into PPAs and take responsibility for its financial costs. The values, embedded in clearly stated management objectives, that are guiding governance for this area point towards a broader and more complex fiduciary relationship than might otherwise exist in a for-profit venture; this value set will undoubtedly have the greatest impact upon conservation outcomes and the long term permanence of HF. In the meantime, the general adherence to governance principles suggests that HF is more than likely to meet its outcomes and improve its performance.

Can HF be characterized as a PPA or does the emphasis on forest management, albeit recognized as stewarding sustainability, militate against an assignment of protected area where the predominant emphasis is dedicated to the protection and maintenance of biological diversity? Through its system of nature reserves, HF has ably demonstrated a commitment to the values that protected areas seek to protect and maintain. Whether the management of forest land surrounding the reserves can be construed as a protected area is open to debate. It is suggested that the IUCN Category VI – Managed Resource Protected Area offers classification potential for the HF as a whole, but that the degree of modification that has occurred on the forest lands may be inimical to protected area ideology and tradition. For PPAs, calls for flexibility in classification typology may be necessary, particularly when protection, conservation and sustainability objectives are fulfilled.

4.6 South Winchelsea Island, British Columbia

4.6.1 Background

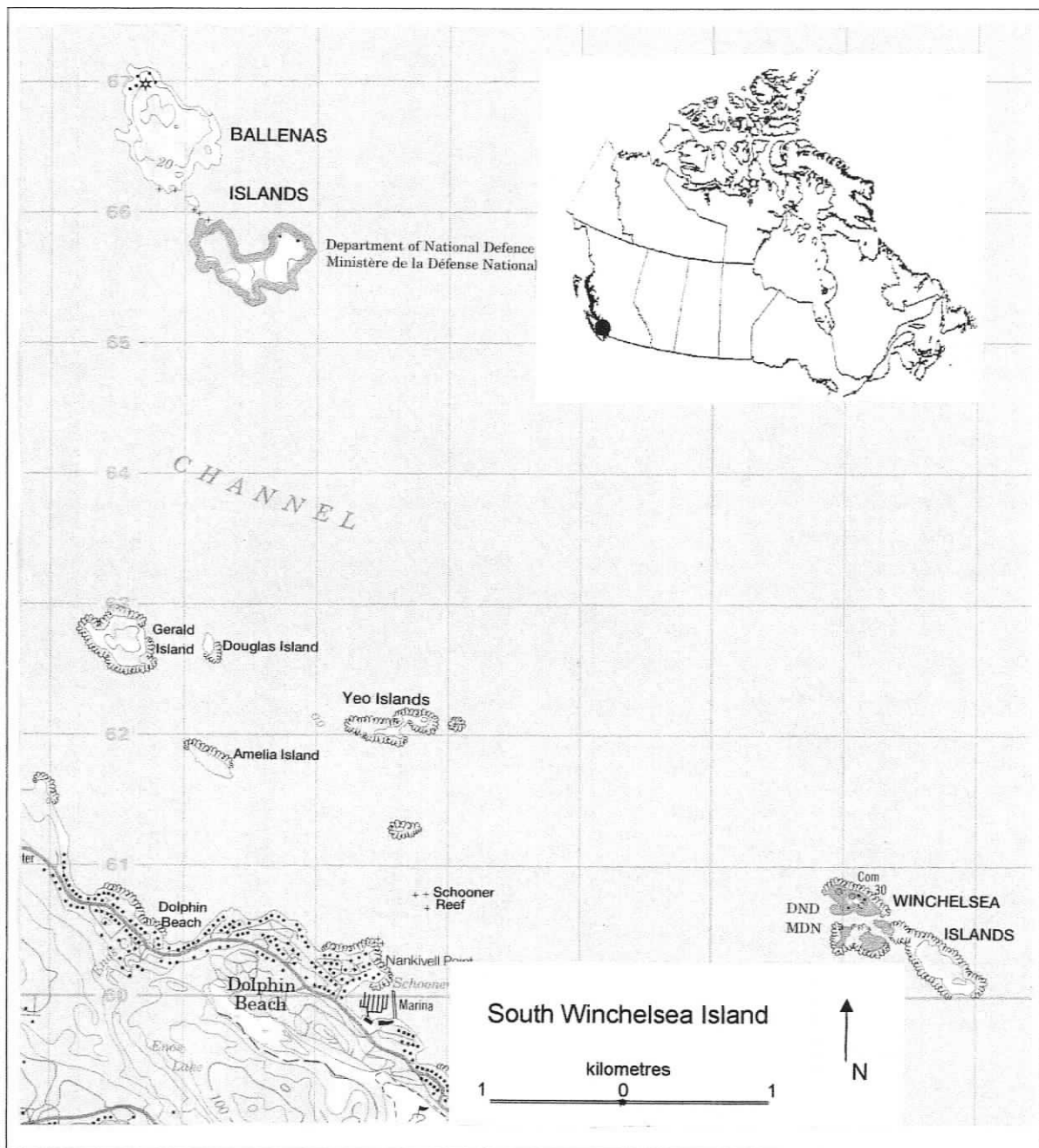
South Winchelsea Island (SWI) is an island 10.4 hectares in size which is located off the east coast of Vancouver Island (Figure 6).¹⁷⁹ It contains some of the last undisturbed coastal Douglas Fir. It is not only noted for its high levels of biodiversity, wildlife values and intact ecosystems, but is also the first private land purchase by The Land Conservancy of British Columbia (TLC) in 1998. This acquisition set in motion the dramatic growth of TLC as a land trust organization. The first fee simple property acquisition at \$595K by TLC gave rise to a non-profit, charitable organization that now manages more than 150 properties throughout most of the province covering some 96,000 hectares valued at over \$15M and is supported by 3000 members, 10,000 donors and more than 500 active volunteers.¹⁸⁰

TLC is the land owner of SWI; it is a non-profit registered charitable organization. The Nanaimo and Area Land Trust and the Islands Trust Fund Board, the covenant holders, jointly hold, along with the registered land owner, a conservation covenant agreement for the island. The island contains an undisturbed example of the very geographically restricted and endangered garry oak-arbutus vegetation complex.

The island is located directly adjacent to Department of National Defence sites located on North Winchelsea and South Ballenas Islands and the southern tip of Nanoose Peninsula. The Nanoose Bay area is subject to a 10 year agreement, expiring in 2009, between Canada and United States respecting the shared used of the Canadian Forces Maritime Experimental and Test Ranges. The range is used to test unarmed weapons systems and acoustic sensors. It has been subject to criticism from public interest groups for a wide range of environmental effects, including the deposition of testing materials on the sea floor habitat as well as the more general implications of nuclear weapons testing.

Moderately sized residential buildings and limited trails occupy 2 per cent of the island. Any form of development on those TLC properties which have a natural heritage focus is a rare occurrence and, as a consequence, the buildings have been modified to

Figure 6. South Winchelsea Island, British Columbia



Source: National Topographic System. 1999. *Parksville, British Columbia, 92 F/8*. Edition 5 NAD Series A 721.

serve as a model of sustainable and responsible management; no electricity or running water is provided. Rental of the building provides a source of limited revenue for the trust organization. The general public is not excluded from the island, but no overnight camping is allowed and limited accommodation serves to regulate extended visitor access, whether for recreational or educational purposes. Although formal visitor use surveys have yet to be implemented, regular patrols suggest that there are frequent visits from mariners and kayakers. Under the terms of a Land Covenant, the land owner is not allowed, among others, to permit pets, non-native plants, motorized vehicles, hunting or fishing, the erection of large signs, or to sell or transfer the property to any private persons.¹⁸¹

4.6.2 Protected Area Values

South Winchelsea Island is one of nineteen islands that make up the Ballenas-Winchelsea Archipelago, which covers some 90 ha. It is acknowledged as having national and international ecological significance. It is an example of the coastal Douglas fir biogeoclimatic zone and the endangered garry oak-arbutus ecosystem.¹⁸² The archipelago was given the highest biodiversity ranking by the BC Conservation Data Centre and is one of only ten sites within the Gulf Islands Trust area receiving such a designation. Expressions of interest have been made by TLC to purchase the remaining three private islands in the archipelago. The larger vision sees the establishment of an integrated and complementary public Crown land and private land trust Protected Areas for the Ballenas-Winchelsea Archipelago.

The ecological and recreational values found within the archipelago have not gone unnoticed by other interested environmental parties. Various proposals have been advanced by environmental public interest groups, such as the Marine Life Sanctuaries Society, the Canadian Parks and Wilderness Society, and local community groups, to have the marine environment within the archipelago declared a marine protected area. The government-sponsored Pacific Marine Heritage Legacy has also expressed some interest in acquiring the three remaining private islands and in 1996 identified the Ballenas-Winchelsea islands as having significant natural and recreational values.

In view of the protected area values, the Ballenas-Winchelsea Archipelago and the surrounding area was designated by UNESCO (United Nations Educational, Scientific and Cultural Organization) as a Biosphere Reserve in 2000. The purpose of designating the Mount Arrowsmith Biosphere Reserve land and marine area is to promote scientific research, monitoring and education for sustainable management.¹⁸³ Currently, no other formal protected areas, private or publicly held, exist in the archipelago other than SWI.

The Statement of Significance for SWI, states:

“Lying at the southern end of the Ballenas/Winchelsea archipelago, South Winchelsea Island is an outstanding example of the rare island environments that may be found within the Coastal Douglas Fir Biogeographic zone. The islands chief significance is its high level of biodiversity. The island’s plant community of Garry Oak/Arbutus, which is at its northern most extent of its range, and Coastal Douglas Fir, represent increasingly rare habitats, home to a wide range of flora and fauna that is nationally and internationally significant. In addition, the island has an extensive varied coastal ecosystem with a wide range of plants, sea life, birds and marine mammals living upon its rocky shores and bluffs”.¹⁸⁴

It is also noted that “SWI represents an outstanding example of the Coastal Douglas Fir Biogeoclimatic Zone” and, in the opinion of the Canadian Wildlife Service, is “nationally significant in terms of its vegetation associations”.¹⁸⁵ In view of this significance, the management vision for SWI boldly states, “This is a very special place. The management vision looks a thousand years into the future. The island should remain in a natural state with human impact limited...The island will be used for environmental education and research purposes”.¹⁸⁶

A species inventory has been prepared and it documents the bird, land and marine mammal species that are expected to occur on the island. A thorough inventory of plant species and communities has recently been undertaken by staff and a final report is in preparation. A preliminary plant species inventory has been conducted by volunteers and land trust staff and five vegetative regions have been isolated on SWI, based on appearance and ecology. Species at risk have been identified by various authoritative bodies.¹⁸⁷

The island is subject to a number of pressures, notably public access for recreation and education, revenue generation and active management of exotics. The presence of a nationally significant ecosystem, however, has allowed TLC to refer to the area as an

ecological reserve with a potential role in serving as an ecological benchmark for the larger southern Gulf Islands ecosystem.¹⁸⁸ The underlying management philosophy that supports the reserve concept is to protect the fragile natural areas and remove listed exotic plant species. The goal is to restore and re-establish native plant communities and ecosystems representative of the coastal douglas fir biogeoclimatic zone, notably the garry oak-arbutus and shore pine-cladina-kinnickinnick plant community. The primary management objective is “to manage SWI as a site of ecological importance and biodiversity...unaffected by human development” and, while not a primary aim, to also encourage opportunities for scientific research.¹⁸⁹ TLC actively encourages academic institutions to study the island, but the potential for regular and sustained long term monitoring and baseline reporting is hampered by financial resources and other competing demands faced by the land trust organization.

The stated intention of TLC is to manage the SWI as an ecological reserve. It may be debated that the size of SWI militates against the objectives for which the reserve has been established and therefore is not representative of the ecosystem complex. It is instructive to note, however, that under the *Ecological Reserve Act* in British Columbia, the smallest ecological reserve is at 0.2 ha. Further, an 11.65 ha garry oak and associated vegetation ecosystem has also been established in the eastern-most part of British Columbia.¹⁹⁰ The Act allows public access to the reserves, as well as opportunity to pursue non-consumptive activities; camping is prohibited and developments are addressed in regulations. The purposes of ecological reserves are deliberate to ecosystem functions and are distinct from, for example, pursuit of general recreation. They are to provide opportunities for scientific research and education, to be representative of natural ecosystems in BC, to serve as examples for recovery from human modification and to preserve species at risk, as well as unique natural phenomena.¹⁹¹

A protected area classification scheme has not been adopted by TLC and the term protected area is not one to which the organization explicitly subscribes. The Land Trust Standards and Practices, which TLC has adopted, eschew any protected area classification schemes, preferring instead “the protection of important conservation values” as a flexible organizational construct.¹⁹² Although an explicit policy on protected area categorization and definition of an ecological reserve have not yet been formally

developed by TLC, ecologically-oriented goals for the area appear to take precedence over any activities that may be seen to run contrary to this primary objective. It is intended that management strategies provide “protection from development and excessive human use” and that they “preserve in perpetuity the biological diversity and natural characteristics of the island”.¹⁹³ A protected area classification system for TLC is being built as land purchases are made, potentially resulting in an independently derived system that is tailored to the specific needs and goals of the land trust organization. Despite the potential for incoherence among multi-varied classification schemes relied upon by land trust organizations, the lands that TLC protect can be viewed as a necessary complement to a larger provincial land protection and conservation strategy and filling the inevitable ecological gaps that appear to be created by state initiated efforts.

4.6.3 Governance Regime

Direction

The conservation mission for TLC as a land trust organization is “Special Places, Forever, for Everyone”.¹⁹⁴ As outlined in its Constitution and Bylaws, its purpose is:

“to contribute to and improve the health and welfare of the general public...(by) the protection, preservation, restoration, beneficial use and management of...plants, animals and natural communities that represent diversity of life on Earth...(and) areas of scientific, historical, cultural, scenic or compatible recreational value”.¹⁹⁵

As a registered charitable society under the *Society Act* of British Columbia, TLC intends to achieve its mission by means of three main mechanisms, which convey various degrees of ownership and authority: through fee simple ownership as land title is acquired through the purchase of lands that may be sold or transferred to other parties; by entering into conservation covenants that are held in perpetuity; and through long term lease arrangements with willing partners that can advance the organization’s goals. At present, it holds 126 conservation covenants and long term leases on 74,000 ha. Occasionally, lands are directly donated to the land trust for conservation management. Although its Constitution allows for the disposal of land and interests in land to achieve its objectives, this provision has not been used extensively.

The long-term direction of TLC is to establish a provincial trust in British Columbia that is modeled on the British National Trust.¹⁹⁶ The 3 million members of the National Trust manage a diverse portfolio of cultural and natural heritage areas. The National Trust also develops national policies and strategies, conducts research and surveys, and advances position statements on matters that typically lie outside its core mandate, such as climate change, soil protection and waste management. As a prescriptive policy and operational management authority, the National Trust is widely seen as a highly reputable and independent agency that serves as a guardian for the nation's special places. Should TLC adopt a similar policy and management function, its conservation and cultural heritage mandate may be strengthened as resources and opportunities become available in a greater geographic territory and as efficiencies are gained.

The conservation mandate of TLC is manifest in a management framework that is implemented for each of the properties for which it has ownership and authority. At the site level for South Winchelsea Island, the conservation direction is established in five major complementary components that, in sum, comprise the strategic outlook and management scheme for the area. The Statement of Significance, Strengths, Weaknesses, Opportunities, Threats, Property Vision, Long-Term Aims and Medium Term Strategies range from broad to more detailed statements addressing the ecological, recreational, scientific research and environmental educational pillars for SWI over a 5 year period. For example, the property vision is to "manage SWI as a site of ecological importance and biodiversity and its ecosystems and natural landscapes will remain as unaffected by human development and influence as possible". This vision is consistent with the Statement of Significance, referred to above. Similarly, the Long Term Aims are likewise consistent, stating that the objective is "to preserve in perpetuity the biological diversity and natural character of SWI". This priority is achieved through a variety of management activities, including trail reconstruction, vegetation recovery, educational signage and facility access. That these various components are made visible in an organizational and strategic framework provides a clear and unambiguous expression that the management priority of SWI is the protection and conservation of ecological and biological values and that this priority is to be achieved through compatible management actions.

The challenge, and future risk, that the land authority for SWI must confront, however, is to achieve a balanced approach amongst potentially competing objectives so as not to undermine this vision. Active *in-situ* management is not required; enforcement problems have not been an issue and a warden visits regularly. The potential for an increase in visitors, however, is made more likely as a result of the provision of facilities, trails, limited interpretation and a location, albeit with limited accessibility, that is adjacent to one of the fastest growing regions in Canada. The current visitor management strategy can be characterized as non-interventionist and a critical threshold has yet to be met that would call for an effective visitor management plan. In fact, visitors are encouraged and active marketing campaigns have been considered since it is believed that exposure to SWI and the provision of information about TLC may inspire support for its broader mission.

The current and more pressing management challenge on SWI is the control of exotic plants. The introduction of such species may place indigenous species or natural communities at risk. This is not an exceptional occurrence in protected areas. For example, many national protected areas, particularly those located close to urban centres, subject to disturbance or vulnerable to invasion, suffer from the threat of exotic vegetation and are viewed as being subject to the risk of having their biodiversity values and ecological integrity undermined.¹⁹⁷

The requirements of the conservation covenant call for, among others, the preparation of an exotic species management plan that must be prepared every five years and submitted to the covenant holders for approval, which approval must not be unreasonably withheld.¹⁹⁸ A five-year plan was prepared by the land owner and approved by the covenant holders in 1999 and is complemented by annual weed management reports.

In alignment with Regional District guidelines for the management of invasive exotic plant species, the plan outlines strategies to remove four exotic plant species which are viewed as being aggressive, highly reproductive and impinging on sensitive vegetative areas – namely, blackberry (Evergreen and Himalayan), English ivy and Scotch broom. As initial trials to remove invasive plants by herbicide-based methods were found to be ineffective and potentially compromised ecological integrity, volunteer physical and

mechanical methods are currently relied upon. Waste materials are destroyed through controlled burns that are regulated by the local fire department. Recovery and restoration of vegetation communities is done by means of natural seeding. Other non-native species, such as exotic grasses with less significant impact or requiring complex control methods, are not actively managed. Other management strategies to control further invasions include passive visitor education respecting the fragile status of the island, as well as taking advantage of the restricted access to the island. To date, approximately 75 per cent of the exotic vegetation has been removed and the land trust organization believes that it has achieved significant success in this regard. It is claimed that the program has not only benefited native plant communities on the island and considerably advanced the organization's goal to restore and maintain ecosystem health and biodiversity on South Winchelsea Island, it has also provided a benchmark for exotic plant removal programs that may be pursued elsewhere.

To achieve its management direction, TLC has entered into long-standing relations with volunteers to assist in exotic plant removal. TLC also encourages university research investment in SWI, although to date, little research has been conducted.

Legitimacy

Unlike public policy land use matters that often invite tension between protection and development interests and debate about appropriate land use, private land matters are typically not marked by the same degree of conflict, provided that use patterns lie within expected norms and zoning restrictions. For private lands, market transactions are generally conducted between a willing seller and a willing buyer with little attention to the use or benefit to which the land will be put.

In the case of SWI, the land came onto the market in 1998 and was being viewed by European buyers to meet private interests. The land was appraised at \$606,000 and had an asking price of \$650,000. Representatives of the then fledgling TLC approached the private seller and developed a competitive negotiated option agreement to purchase the land at \$595,000, with a \$200,000 down payment with further payment to be made within 5 years. As this was the first land purchase by the trust organization, a public campaign to raise funds was initiated and served as a communication vehicle in order to reach a broader public. No substantive opposition to the purchase emerged, but there

was an informal complaint registered with TLC by an interested citizen, who charged that the protection goal for the island would be undermined by the provision of general public access. One indication that this impact has not manifested is the fact that such complaints have subsided. Dispassionate support has been provided by local municipalities, since there may be a perception that SWI may improve their profile in the neighbouring communities and generate local economic benefit.

The provision of public benefits and the degree of community support are two important attributes that TLC must consider when acquiring properties. Community representatives are contacted and, when necessary, relationship-building is actively pursued in an effort to mitigate any real or perceived conflict. With the exception of one incident, TLC, however, has not experienced any opposition to, or conflict with, its mission and mandate for SWI, suggesting that the provision of broader public benefits outweigh any real or perceived costs to opposing local interests.

TLC has adopted a broad protection mandate. Although there is no direct reference in any documentation regarding obligations to future generations, the global community or nature, these considerations are, nevertheless, inferred as being central to its mission. Like most land trust organizations, TLC takes actions that reflect the public interest in protection and conservation and this public interest is seen to be very specific. The mandate of TLC is take action “to reflect the public interest in the protection, preservation, conservation, maintenance, enhancement and restoration of the natural state of the land and the amenities for ecological and environmental reasons”.¹⁹⁹ Should the public interest be narrowly interpreted or approached with a different emphasis, the trustee relationship would be similarly constrained and deliberate.

Fairness

No major or minor conflicts have affected SWI. The area is not subject to any land claims by First Nations nor is it subject to the BC treaty process. Local tradition suggests that First Nations people camped on the island during fishing activities and there is evidence of a possible midden generated by the Nanoose people of the Coast Salish First Nation. Field workshops on traditional ecological knowledge with First Nations representatives are offered. First Nations are not currently represented in the broader TLC organization, but a First Nations Land Trust program is to be implemented

shortly and a First Nations Liaison officer appointed, which is hoped will strengthen the organization's equity goals.

Under the terms of the Conservation Covenant, revenue from the rental of the building facilities is to be reinvested into SWI to recover costs arising from management and acquisition or to address the costs associated with other lands for which TLC is responsible.

Performance

At the policy level, and as required by its Constitution, TLC subscribes to the Land Trust Standards and Practices issued by the Land Trust Alliance based in Washington. Its Constitution calls for regular monitoring of these standards by the Board of Directors.²⁰⁰ Although American based, it presumes Canadian legal and regulatory equivalency.²⁰¹ Unlike regulatory standards that typically present objective measures, the standards document provides descriptive technical and ethical guidelines for the responsible operation of a land trust. For example, the document prescribes that "the land trust maintains regular contact with owners of easement properties" and that "the land trust has a written policy and /or procedure detailing how it will respond to a potential violation of an easement".²⁰² It is argued that subscribing to such standards and employing best practices are "the surest way to secure lasting conservation".²⁰³ Currently, an internal audit is underway by TLC to determine compliance with the standards document.

The standards address predictable aspects relevant to non-government organizations, such as compliance with laws and avoiding conflicts of interest. Its more notable features, however, spotlight that the mission of a land trust is to serve the public interest, that an evaluation of the risks and benefits of a potential land purchase be undertaken and that, if the risks outweigh the benefits, the project be abandoned or modified. It also makes a management distinction between those lands that are to be held in perpetuity for conservation purposes (referred to as conservation easements stewardship) and those lands with the potential to be transferred or sold (referred to as fee land stewardship). For the former, baseline documentation reports are necessary to promote regular compliance and easement monitoring, whereas the latter emphasizes monitoring of potential management problems, such as trespass.

At the management level for SWI, measures that can serve as standards of performance are embedded within the conservation covenant and the Management Plan for SWI. The role of the Baseline Documentation Report that accompanies the conservation covenant is to provide an objective information baseline for monitoring compliance with the covenant. The document is general, however, and does not easily lend itself to a regular reporting regime on performance and progress.

Under the terms of the conservation covenant, the covenant holders are permitted to inspect the area annually to monitor compliance with the agreement. They also have the privilege of protecting the island in accordance with the Baseline Documentation Report. Inspection reports by the Islands Trust Fund Board and by the Nanaimo Area Land Trust are prepared on an annual basis, with the most recent report indicating that South Winchelsea Island is complying with negotiated expectations, such as provision of access, no trail construction, prohibition of tree removal and absence of contamination.²⁰⁴ The assessment is specific to the Baseline Documentation Report and, while it addresses specific parameters noted above, it remains silent on whether progress is being made towards the larger goal of ecosystem protection. The inclusion of strategic and more conceptual parameters, such as health status in the garry oak-arbutus ecosystem, in addition to the more technical and operational considerations, would make the assessment report more meaningful.

The Management Plan presents core objectives that could generate outcome-based performance measures for an evaluation framework for SWI. The objectives call for preservation of biological diversity, restoration of plant communities and a commitment to sustainable management. The organization recognizes that long term monitoring programs are needed to establish a baseline of ecosystem disturbance and to assess the effectiveness of restoration activities. Formal programs, however, have yet to be implemented. As a consequence, progress towards the goal of ecological protection and biodiversity remains uncertain.

Compared to other regions for which TLC has responsibility, SWI is located in the physically largest of the five regions in the province and is managed by 13 professional staff. It has a dedicated Senior Warden who oversees the property on a regular basis and is responsible for preparing relevant documents that are reviewed by the

appropriate bodies. Staff exchanges with international land trusts occur as another method to build organizational capacity.

That informal evaluation programs are currently conducted by staff and volunteers suggests that capacity to undertake monitoring and reporting programs exists. However, this has yet to be regularized and incorporated into the organizational mandate. Progress in this connection is expected as the organization matures and as it makes commitments about reporting on the conservation values that it seeks to protect, just as it currently reports on its accomplishments in purchasing land and achieving ecosystem representation.

Accountability

For SWI, the TLC Constitution and Bylaws and the conservation covenant stand as the legal documents by which the PPA is governed and from which its accountabilities and authority is derived.

The central tenant of accountability resides in the TLC Constitution. For those lands considered by the TLC as being of the greatest significance, its Constitution provides for the declaration of inalienable lands. The term generally attracts restrictions on transferability. For TLC inalienable means that the land and its significant values must be protected in perpetuity. Such lands must be subject to a conservation covenant and be held by one or more organizations that are independent of TLC. Inalienable lands cannot be mortgaged; they must be covered by insurance; and they cannot be sold or transferred, unless the organization is being dissolved, and then only to those parties with sympathetic mandates.²⁰⁵ Only the Directors of TLC have the privilege of declaring a property to be inalienable, suggesting that a broad range of technical, financial, policy and political considerations are taken into account in order to identify those lands that are considered to be of the greatest significance.

The mission of a land trust, and its commitment to hold land in perpetuity, could, on its own, reasonably stand as a commitment to protection and conservation. The requirement, however, that the land trust enter into a conservation covenant with other parties serves to hold the land trust, not only accountable to its commitments, but

subject to an oversight mechanism; the arrangement serves as a check and balance on the organization's performance.

Given the declaration of inalienable status for SWI, TLC was required, as directed by its Constitution, to enter into a binding conservation covenant agreement with other parties. In this case, the Nanaimo and Area Land Stewards Society - a registered society, and the Trust Fund Board - a corporation under the *Islands Trust Act*, act as the Covenant Holders. In practice, both local and broad provincial groups are involved in conservation covenants so as to ensure accountability. This shared arrangement is a legal requirement and it also points towards a growing trend among public interest environmental organizations to work in a collaborative manner to achieve mutual goals by innovative means.

As SWI is located in a rapidly growing area, the intent of the conservation covenant is to provide a high level of legal protection from development and excessive human use. The conservation covenant states that its purpose is:

“to protect, conserve and maintain the land and the amenities in a natural state; to prevent any occupation or use of the land that will significantly impair or interfere with the natural state of the land or the amenities, and to use the land and amenities for the purposes of environmental education and research”.²⁰⁶

The parties have also agreed that the flora and fauna will evolve through natural succession over time.

The two major parties that are signatories to the conservation covenant – namely, the land owner and the covenant holders not only fulfill their mission by entering into the covenant, they flow benefits to the public at large. The agreement has been entered into “on behalf of the public”. Thus, the impetus for acquiring the SWI is to provide benefits to the public, which is more amorphous and difficult to define. The covenant states, “The land contains significant amenities, including flora, fauna and natural features of great importance to the owner, to the covenant holders and to the public”. The covenant also stresses that “this Agreement shall be perpetual to reflect the public interest in the protection, preservation, conservation, maintenance, enhancement and restoration of the natural state of the land and the amenities for ecological and environmental reasons”.²⁰⁷

The conservation covenant is registered under the BC *Land Title Act* and two sections of this statute are pertinent to the roles and relationships among the two parties. Section 218 of the Act allows for the provision of a statutory right of way, in effect an easement, to be granted to persons – in this case, the covenant holders – as necessary for the operation and maintenance of the grantees undertakings. Persons under the Act are explicitly defined and constrained, presumably to restrict unnecessarily impingement on landowners. Those that are not defined must be designated by the responsible Minister. In this case, the Islands Trust Fund Board is a recognized person under the *Islands Trust Act*, however the Nanaimo and Area Land Stewards Society is not and was designated as such.

Section 219 of the Act allows for registration of a covenant against the land title and, more importantly, is binding upon successors to that title. As in the previous provision, persons who can register a covenant are defined and others must be designated by the Minister. The scope of what can be registered in a covenant can be of either a positive or negative nature respecting, among others, the use of land and whether or not it can be built upon. The Act (s.4 b) also allows for a covenant to include “that land or a specified amenity in relation to it to be protected, preserved, conserved, enhanced, restored or kept in its natural or existing state”. The term amenity includes “any natural, historical, heritage, cultural, scientific, architectural, environmental, wildlife or plant value”. The section also allows for the “just and equitable apportionment of the obligations under the covenant”.

As owner of the land, the main rights and responsibilities that are conferred on TLC include the right to use, occupy and maintain the land in any way provided that it is consistent with the intent of the conservation covenant. It is also responsible for all costs and liabilities related to ownership. Responsibilities expressly stated include maintenance of the infrastructure (buildings, waste, water supply, signage, communication), as well as the requirement that any revenue generated from improvements be re-invested into SWI or other lands owned and managed by TLC.²⁰⁸ The land owner must also prepare a plan to address invasive and non-native plant control and it must establish a management fund for Winchelsea-Ballenas to ensure maintenance of land and improvements in perpetuity.²⁰⁹

The covenant holders, as previously outlined, have a statutory right of way to enter upon and inspect the land at least once a year with a view to monitoring compliance and, when necessary, to take action to protect the land when there is a departure from the stipulations of the conservation covenant. Administrative responsibilities include approval, every five years, of the Exotic Species Management Plan.

The land owner is held accountable to the covenant holders through a financial provision, termed a rent charge, which is levied for each violation of the conservation covenant. To date, no violations with the conservation covenant on SWI have occurred.

The incentives for entering into a conservation covenant, at least for a land trust organization, are not extensive and are administratively cumbersome. In this case, TLC is able to apply to provincial assessment authorities to seek a tax exemption on property, which in theory, yields a benefit that could further invested in advancing the mission of the organization. Granting such an exemption, however, is discretionary in nature and the request must be submitted annually.

Although it has been in operation for less than 10 years, TLC has a relatively sophisticated organizational structure. It is comprised of a board or directors elected by the 3,000 members. The board is supported by a complement of 40 professional staff, as well as selected patrons. This distinctive member-driven feature sets TLC apart from other land trust organizations, which typically resort to appointment processes.

TLC's 16 member Board has representatives from across the province and has authority to determine how the income and property of TLC is to be distributed. From the organization's inception, the number of Directors has increased from 9 to 16, reflecting the increased representation of ownership and management responsibilities across the province. There is also an Advisory Panel with representation from conservation bodies, corporate sector and foundations which advises the Board on policy matters. In addition, there is a Fundraising Committee, established by the Board, which is dedicated to revenue generation.

In advancing its mission for land protection and conservation, TLC pursues two major roles. In its facilitative role, lands that are owned by TLC and not declared

inalienable are available for transfer to federal, provincial, regional and municipal governments. Slightly less than 50 per cent of lands initially owned by TLC have been transferred to various levels of government, indicating that this is an active function of the organization.

In its fiduciary role, lands that are owned by TLC are held in permanent trust for the benefit of the BC public. The declaration of inalienable lands, however, is only recently becoming a sought after administrative mechanism, largely due to the fact that such lands cannot be registered with a mortgage. This role is expected to increase as constraints on financing are removed.

An Executive Director and senior management reports to the Board and oversees a staff complement with a broad scope of responsibilities for project management as well as volunteer coordination. Until very recently, the responsibilities of President of the Board (the Chair) and Executive Director were integrated. The separation of powers provides for greater checks and balances and organizational efficiency. Volunteers from within the membership are extensively relied upon to keep overhead costs to a minimum and, more importantly, to ensure that members retain a sense of ownership and empowerment for the organization

Decisions are reviewed by the Executive Director with final authority resting with the Board of Directors. Decisions are normally taken by consensus or by majority, and in the event of conflict the Constitution does not allow the Chairman to have the casting vote.

The primary responsibility of the Board is to set policy and the long-term direction that is consistent with the values to which the organization subscribes. The Board's authority to "declare a property or an interest in land to be inalienable" sets the policy and management direction for TLC. As significant ownership and operational responsibilities flow from that declaration it is a tremendous authority vested in a Board.

One of the objectives of SWI is education. Regular and frequent access to information is made available to the general public and to members through printed and electronic publications, such as newsletters, brochures information sheets and a

website. Exceptions include access to member financial contributions and *in camera* land transactions. Promotional materials and more detailed documentation are available by request.

As required to maintain its charitable status, the society must submit audited financial statements. This practice not only fulfills legal provisions, it also serves to inject a high standard of credibility and trust in its organizational capacity and commitment. Financial records and minutes are open to the members and special mention is made that “such information will be provided in such a format as to insure complete and easy tracking of all income and expenditures both by source of funds, and on a project by project basis”, likewise providing greater ease of access and interpretation.

The Constitution of TLC requires that, when lands are declared to be protected in perpetuity, it enter into a conservation covenant with at least two other parties.²¹⁰ In the event of a dispute between the parties, there is a requirement that the parties give notice of the disagreement and make attempts to quickly resolve it, “acting reasonably and in good faith”. The parties have also agreed that they may appoint a mediator, should resolution not be possible. To date, mediation service has not been necessary; compliance with the covenant is attributed to regular and frequent communications among the parties.

4.6.4 Governance of Private and Public Interests: Risk Management of “In Perpetuity”

The central mission of the land trust organization is conservation of lands and their protection in perpetuity. The TLC Constitution states “when a property or an interest in land is declared to be inalienable, the Society will take every measure possible to ensure its protection in perpetuity” and that, once granted, “the inalienable status may not (be) remove(d)”.²¹¹

The commitment to protection in perpetuity can have great consequences if risks are not adequately accounted for. Such consequences include the failure to meet the goals for which the land is set aside, as well as jeopardizing other trust activities, as unanticipated and costly management actions are assumed.

However, the greatest risk faced by most non-government land trust organizations is the possibility of a general undermining and dissolution of the organization and the potential loss of lands held in private ownership. Contingency plans and legal mandates contemplate this stark reality and provide for the transfer of lands to organizations with sympathetic mandates, should dissolution ever occur.

In the case of SWI, should TLC no longer stand as the land owner, the conservation covenant is binding on successive land owners. The covenant holders may transfer their rights and obligations to those qualified to hold covenants and, in the last instance, the Provincial Crown assumes the roles and responsibilities of the private institution. To date, the Crown has assumed responsibilities as a covenant holder in at least one instance on Vancouver Island, for a property on the Cowichan River.

In view of the potential implications to the land and to responsible parties, as well as the potential for shifting lands from the private to the public sector, it is not surprising that risk management is a major investment and formal activity conducted by TLC both at the property acquisition stage and at the management stage.²¹²

In its role as a potential land owner and before a property is acquired, an Assessment of Acquisition is conducted by land trust regional management staff to determine its potential for permanent ownership or for potential transfer. The purpose of the assessment is to determine the opportunity that the proposal presents and the extent to which it meets TLC's organizational objectives. Three thematic areas are assessed: the merits of the proposal, notably the natural and cultural heritage values; general benefits to BC and the difficulty of protection. Issues such as ecological integrity, the presence of endangered species, and a property's social and educational potential are specifically addressed in the assessment.²¹³ Acquisition costs, as well as the resources that are necessary to continue as stewards of the land, are then commented upon. Although not a central feature of the assessment, community engagement and the degree of opposition and support are likewise examined. Partnership opportunities are also explored.

The assessment is conducted on a relative rating scale. Since TLC is a provincial organization, all criteria are based upon a provincial scale, regardless of their national or

international significance and an overall rating grade is assigned to each acquisition. It is stressed, however, that an individual's judgment in the overall context needs to be applied since "that the sum may be greater than the parts". So as to prevent an unintended focus on a particular property to the exclusion of other proposals, guidelines state that "only in very rare cases can the overall merit be assigned an A grade". Although only recently introduced, properties acquired by the land trust have merited an A, B or C rating. Land Trust guidelines suggest that, if the risks outweigh the benefits, the proposal be abandoned or modified.

In view of the background provided by the assessment, two questions, however, remain as the distinct drivers in acquisition policy and they highlight the policy and management role of the organization: "Is TLC the most appropriate owner?" and "What will happen if TLC does not acquire it?" The overall assessment, which is accompanied by a comprehensive management paper, is forwarded to the Executive Director for signature, after which it is sent to the TLC Board of Directors for final review and decision-making.

For SWI, a more detailed risk assessment – commonly referred to as a SWOT analysis (strengths, weaknesses, opportunities, threats) – has been undertaken at the management stage and provides the basis for long term strategies. Key risks and threats to SWI include the following: invasive plant species impinging on native habitat; infrastructure deterioration inviting liability issues; an inability to directly manage visitors, creating potential for ecosystem disturbance, including fire; difficulties in access; limited provision of interpretative materials creating opportunity for misuse; and the absence of a complete biological survey that can serve as reference and baseline.

Managing risk takes considerable financial resources and for those properties that have been declared inalienable and to be held in perpetuity, the land trust organization devotes a considerable percentage of its annual budget to them. For SWI, the conservation covenant states that "after 2002, the owner cannot register any mortgage or other charge against the land" which requires that funds be found elsewhere in order to maintain its nature reserve status and to manage the potential threats. For a growing land trust organization, this mechanism may appear to be unjustifiably constraining and limiting the flexibility sought by the organization. However, the check of preventing the

use of inalienable lands as financial collateral to advance an organization's mission is more likely to result in the lands being protected in perpetuity and avoiding the very risk that the land trust has so carefully addressed.

4.6.5 Summary

SWI can be characterized as fulfilling the majority of the advanced principles for the good governance of PPAs and, as a consequence, the organization has enhanced its ability to protect the values for which the area was originally set aside. TLC, the land owner of SWI, has subscribed to a visible framework of direction, most notably a Management Plan that is consistent with organizational philosophy. The establishment of SWI has garnered support from the surrounding community and the absence of conflict suggests that the area has legitimacy and that there are no issues of fairness. A collaborative relationship with other land trusts, and third parties that ameliorates against potential conflict, also contributes to fairness and enhances credibility.

TLC subscribes to broadly recognized Standards and Practices for land trusts. Although compliance with these standards provides a measure of organizational performance, the absence of a performance benchmarks respecting the goals and objectives of SWI, create uncertainty about progress towards protection of ecological integrity and conservation of biological diversity. There is no visible evaluation framework that assesses management effectiveness or the state of conservation for the proclaimed ecological reserve. Systematic investigation and regular reporting on outcomes, and the real impacts of management actions, would go some distance to creating certainty about performance and progress towards the goal to protect, conserve and maintain the land and the amenities in a natural state. First steps could include the selection of a very limited number of representative outcome-based indicators and the results to be achieved for SWI. This limitation is expected to diminish as the organization continues to mature under its committed leadership.

The most distinctive governance feature of this PPA is the commitment to accountability through a number of formal to informal mechanisms, such as the use of independent oversight bodies, self-regulation, risk assessments and information provision. Significantly, the key administrative instrument - the Conservation Covenant

with its statutory basis and as a directive under TLC Constitution, that governs SWI is unambiguous in assigning authority, responsibilities and purpose; the instrument provides legitimacy to the private area.

Although it has not been formally designated as such, this PPA is referred to as an ecological reserve for scientific and education purposes and it is to be protected in perpetuity on behalf of the public interest. That TLC has made a commitment to a fiduciary and trustee, rather than proprietary, relationship reinforces the legitimacy of the governance regime for this PPA. The commitment to the public trust not only ensures that the organization remains accountable to its beneficiaries for the management of resources that are held in trust, but that this commitment directly shapes the governance regime for SWI and for TLC.

4.7 Ni'iinlii' Njik (Fishing Branch) Settlement Land, Vuntut Gwitchin First Nation Traditional Territory, Yukon

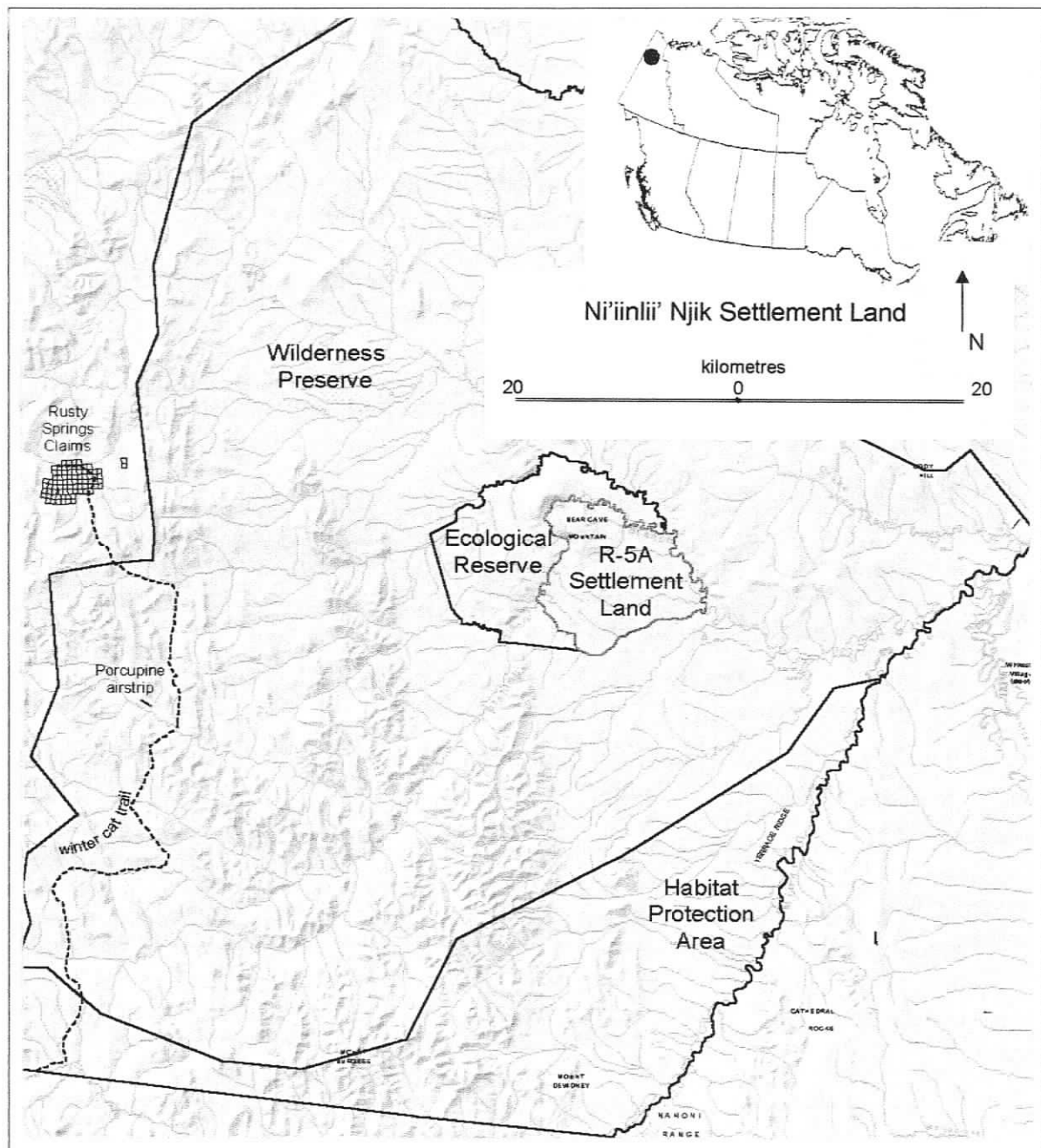
4.7.1 Background

The Ni'iinlii' Njik (Fishing Branch) Settlement Land (N'NSL) – the traditional name meaning “where fish spawn” - is located in northern Yukon and in the Traditional Territory of the Vuntut Gwitchin First Nation (Figure 7).²¹⁴ It is extremely remote, relatively undisturbed and culturally significant to the Vuntut Gwitchin. Its ice-free waters, a product of karst topography and thermal exchange, create a unique micro-climate that supports a highly productive chum fishery and concentrations of grizzly bears rarely seen at the Arctic Circle.

The N'NSL arose out of the settlement of aboriginal land claims. Approximately 14,322 hectares of Settlement Lands, as negotiated under the 1993 Vuntut Gwitchin First Nation Final Agreement, were provided, along with 16,970 hectares set aside by the Yukon Government for an Ecological Reserve, in order to establish the 31,292 hectares Ni'iinlii' Njik protected area. This area was also designated in the Final Agreement as a Special Management Area.²¹⁵ The Final Agreement recognizes three legislative bodies with varying powers of paramount authority, land tenure and management responsibility: the Vuntut Gwitchin for its Settlement Lands and traditional rights, the Yukon Government for ecological reserves and the Government of Canada for sport and commercial fisheries. Under the Final Agreement the N'NSL is to be managed as “an ecological unit” so as “to recognize and protect traditional and current use by the Vuntut Gwitchin”.²¹⁶ Such an approach calls for not only the coordinated application of legislation among the three authorities, but also for an entirely new form of governance to allow individual interests and concerns to be addressed in an effort to meet shared goals.

The settlement of land claims also conferred upon the Vuntut Gwitchin First Nation land ownership; as the Final Agreement states, the Vuntut Gwitchin First Nation is the “owner of Settlement Land”.²¹⁷ Registration of title to “Fee Simple Settlement Land” and to fee simple title in Mines and Minerals rests within the Land Titles Office in the Yukon Territory.²¹⁸ These Settlement Lands confer on the Vuntut Gwitchin First Nation “the

Figure 7. Ni'iinlii' Njik (Fishing Branch) Settlement Land, Vuntut Gwitchin First Nation Traditional Territory, Yukon



Source: Vuntut Gwitchin Government and Yukon Government. 2004. *Ni'iinlii'Njik (Fishing Branch) Wilderness Preserve and Habitat Protection Area Management Plan*. Yukon: Queen's Printer.

rights, obligations and liabilities equivalent to fee simple” and “fee simple title in the Mines and Minerals, and the Right to Work the Mines and Minerals”.²¹⁹ These lands are expressly not Reserve Lands and they contain the scope of rights and responsibilities associated with fee simple lands. There is no legal distinction between fee simple lands and these First Nation lands. It is in the assignment of rights and obligations of fee simple lands, that the lands become fee simple lands.

Under land claims and modern treaty agreements, lands are not *granted* to the First Nation from the Crown; grant of fee simple title is an expression commonly used when Crown lands are disposed. Granting of lands is inconsistent with First Nation understanding of the previous status of the land; lands did not belong to the Crown and therefore the Crown cannot give away that which made up traditional land and land which the Crown never owned. The wording, “to confer”, that is used in the Final Agreement, permits the parties to recognize that the title is fee simple by virtue of the content of rights and obligations the title conveys without referencing the source of the title.

As fee simple lands, these are private lands. Fee simple title represents the most robust and expansive form of private ownership. There is no residual interest accruing to any party other than the named owner. In particular, the lands are no longer public lands, which in Canada, means they are no longer Crown lands. Public land includes all or any part of land (including land covered by water) that is not privately owned in the Province or Territory. Public lands are controlled and managed by the provincial or federal government, or creatures of these governments.

There are two significant distinctions that must be made about Vuntut Gwitchin Settlement Lands as compared to fee simple lands. First, in the case of Category A Settlement Lands – lands designated to the Vuntut Gwitchin under the Final Agreement – title to the mines and minerals, that is, the surface and sub-surface rights, is also conferred. First Nations are free to develop and benefit from these lands, should the General Assembly consent. This is not a feature of lands held by private interests, but rather of governments.

These Settlement Lands also share another important distinction from fee simple lands: the Vuntut Gwitchin Constitution is explicit and states that the Settlement Lands “shall not be sold”. This is a privilege that the Vuntut Gwitchin First Nation have chosen to exercise. While their rights of ownership entitle them to a bundle of rights – among others, control and use of the property, its benefits, power and authority to exclude, as well as the sole authority to transfer to sell the property, subject to the general laws of application – the Vuntut Gwitchin have expressly provided that Settlement Lands shall not be diminished in their scope. The enjoyment of the benefits of the land is exclusively the right of the Vuntut Gwitchin, a necessary and defining characteristic of private lands. As ownership interest is into perpetuity, the Vuntut Gwitchin have elected to be permanently bound to the Settlements Lands through its constitutional provisions. The Vuntut Gwitchin have elected to exercise their benefit in a distinctive and unique manner which sets the Vuntut Gwitchin apart from conventional governments and private interests. Those bodies regularly dispose of their lands. Despite legislative provisions governing public protected areas, for example, it has been previously commented that permanent protection of boundaries or of status is subject to change either through legislative or regulatory action. The Vuntut Gwitchin are not precluded from acquiring or holding interests in Non-Settlement Land.

The management powers governing the Settlement Land are discretionary and include, for example, enactment of by-laws, land management programs, rents and fees for use and occupation and records of interests.²²⁰ These arrangements, however, have no effect on the status of ownership.

The Final Agreement specially created a governance system for the Vuntut Gwitchin Settlement Lands and it also enabled title holders to express and manage their interests over these lands. The modern treaty respecting the Vuntut Gwitchin represents a new and novel form of governance over their lands. The Final Agreement’s dedication of formally authorized First Nation Settlement Lands to create a protected area is believed to be the first, and only, occurrence in Canada in which the protected area remains as Settlement Lands with a distinctive governance regime where continuing rights, titles and interests are asserted. Unlike other cases in this research, the Vuntut Gwitchin First Nation is not a private sector interest *per se* but rather a newly established and emerging government with a cultural tradition of governance that has not been widely recognized

by conventional regimes. The formal and administrative engagement by First Nation communities in protected area management is anticipated to become more dominant in the future (Dearden and Berg 1993). Under the Settlement Agreement, the Vuntut Gwitchin have the legal authority to make decisions about their Settlement Lands and they have significant rights pertaining to the Ecological Reserve. The focus of this case is on the governance and authority of the Vuntut Gwitchin - their rights and obligations, decision-making processes - and the benefits and constraints that may flow from the Settlement Lands as they contribute to the Ecological Reserve.

4.7.2 Protected Area Values

The N'NSL is located in a dry, cold northern region which escaped glaciation in the last ice age. The confluence of the north and south fork of the Fishing Branch River, part of the Porcupine River drainage, divides the Settlement Lands, located east and south, from the Ecological Reserve, located west and north.

The limestone mountains, and associated chemical weathering, have not only produced a rare concentration of natural resources, but have also influenced the development of significant cultural and archaeological values. Karst landscapes and underground drainage, cavities and passages that are found in the south fork of the Fishing Branch River, allow for the storage of summer thermal energy. This enables warm groundwater springs to keep the sections of the river free of ice all year, in spite of severe ambient winter conditions. Spring-fed water disappears into gravels of the stream's bed, only to re-emerge downstream. As these warm waters seep over the gravels and the forest floor, they not only provide a steady flow of oxygenated water for fisheries, they also create unique permafrost-free conditions and an island of temperate forest in an otherwise northern environment.

These factors interact to make the Fishing Branch River a highly productive salmon fishery – in fact it is one of the most significant chum salmon spawning areas in the entire Yukon River drainage.²²¹ The loose gravel beds in which the salmon deposit their eggs and the warm upwelling water that incubates the eggs and prevents them from freezing have enabled a record 355,000 chum escapements in 1975. Recent annual escapements, however, are much lower, with the last decade typically producing only

about 25,000 escapements.²²² Under the auspices of the Pacific Salmon Treaty, restoration of the Yukon chum salmon fishery is under development and interim escapement goals for the Fishing Branch River have been set at 50,000 to 120,000.²²³

This concentrated food source attracts and supports the highest known seasonal density of grizzly bears associated with large, relatively undisturbed northern regions.²²⁴ During the peak of salmon spawning in the fall, generally beginning mid-September to early November, grizzly bears congregate to feed on the salmon. The area also includes a spring migration route of the Porcupine caribou herd and supports sheep, moose, raptors and a wide variety of other wildlife. In the early 1950s, Otto Geist, a University of Alaska researcher, proclaimed "This is truly a naturalists paradise, and trappers and hunters too, of course!"²²⁵ In 1975, the International Biological Program assessed the Fishing Branch area.²²⁶ In 1991, the World Wildlife Fund identified the area as an integral part of a proposed Carnivore Area.²²⁷

The chum salmon run historically supported subsistence activity for the Vuntut Gwitchin, and it is the mainstay for the modern day aboriginal fishery located near Old Crow. The fishery also contributes significantly to Alaskan commercial and subsistence fisheries in the Yukon River, downstream of the mouth of the Porcupine River.²²⁸

The Vuntut Gwitchin have a long and important association with the N'NSL and are deeply connected to it. They hold the area in high regard and it is an integral part of their cultural and spiritual heritage; it is valued as a sacred area and "as a source of life where ecological interactions must not be disturbed".²²⁹ Tradition has it that the abundance of food at N'NSL provided a source of sustenance during times of resource scarcity and that it served as a place of survival and refuge. An important part of the history of the Vuntut Gwitchin is the legend of Kuihenjik, the great Vuntut Gwitchin warrior, who spent his last days at Bear Cave Mountain along the Fishing Branch River, after seeking retribution for his brother's death. Ultimately, the warrior met his own fate, "and to this day the river does not freeze in that place where he threw his entrails".²³⁰

Vuntut Gwitchin Elders have related that the Fishing Branch area provided tremendous trapping, fishing and hunting opportunities. Oral history provides that the

area was rich with salmon and grizzly:

“I tell story one time it over there in that mouth you see, that’s where my old man said he went to that Fishing Branch, that open place. Fish, king salmon, I guess other one, we call it dog salmon and that one just dies there that open place. He goes pass their wintertime when he’s trapping lots of grizzly dens close to there. Lots of grizzly bear eat, and eat and eat in that water, he go to that open place, even look thick, even white, because of that fish is dead”.²³¹

The Fishing Branch area is also seen as an area that can provide sustenance for future generations, particularly during difficult times. Nearby villages that housed the Vuntut Gwitchin and cabins in the immediate area, no longer in evidence, provided a base from which the Vuntut Gwitchin could conduct their lives in the Fishing Branch area. Stories have been told about the wonderment of the caves inside Bear Cave Mountain and the anxiety of confronting denning Grizzly Bears. The Elders have identified Gwitchin place names for a large number of geographical places of activity and interest, which further highlights their reliance upon the area, and its importance to the culture and tradition of the Vuntut Gwitchin.

As a result of the karst formations, caves can be found in the surrounding Northern Yukon region; they are a repository of significant archeological findings. One of the more notable caves is Bear Cave Mountain located on the Settlement Lands of N’NSL. It is extremely well preserved and noted as being the largest and one of the oldest caves in the Yukon. It is currently managed as an archaeological site. Its cold and dry environment is ideal for preserving paleontological information, which has been dated back to the time of the formation of the caves, more than 2 million years ago. Bison and mammoth bones, estimated to be more than 10,000 years old, have been found inside caves of the Bear Cave Mountain area. Undocumented caves have also been recently discovered immediately south of Bear Cave, but, despite the presence of a wooden bridge at the mouth of a cave, evidence of human activity is not well understood. It is suggested that, the low elevation limestone bedrock outcrops that are found in the Fishing Branch region, contain tremendous potential for evidence of human activity and sites related to Gwitchin history. Archaeological evidence from nearby caves outside of N’NSL – altered caribou and mammoth bones – suggests human occupation dating to 20,000 years. These bones are now considered to be the oldest evidence recovered to date of human occupation in the New World.²³² Caves on the Settlement Lands are used by grizzly bears as winter den sites. Information in the caves in the Settlement

Lands and nearby areas could further reveal understanding about the dispersal of biological communities and human populations in North America.

Oil and gas development, commercial logging and all road development activity is prohibited in the N'NSL. Natural fires are allowed, provided they do not threaten life or approved structures. Infrastructure is limited to a fish counting weir, which has been in place since the early 70s, and cabins are currently being built for bear viewing opportunities during specified periods. Access to the area is extremely difficult and largely restricted to helicopter and winter dog-sled. Formal visitor statistics have not been collected and use is believed to be infrequent, highly sporadic and limited to access requests to determine the commercial potential for grizzly bear viewing. Although the area is not actively promoted as an ecological benchmark site, scientific and research monitoring is allowed. Both historical and contemporary activities are contributing to a growing knowledge base. The Vuntut Gwitchin retain the right to harvest wildlife and to fish in the Ecological Reserve, as well as on their Settlement Lands. They have, however, voluntarily agreed to forego hunting and fishing in the area, in an effort to bring greater appreciation to the non-consumptive values of wildlife and, in the case of fisheries, to allow depleted stocks to recover to sustainable levels. Controlled fish harvesting occurs downstream on the Porcupine River.

The N'NSL also forms the core of a much larger protected area, a consequence of the Yukon Protected Areas Strategy and direction outlined in the Final Agreement, which contemplates the management of future Special Management Areas.²³³ The goals of the larger Ni'iinlii' Njik (Fishing Branch) Wilderness Preserve and Habitat Protection Area are to provide a protection buffer around the core Settlement Lands and Ecological Reserve, to enhance representative ecological systems and to extend protection to the entire Fishing Branch watershed. The area, comprising approximately 670,000 ha, recently received regulatory approval.²³⁴ Although it is comprised of four different administrative land parcels managed under different legislative authority and subject to different development standards, the area is to be managed as one ecological unit. The management focus is to "foster(s) a spiritual connection to and respect for the water, land and wildlife and promote(s) stewardship of the area by all".²³⁵

Other formal protected areas adjacent to the Settlement Lands and in the Traditional Territory of the Vuntut Gwitchin include Vuntut National Park and the Old Crow Flats Area, both of which are administered as Special Management Areas, as provided for in the Final Agreement.²³⁶ A review of the park and surrounding special management area by the National Round Table on Environment and Economy suggests that areas were established as a consequence of a convergence of common interests, mutual trust and respect between the Vuntut Gwitchin and the government of Canada. However, interpretations by the parties respecting their governing authorities and roles necessitated the signing of a Cooperation Agreement in 2000 by the Vuntut Gwitchin First Nation, North Yukon Renewable Resources Council and Parks Canada.²³⁷

The Ecological Reserve was formally designated as Ni'iinlii' Njik (Fishing Branch) Ecological Reserve pursuant to a 2003 regulation of the Yukon government, enacted under the recently proclaimed *Parks and Land Certainty Act*.²³⁸ Under that legislation, the purpose of an ecological reserve is "to protect an area of unique natural significance, unique ecological characteristics or importance for a population of rare or endangered flora or fauna which is intended to remain in its natural state". The legislation gives the Yukon Government the legal authority to manage lands within a protected area established under land claims agreements. Regulations to prohibit mining and oil and gas development in the Ecological Reserve were also brought into effect.

The Settlement Lands were designated under the Final Agreement and are subject to the Yukon *Land Claim Final Agreements Act*, the legislative instrument that gives direct effect to and declares valid the Vuntut Gwitchin First Nation Final Agreement. Under the 1993 Vuntut Gwitchin Self-Government Agreement and supporting legislation, the Settlement Lands will also be subject to the Vuntut Gwitchin Land and Resources Act and the Vuntut Gwitchin Fish and Wildlife Act. This legislation is currently under development and expected to be brought into force in the near future.

In view of the objectives set for the Settlement Lands and Ecological Reserve, notably the protection of biodiversity and traditional activities, IUCN Category Ia - Strict Nature Reserve offers classification potential where an "area of land...possess(es) some outstanding or representative ecosystems, geological or physiological features and/or species, available primarily for scientific research and/or environmental monitoring".²³⁹

IUCN Category III – Natural Monument also offers classification potential. In this case, the area “contain(s) one, or more, specific natural or natural/cultural features which is of outstanding or unique value because of its inherent rarity, representative or aesthetic qualities or cultural significance”.²⁴⁰ The vital cultural connection and traditional interaction between the Vuntut Gwitchin and the land surrounding Bear Cave Mountain is of central importance to this classification potential.

4.7.3 Governance Regime

Direction

The evolution of the N'NSL is embedded within a renowned administrative history. The area is in the Traditional Territory of the Vuntut Gwitchin First Nation.²⁴¹ In spite of this occupation, much of the area surrounding N'NSL was first enacted as a 400,000 hectare Game Preserve in 1972 under the Yukon Territory Game Ordinance. The objective of this designation was to protect the headwaters and spawning grounds of the Fishing Branch River from detrimental activities. The passage of the Yukon *Wildlife Act*, however, discontinued the Game Preserve as an administrative instrument and in 1974, an unsuccessful application was made to distinguish the area as a Recreation Reserve, under the auspices of the Yukon Tourism and Information Branch. While the Vuntut Gwitchin may have indirectly benefited from such authorizations, they were not formally consulted, nor did they have authority to reject or approve such authorizations. As land claim negotiations began to gain momentum in the 1970s, however, formal enactments without Vuntut Gwitchin authority could not be completed. In 1984, the Settlement Lands, including Bear Cave Mountain, received an interim protection by a federal Order in Council, which enabled the land to receive interim protection until land claim negotiations were completed.

Negotiations were completed in 1993. Under the Vuntut Gwitchin First Nation Final Agreement, the Vuntut Gwitchin formally agreed to manage their Settlement Lands consistent with the management principles established for the Fishing Branch Ecological Reserve. The effect of this decision was to create a larger protected area than otherwise would have been established.²⁴²

Three agreements set the management framework for N'NSL: the Vuntut Gwitchin First Nation Final Agreement; the Ni'iinlii Njik (Fishing Branch) Ecological Reserve & Settlement Land R-5A & S-3A1 Management Plan; and the Vuntut Gwitchin Self-Government Agreement.²⁴³ They provide respectively for the establishment, implementation, and decision-making structures and institutions for the N'NSL.

The Final Agreement signed by the Vuntut Gwitchin First Nation and the Governments of Canada and Yukon took over 15 years to negotiate. The Agreement provides for, among others, the establishment of the Fishing Branch Ecological Reserve as a "Special Management Area" - a term reserved under the Final Agreement for those areas identified and established within the Traditional Territory of a Yukon First Nation. The Final Agreement took legal effect in 1994.

The Final Agreement provides for the selection and allocation of Settlement Land for the N'NSL. As the most significant outcome of negotiations and as part of an overall benefits package, it is recognized that land is fundamentally important to the First Nation's cultural identity, traditional values and life style, as well as providing a foundation for self-government. In total, 7744.06 sq km of Settlement Lands were allocated to the Vuntut Gwitchin First Nation, representing approximately 30 per cent of the Category A Settlement Lands allocated to all Yukon First Nations. Such Settlement Lands confer on the First Nation all the rights, obligations and liabilities commonly associated with fee simple lands. The significant difference, however, is that in the case of Category A Settlement Lands title to both surface and sub-surface rights, not just surface rights, is also conferred upon the First Nation.²⁴⁴ The Final Agreement also stipulates that, "a Special Management Area may not include Settlement Land without the consent of the affected First Nation".²⁴⁵

The Vuntut Gwitchin First Nation agreed, through their General Assembly, to the allocation of Settlement Lands Parcels R-5A and S-3A1, at 143.12 sq km and 1 sq km respectively, to adjoin the Fishing Branch Ecological Reserve. The decision was not a difficult one. Through their oral testimony, their deep attachment to the area and obvious evidence of use is readily confirmed. Under this agreement, the Vuntut Gwitchin retains authority to manage their Settlement Lands and to govern subsistence hunting, fishing and trapping by its Citizens on the Ecological Reserve and Settlement

Lands. This agreement also required that the “Vuntut Gwitchin First Nation shall manage Parcels R-5A and S-3A1 in a manner consistent with (a number of) principles”.²⁴⁶ These principles respect ecosystem management, First Nation traditional and current use, and protection of biodiversity.

More significantly, this consent also required that the Vuntut Gwitchin forego the economic potential that could flow from the surface and sub-surface rights in this area. They agreed that in the Settlement Lands oil and gas development “will not be allowed” and lands are “not available for mining”, and through this action, they made a demonstrable commitment to conform to the management principles.²⁴⁷ The Parcels R-5A and S-3A1 represent approximately 2 per cent of total Vuntut Gwitchin Settlement Lands. As noted, this arrangement is believed to be the first and only type of its kind in Canada to be negotiated as part of a First Nations land claims agreement.

The Final Agreement calls for the development of a management plan. Three significant aspects in the Final Agreement set the policy framework for the development of the management plan.²⁴⁸ First, no lands shall be removed from the Ecological Reserve without the consent of the Vuntut Gwitchin First Nation, reflecting a critical shift in decision-making authority from that previously witnessed for the area and a virtual guarantee that the Ecological Reserve will not be subject to capricious action. Second, it outlines principles that integrate First Nation requirements and values into an ecosystem management approach, suggesting a search for balance between cultural and ecological systems. Third, there is requirement for regularly scheduled reviews by the Government and the Vuntut Gwitchin First Nation, no later than five years after its initial approval and at least every 10 years thereafter, ensuring that actions remain timely, relevant and reflective of the views of the major parties.

The Management Plan was developed in 2000 and amended in 2004 to reflect agreed upon changes in the location of the wildlife viewing area. The plan provides for the implementation of management principles, guidelines for planned activities, as well as an administrative structure responsible for oversight of the N'NSL.

The 1993 Vuntut Gwitchin Self-Government Agreement brings further certainty to the Final Agreement and to the exercise of jurisdiction over lands within the Traditional

Territory. It enables the effective management and administration of the rights and benefits secured by the Final Agreement. To that end, it allows for the development of self-government legislation that will authorize the action and activities to be undertaken on the Settlement Lands for the N'NSL. An administration agreement between Vuntut Gwitchin and Yukon is expected to ensure harmonization and consistency between the respective authorities.

The Self-Government Agreement also recognizes that traditional decision-making structures have played a significant role in the political and cultural life of the Vuntut Gwitchin. There is strong desire to maintain these structures. There is also support for contemporary and evolving political institutions that are tailored to the needs and aspirations of the Vuntut Gwitchin. At the core of the Self-Government Agreement there is recognition and "wish to protect a way of life that is based on an economic and spiritual relationship between Vuntut Gwitchin and the land".²⁴⁹

If the genesis of the N'NSL lies in the fair resolution of settlement claims, its future direction lies in protection and stewardship actions; sustainability principles and values are to guide management. The Final Agreement dictates that "the management of the Parcel by Vuntut Gwitchin First Nation shall be consistent with the (following) management principles":²⁵⁰

"to manage the Ecological Reserve and Parcels R-5A and S-3A1 as an ecological unit;
to recognize and protect the traditional and current use of the Ecological Reserve by Vuntut Gwitchin;
to protect the full diversity of Wildlife populations, particularly salmon and grizzly bear;
to protect the habitat from activities which may reduce the capacity of the Ecological Reserve to support Wildlife; and
to preserve the integrity of the natural landforms, geology, hydrology and special features of the Ecological Reserve".²⁵¹

These principles provide the policy and implementation framework for the N'NSL and direct management activity for 15 different areas, including among others, access, wildlife viewing, management of food and garbage, facilities and wildfire, with a view to minimal impact.

An obvious emphasis in the Management Plan is placed on hunting, trapping and fishing. The management direction is to minimize such activity so as to sustain the diversity of wildlife, avoid conflict and maintain optimum bear viewing opportunities. To this end, grizzly bear hunting is closed to residents and non-residents; other species can be hunted only when permitted by regulation. For the Vuntut Gwitchin, the protection of traditional and current use is fundamental to negotiated settlements and they maintain the right to harvest wildlife and trap in the Ecological Reserve, as well as on their Settlement Lands for subsistence purposes.

As noted above, the N'NSL is managed in conjunction with the adjacent Wilderness Preserve and Habitat Protection area. Although comparatively small, the significant values embedded in N'NSL dictate the management direction of the larger area. The key objectives of the Wilderness Preserve and Habitat Protection area include the protection of the Fishing Branch River and the maintenance of natural population levels of grizzly bear, which gather seasonally at Bear Cave Mountain.

The greatest risk identified for the N'NSL arises from the wildlife viewing of grizzly bears, which invites liability to humans, environmental damage, as well as impacts on the grizzly bear populations. Although long established in British Columbia and Alaska, commercial bear viewing has to date not been conducted in the Yukon. The Management Plan states that "commercial operations shall not be allowed to operate on the Ecological Reserve, R-5A or S-3A until a risk management plan has been completed for the management area".²⁵² A plan is currently under preparation and requires the approval of no less than five authorities, including that of Vuntut Gwitchin, and is an indication of the potential risks and benefits that this venture presents. Although the home range for grizzly bears occurs well beyond the boundaries of N'NSL and extends into the surrounding Wilderness Preserve and Habitat Protection area, the focus of the plan is on the seasonal congregation of bears in the N'NSL. The emphasis is on the "need to carefully manage viewing and other human use of the area to minimize impact to the areas ecology and risk to visitors".²⁵³

A formal cost-benefit analysis was not undertaken to assess whether or not bear viewing should be established within the N'NSL. Rather, an alternative risk management approach has been employed to mitigate for potential impacts. The

incremental and operational approach currently outlined for N'NSL employs investment in research and monitoring, the conduct of pilot studies, adherence to strict guidelines and regulations by all those engaged in the bear viewing operation. Specific attention is given to the management of escalating levels of bear-human interaction and conflict, including strict and special conditions governing the elimination of bears. There is a requirement for evaluation and review and, it is presumed that the central parties – the Vuntut Gwitchin and the Yukon Government – have the privilege to accept, reject or amend the bear viewing plan as conditions warrant and as new information emerges. Commitment to an adaptive management approach will allow modification, as required, as better research emerges or social expectations and demands change.

While respecting the authority of the respective parties, the approach to the N'NSL can be characterized as an equity partnership among Vuntut Gwitchin, Yukon and Canada. However, there have been collaborations with other parties during the political and management stages of N'NSL. For example, partnerships with the non-government organization Nature Conservancy of Canada have been struck. The Vuntut Gwitchin also participate in administrative partnerships, such as the Salmon Working Group for the Porcupine River, which oversees and advises on salmon management and harvesting plans.

The requirement to manage the area effectively as an ecological unit also demands collaborations of a more technical nature that builds knowledge and enhances understanding. The formal knowledge and information base for N'NSL is comparatively limited and is generally restricted to episodic and archival research in archaeology, history, biology, hydrology and vegetation for the surrounding region. With the exception of salmon population trends and qualitative research on bear viewing, longitudinal studies have not been conducted in the specific area of N'NSL. Partnerships with academic institutions and affiliations with government agencies, however, are expanding this base. The extensive oral history project, led by the Vuntut Gwitchin, will also considerably advance understanding of the area.

The Committee of Managing Agencies (CMA), of which Vuntut Gwitchin is a member and co-chair, provides the management oversight for the N'NSL. The importance that the Vuntut Gwitchin administration gave to the critical and early stages of establishment

and to ongoing implementation is indicated by the strong presence of its Natural Resources Department. Various administrative capacities, including the Director of Natural Resources, natural resource planners, as well as consulting expertise contracted by the Vuntut Gwitchin, are relied upon. Funding for the N'NSL is estimated at \$140,000 for initial start up and \$30,000 annually, with responsibilities to be apportioned among the CMA as agreed.

The Renewable Resources Council (RRC) also serves in an advisory capacity on the CMA. In each First Nation Traditional Territory, the RRC, with equal numbers of members appointed by the Yukon First Nation and government, serves as the "primary instrument for local renewable resource management" and "act(ing) in the public interest", it may make recommendations to the Yukon Minister and Vuntut Gwitchin First Nation "on any matters related to the conservation of fish and wildlife".²⁵⁴ The responsibilities of the RRC are extensive and also extend to the establishment of future Special Management Areas, including the recently established and adjacent Ni'iinlii' Njik Wilderness Preserve and Habitat Protection Area.

Legitimacy

Legitimacy not only includes authoritative agreements and supporting legislation, but a process that allows for expression of interest from a broad community. The Final Agreement provides that, "The development of the management plan shall include a process for public consultation".²⁵⁵ A series of public meetings were held with representation from governments, agencies and non-government organizations, many of which reside in Alaska or have international status.²⁵⁶ The general public was also invited to attend. The views and opinions of these bodies remain part of the land claims negotiation record.

Throughout land claim negotiations, it was expressed by the Vuntut Gwitchin that a much larger protected area was needed to accommodate the home range of grizzly bears and the migration route of the Porcupine Caribou herd. As interest in oil and gas development in the Alaska Arctic National Wildlife Refuge and Yukon continues to threaten caribou populations, the Vuntut Gwitchin have led an international campaign to protect the extensive winter range, migration routes and summer calving grounds of the Porcupine Caribou herd.

Mining and oil and gas potential also exist in the Wilderness Preserve and Habitat Management Area surrounding N'NSL. Resolution of a larger protected area is contemplated in the Final Agreement and a process for the management of Future Special Management Areas has been outlined. Public commentary was provided by conservation organizations and Vuntut Citizens as to the ecological and cultural significance of a large protected area and, in particular, concerning the integration between the values:

"The headwaters of those rivers come from the mountains. We use that water and there are a lot of fish in every tributary. This area we look after, as Vuntut Gwitchin, is very special to us for the migration of caribou and the other animals there. We know them like ourselves - we live with them - we take a few, watch them go through, and give them thanks...The history of our elders has taught us how to use the resources for the future. We have been told by elders to protect the caribou, the moose and everything in that area. And speak for it...Decisions for the Vuntut Gwitchin have all been made on the Caribou".²⁵⁷

A common concern expressed at the public meetings was the cumulative impact arising from potential development and impingement upon the Vuntut Gwitchin and ecosystem integrity. It was also acknowledged that there is a challenge to achieve sustainable development. With the exception of mining interests that preferred "management of mineral potential rather than exclusion", overwhelming support was expressed for the establishment of the Wilderness Preserve and Habitat Protection Area. Five years after the initial rounds of public consultation, a Management Plan for the Ni'iinlii' Njik (Fishing Branch) Wilderness Preserve and Habitat Protection Area was approved by Vuntut Gwitchin and Yukon in 2004.

Legitimacy for N'NSL is derived from a number of agreements and legal instruments. Land claim discussions in the Yukon have had a lengthy gestation period and reached a defining threshold with the 1973 Council of Yukon Indians *Together Today for Our Children Tomorrow*. It was not until some 20 years later, however, that the 1993 Umbrella Final Agreement, the 1993 Vuntut Gwitchin First Nation Final Agreement and the 1993 Vuntut Gwitchin First Nation Self-Government Agreement were negotiated and signed by Vuntut Gwitchin, Canada and Yukon. In 2000, the Ni'iinlii' Njik (Fishing Branch) Ecological Reserve & Settlement Land R-5A & S-3A1 Management Plan, was signed by Vuntut Gwitchin and Yukon Government, which brought a successful closure to three decades of difficult negotiation that witnessed the establishment,

implementation, and creation of decision-making structures and institutions for the N'NSL.

The Settlement Lands have been formally designated under the Final Agreement. They are to also receive legal authorization by the Vuntut Gwitchin, as provided for in the Vuntut Gwitchin Self-Government Agreement. For example, the proposed Vuntut Gwitchin First Nation Land and Resources Act will provide for management of Settlement Lands R-5A and S- 3A1. The proposed Vuntut Gwitchin First Nation Fish and Wildlife Act will govern subsistence harvest of fish and wildlife resources by Vuntut Gwitchin citizens on the Ecological Reserve, and the management of wildlife on the Settlement Lands, in accordance with the Final Agreement.

Notwithstanding the general rights and obligations that accompany designated Settlement Lands, these lands are also subject to a number of special conditions. As negotiated in the Final Agreement these conditions include: a reservation by Fisheries and Oceans Canada to operate a fish weir and management of Settlement Lands consistent with defined principles. They also include a right held by the Yukon to authorize the viewing of grizzly bears on Settlement Lands without payment of fees to the Vuntut Gwitchin First Nation.²⁵⁸ These conditions are currently being respected in the management and implementation strategy for N'NSL.

The Ni'iinlii' Njik (Fishing Branch) Ecological Reserve received legal authorization by the Yukon Government in 2003 under the newly enacted *Parks and Land Certainty Act* by means of an Order in Council. However, this was not the first formal authorization. The reserve was first designated under the Yukon *Lands Act* shortly after approval of the Management Plan. Authorization for any park activity, development or use permitted under this legislation and is consistent with the Management Plan is to be effected by park permit.

The N'NSL enjoys deep support from a broad section of society that is aware of its cultural and biodiversity values. Direct participants are actively engaged in expanding the knowledge base. Indirect observers, such as those associated with non-government organizations, continue to ensure that cultural and environmental values are acknowledged and appreciated. Moreover, expectations about the treatment of values

attached to N'NSL are so deeply entrenched that it would appear virtually impossible for any future conditions to suggest a reversal or substantial change to its protected status.

Although the central parties for the management of N'NSL remain accountable to their respective constituencies, they are, nevertheless, managing the lands and holding them in trust on behalf of nature, future generations and the global community. The Final Agreement stresses that the purpose of a Special Management Area is:

“to maintain important features of the Yukon’s natural or cultural environment for the benefit of Yukon residents and all Canadians while respecting the rights of Yukon Indian People and Yukon First Nations”²⁵⁹.

Fairness

The establishment of N'NSL was achieved through the settlement of land claims. That the Vuntut Gwitchin hold the area to be sacred and culturally significant and that these values were not relinquished in negotiations enabled the easy passage of N'NSL in the Vuntut Gwitchin General Assembly. Consequently, it was not necessary to access the mitigation provisions provided for in the Final Agreement when the establishment of a Special Management Area “adversely affects the rights, interests and benefits” of Vuntut Gwitchin.²⁶⁰

The establishment of N'NSL offers a means of self-identification and an opportunity to exercise the Agreement’s self-government provisions. As the Vuntut Gwitchin Self-Government Agreement proclaims, the establishment of N'NSL is a way to “recognize and wish to protect a way of life that is based on an economic and spiritual relationship between Vuntut Gwitchin and the land”.

Major conflict has not marred N'NSL. A mining claim issue, discussed below, demonstrates that a working partnership between a non-government organization and the Vuntut Gwitchin can effectively resolve a potential conflict.

In the Settlement Lands, the Vuntut Gwitchin retain the right to fish, harvest wildlife and trap for subsistence use, such as for sustenance and for traditional ceremonial purposes.²⁶¹ Commercial uses are prohibited and the principle of conservation is central to management. Pending Vuntut Gwitchin legislation will govern the management, administration, allocation and regulation of these renewable resources on their

Settlement Lands. For example, it is anticipated that non-Vuntut Gwitchin citizens seeking access to hunting or fishing activities on Settlement Lands will need to obtain written permission from the Vuntut Gwitchin. In the Ecological Reserve, the Vuntut Gwitchin retain the right to fish, harvest wildlife and trap for subsistence use.

These rights are significant and are to be applied to Vuntut Gwitchin Traditional Territory. The arrangements for N'NSL, however, are unique and depart from this negotiated right. In the N'NSL, the Vuntut Gwitchin have voluntarily elected to forego the hunting of grizzly bear and moose in order to advance non-consumptive values. Regulations to this effect are anticipated and are to be harmonized with the Yukon Government regulatory framework.

In view of the recent reduced escapements for chum salmon, the Vuntut Gwitchin have also voluntarily elected to abide by the will of the Vuntut Citizens to forego fishing for the last three years which has predictably created hardship within the community. However, fishing is expected to resume this year as escapements return to higher levels. Laws of general application apply to the non-native fishery and, in particular, fishing activity is to be conducted so as to avoid human/bear conflict.

Unlike the terms governing the Vuntut National Park, the Management Plan for N'NSL does not provide a focus on economic and employment opportunities and benefits that could flow to the Vuntut Gwitchin.²⁶² Limited reference is made to on-site personnel in N'NSL, particularly during the salmon run: "if the job criteria are met, preference will be given to VGFN members for at least one of these positions".²⁶³ Other employment opportunities that could potentially strengthen the Vuntut Gwitchin renewable resource sector in N'NSL include facility construction, trail maintenance, resource monitoring, expanded work in fisheries, commercial bear viewing, guiding, interpretation and dissemination of public information at the reception centre to be located in Old Crow.

Performance

The Management Plan states that "monitoring is an essential part of assessing and evaluating whether the Management Principles are being effectively implemented".²⁶⁴ It is recommended that strategies be implemented to monitor, for example, grizzly bear

numbers, salmon populations, ecosystem disturbance and that this monitoring be conducted over the long term. The Draft Risk Management Plan for Bear Viewing also highlights the essential role of monitoring and, in particular, calls for the collection of baseline behavioral data and the auditing of commercial wildlife viewing operations by a qualified and independent inspector.

A formal monitoring program has not been developed for the N'NSL. Early stages of plan implementation and the current low levels of visitation may be preventing its initiation. Key indicators have yet to be defined and the reporting on performance has yet to be done on regular basis. Reference studies for impacts on bear behavior are currently being put in place, indicating commitment to this governance principle. Although the Management Plan is silent on the role of local ecological knowledge, it is presumed that scientific and traditional knowledge will be incorporated into subsequent evaluations. The near challenge that the CMA will face, however, is to respond credibly to the following question: Is it getting better or worse in the N'NSL?

The Vuntut Gwitchin Government has established a Department of Natural Resources with the mission,

“To assist the responsibilities of Vuntut Gwitchin to maintain the quality of the environment while using and managing the natural resources of the Traditional Territory to meet the changing needs of the citizens in a manner that is consistent with the traditional values of Vuntut Gwitchin”.²⁶⁵

The department is staffed by seven professionals who have the responsibilities, among others, to contribute to self-governance, management of cultural and heritage resources and to enable Vuntut Gwitchin engagement in the natural resource sector. Staff include a Director, Administrator, Lands Manager, Natural Resource Planner, Game Guardian, Heritage Manager, Heritage Researcher. Two consultants are also relied upon. Perhaps most notably, the department is committed to providing effective stewardship of natural resources and quality of the natural environment in the Traditional Territory. This department is directly responsible for the implementation of the N'NSL and will shape its current and future direction. The department is currently preparing infrastructure and public information materials for the N'NSL and is documenting the cultural and heritage aspects of the area.

Trend data on salmon populations are readily available and this provides a measure of the ecological health of the Fishing Branch. However, the general absence of baseline, trend and reference information on other important factors and the lack of performance measures agreed to by the CMA, and supported by the Vuntut Gwitchin, makes it difficult to determine if the principles for the N'NSL are being fulfilled. More importantly, it is difficult to determine whether or not progress towards management of an ecological unit is, in fact, being made.

Accountability

The Final Agreement provides that in the event of disagreement among the parties in the development of the Management Plan, the final decision making authority rests with the Yukon Minister responsible for Parks. Outstanding matters are to be referred to the responsible Minister who can “accept, vary or set aside” the matter; no substantive disagreements, however, occurred in the preparation of the plan.²⁶⁶ In 2000, the Management plan received approval by the responsible Yukon Government Minister and the Chief of the Vuntut Gwitchin First Nation. The plan was recently amended to reflect the construction of buildings within the Ecological Reserve.

Authority for the N'NSL, however, is complicated by the existence of three separate powers – Vuntut Gwitchin, Yukon and Canada – all of which have legislative responsibilities and authority that create potential for jurisdictional conflict. For example, the requirement to conduct surveys of salmon stocks in the Fishing Branch River may undermine the wilderness experience of area visitors. Similarly, organized visits may invite impacts upon Bear Cave Mountain on the Settlement Lands. Although the plan merely calls for the coordinated application of legislation, this understates the demands that are made by a cooperative and equally shared governance environment. A necessary prerequisite for effective management includes, among others, mature and respectful relations, as well as a desire and political will to find a common solution. To this end, the role of the CMA takes on critical importance as it navigates the demands and objectives of the various authorities.

Although no accountability statements are specifically referred to in the Management Plan, general accountabilities are derived from the purpose statement – namely, to implement the management principles, to manage the area as an ecological unit and to

protect diversity, cultural and scientific values. In more constrained terms, Vuntut Gwitchin representatives remain accountable to the Vuntut Gwitchin First Nation for the protection of traditional and current uses in the Settlement Lands and Ecological Reserve and they are also bound by the Vuntut Gwitchin First Nation Constitution.

The N'NSL is governed by a management committee – referred to as the Ni'iinlii' Njik (Fishing Branch) Committee of Managing Agencies (CMA) - with representation from the Vuntut Gwitchin Government, as well as from other administrative agencies.²⁶⁷ It is established under the auspices of the Management Plan and is co-chaired by the Vuntut Gwitchin First Nation and the Yukon Government. Until very recently, the Deputy Chief, Director of Natural Resources for Vuntut Gwitchin First Nation served as co-chair.

The function of the CMA is to serve in an advisory capacity, with each representative being accountable to their respective agencies. As the policy framework for N'NSL has already been defined, the role of the CMA is to facilitate the effective implementation of management activities, to remain accountable to the management principles, to consider amendments and to make recommendation on public consultation and communication matters. Decision making within the CMA “will be by consensus”.²⁶⁸ The scope of CMA responsibilities also extends to the management of the larger wilderness preserve and habitat management area. This extended responsibility provides an ecological and cultural context for the N'NSL.

Actions that require decision flow to the respective agency for final authority. For the Vuntut Gwitchin, four government branches have the potential to prevail upon the N'NSL and provide the necessary policy direction: the General Assembly; the Elders Council; the Chief and Council; and the Vuntut Gwitchin Court. The General Assembly is composed of approximately 800 citizens of the Vuntut Gwitchin First Nation. Decisions of this body on policy guidelines are encouraged to be consensual in nature, and if required, by majority. The Elders Council, consisting of all Vuntut Gwitchin First Nation members who are 60 years of age or older, serves in an advisory capacity to the Council and also assists in the determination of First Nation membership.

Matters related to N'NSL, however, generally fall under the purview of the Vuntut Gwitchin Council. This body has the authority to enact laws, conducive to general

welfare and good government and has powers, *inter alia*, to set clear policies and guidelines, enact land use codes, and establish a system of laws according to the “traditions, needs and ideals of the Vuntut Gwitchin”.²⁶⁹ The Vuntut Gwitchin Court has yet to be established; it will be responsible for the adjudication of matters under the legislative authority of Vuntut Gwitchin.

For the Ecological Reserve, the responsible Minister recommends to the Commissioner in Executive Council any amendments to the Management Plan, in accordance with the *Parks and Land Certainty Act* and the provisions of the Final Agreement. It is presumed that such amendments must also receive formal support from the Vuntut Gwitchin.

Due to its isolation, as of yet there have been no enforcement issues. The Superintendent of Yukon Parks for the region remains responsible for enforcement and it is anticipated that on-site Conservation Officers will be authorized to provide direct management oversight, particularly during the bear viewing season.

Two types of checks and balances apply to the N’NSL. The first are internal measures, including a five year plan review to ensure compliance with management goals. However, given the early stages of implementation and the absence of any management issues, it is the consensus of the CMA that a formal review and assessment be postponed and be initiated only if warranted. Should matters become a point of contention amongst the parties, intergovernmental accords, between the Yukon Government and the Vuntut Gwitchin, also provide for an increasing level of administrative attention to disputes or management conflicts arising within the CMA.

The second type of checks and balances are external provisions to resolve disputes. The Final Agreement provides for the resolution by the Dispute Resolution Board of “any matter arising out of the interpretation, administration or implementation of the Settlement Agreement”.²⁷⁰ This three-member Board, comprised of appointments by the Council of Yukon First Nations, federal and territorial governments, has recently been established with the purpose of pursuing out-of-court resolution, through mediation or binding arbitration.

The management issue with the greatest potential to give rise to dispute in N'NSL is the negotiation of terms and conditions of access for grizzly bear viewing. In this case, the Final Agreement specifically provides that "failing agreement, either party may refer the matters to the Surface Rights Board for resolution".²⁷¹

The Yukon Surface Rights Board is an administrative tribunal that resolves disputes between surface rights holders - those owning or having an interest in land, and those with access rights to the land. The Board was required to be established by the Umbrella Final Agreement for the Council of Yukon First Nations. Board membership is comprised of equal numbers of nominations from the Council of Yukon First Nations and the federal government, with the latter made in consultation with the Yukon Government. The Chairperson of the Board, upon recommendation of Board members, is appointed by the Minister of Indian and Northern Affairs Canada. Dispute resolution generally advances through escalating stages of negotiation, mediation, and when jurisdiction permits, binding arbitration. The board has typically settled disputes between land owners and those with privileges on the land, for example, for trapping, hunting, mineral exploitation, and in connection with oil and gas reserves. The Board has yet to be called upon to resolve disputes related to the NNSLER. However, access to a skilled, independent and cost-effective tribunal provides a strong accountability measure.

Compliance is most likely to be achieved and disputes are most likely to be avoided when there is opportunity for open lines of frequent communication and attention to matters as they arise. To this end, management meetings are held regularly. General public communication to the public will occur at a visitor reception centre to be established at Old Crow.

4.7.4 Governance of Private and Public Interests: A Balance between Access and Protection

Access to the N'NSL is a major policy and implementation issue. It is widely acknowledged that several benefits can be derived from controlled access, such as a transformative wilderness experience, shared learning and revenue generation. However, such benefits can also invite vulnerabilities, such as disturbance to wildlife and to fragile landforms, which can erode the unique wilderness character of the area. This

conundrum has engendered, and continues to command, critical attention by the CMA and the VGFN as they seek to define the appropriate balance between access and protection in an area that is currently isolated and undeveloped.

To guide the development of a policy framework pertaining to access, research information, traditional knowledge and field experience were drawn upon. It is well accepted that roads invite unconstrained use, fragment productive habitat and disrupt the already short summer cycle upon which wildlife depends.²⁷² To this end, a mix of legislative authority and highly prescriptive non-binding guidelines for road development and public access set the framework that balances protection and access in N'NSL.

In the Settlement Lands and Ecological Reserve, mining, oil and gas development, commercial harvesting and road development are prohibited; the lands are "not open for industrial activity" in order to protect the full diversity of wildlife and habitat and to preserve the ecological integrity.²⁷³ The prohibition of oil, gas and mining development in the Ecological Reserve has been brought into force by regulation. As provided for in the Final Agreement, surface and sub-surface rights have been assigned to the Vuntut Gwitchin in the Settlement Lands and was part of the negotiated land claims agreement. Despite the potential that could flow from this substantial economic provision, the Vuntut Gwitchin have agreed through a resolution in their General Assembly, that, in the Settlement Lands, oil and gas development "will not be allowed" and that lands are "not available for mining".²⁷⁴ The relevant Vuntut Gwitchin legislation, the Vuntut Gwitchin Land and Resources Act, will give authoritative effect to this policy intent.

Concern by the Vuntut Gwitchin that mining impacts would seriously undermine the ecology of the area received critical attention subsequent to the establishment of N'NSL. A half dozen quartz-zinc mining claims, known as Rusty Springs, located west of N'NSL but inside the then proposed Wilderness Preserve, were staked and threatened protection goals under the historic Yukon Protected Areas Strategy. An agreement between the Vuntut Gwitchin First Nation, the Nature Conservancy of Canada, a non-government organization with previous experience in the area, and Eagle Plains Resources Ltd., the mining company, culminated in a removal of the mining claims. Monetary compensation, by the two parties, was provided to the mining company. Some 81 claims covering 700 ha, however, continue to lie immediately outside the

western boundary of the Preserve and their viability is to be confirmed in the immediate future. Winter access to these claims, through a winter cat trail in the Wilderness Preserve, is permitted and limited to “future contiguous expansions of the existing claim for development and exploration purposes”.²⁷⁵

Current policy prescription for both the Settlement Lands and Ecological Reserve prohibits road development, recreational off road vehicles, landing strips for fixed wing aircraft, as well as trail construction and random foot paths that are likely to have an adverse effect. There is no road access to N’NSL - the Dempster Highway is 100 km to the east – and it has not been necessary to formally collect visitor statistics. Visitors, however, albeit infrequent, have been known to access the area on dog sled during winter months. Contemporary use of the area has generally been limited to scientific studies. Enforcement has not been an issue and to date no penalties have been levied.

Although there is consensus among Vuntut Citizens, and the general public for this scope of control over access, the prospect of grizzly bear viewing, however, presents a more complicated matter. The area supports one of the Yukon’s densest concentrations of grizzly bears, which congregate during the fall chum salmon run. They are dependent upon a larger habitat area surrounding the Fishing Branch, which supports the grizzly bear population throughout the year.²⁷⁶ It is acknowledged that there is a potential for enhanced visitor appreciation, as well as revenue generation from permit fees that can potentially flow back to the Vuntut Gwitchin and Yukon government. However, limiting the impacts on bear behavior and fragile archaeological sites, as well as respecting the sacred values that are deeply held by the Vuntut Gwitchin, forms the core of the developing management strategy. It is declared that “viewing is secondary” and tremendous care is being exercised so as to avoid a tragic choice.²⁷⁷ Although it is not a formal policy, the 1997 Yukon Grizzly Bear Management Guidelines prepared by a Yukon intergovernmental management team has provided a basis for the developing bear viewing strategy.²⁷⁸ These Guidelines are to be amended based on new and additional information, including local and traditional knowledge and experience.

Management guidelines provide that public access is to be highly controlled on the Settlement Lands and Ecological Reserve through a carefully screened permitting process. During the non-congregation period of November to August, visitors will be

required to secure a permit for access to the Settlement Lands and Ecological Reserve and will be able to access the area by non-motorized means or by helicopter.

During the fall congregation period of September to October, however, visitor access will be available only by commercial guiding. The size of group and length of stay is to be highly regulated.²⁷⁹ The process to allocate limited visitor permits remains uncertain. Helicopters will require a landing permit that is restricted to a confined area in the Ecological Reserve and Settlement Lands. Infrastructure and viewing sites, initially slated for the Settlement Lands, are now located on the Ecological Reserve to provide safer and more exciting viewing opportunity.²⁸⁰ Visits to Bear Cave Mountain are expected to be included in the commercial bear viewing opportunity.

Authorizations for commercial access to bear viewing are to be issued by the Yukon Government, subject to Vuntut Gwitchin approval. A formal policy on commercial fees in the Ecological Reserve has yet to be determined by the Yukon Government or by the Vuntut Gwitchin Government for their Settlement Lands. The ability to collect fees in their Settlement Lands will be governed by Vuntut Gwitchin legislation and subject to Vuntut Gwitchin regulatory authority. It is expected that issues are to be addressed by the CMA and that equity on revenue generation from commercial bear viewing will be assured.

Unlike the agreement negotiated for the adjacent Vuntut National Park, where various economic and employment opportunities for the Vuntut Gwitchin are set out, relatively few provisions are as well defined in the Management Plan. As a consequence, the Vuntut Gwitchin have subsequently established the independent and arms-length Vuntut Development Corporation with a for-profit mandate. This agency has recently entered into a partnership with a private party interested in commercial bear viewing in the N'NSL, with the obligation to flow 50 per cent of benefits back to the Vuntut Gwitchin. This indirect flow of benefits from eco-tourism may, it is argued, "pave the way for increased tourism opportunities in the Vuntut Gwitchin traditional territory resulting in more traditional economic opportunities for the citizens of Old Crow".²⁸¹

A visit to the Fishing Branch is not without high risk. As a consequence, liability waivers, informed consent and extensive insurance coverage for general visitors and

commercial operators are required. Future public information and education programs are also intended to communicate the risks associated with N'NSL. It is presumed that liability is born by the two major parties.

Although bear viewing is a non-consumptive activity that was previously assumed to have little or no impact on the health of the animals or welfare of the population, current research is examining this assumption.²⁸² One of the greatest risks that bear viewing may invite is behavioral change that can upset feeding habits, displacement and reproduction. As the grizzly bears in the N'NSL are believed to have one of the lowest replacement rates in North America, the effects of bear viewing remains an overarching concern. Bear habituation, that is, tolerance to humans, has occurred in the N'NSL for about 10 years, largely as a result of reconnaissance studies to determine the potential for bear viewing activity. Preliminary evidence suggests that, while some habituation appears to have occurred, its impact is unknown.

The challenge that a successful viewing program must confront is the habituation of bears such that the risk to humans and disturbance to bears is minimized. It is based on the assumption that highly habituated bears perceive humans as neutral and non-threatening and are considered less dangerous than non-habituated bears. To this end, reference studies are being implemented to establish a base-line for monitoring change and behavior in the grizzly bear population.²⁸³ What remains to be seen, however, is the extent to which baseline information is used to set limits on human viewing capacities and the balance that will be struck between ecological sensitivities and social interests to determine the carrying capacity for the area.

The decision to allow bear viewing is contingent upon the ability to manage risk and potential conflict. Thus, the policy question, "should bear viewing occur?" is dependent upon the operational and implementation question, "how will bear viewing be conducted?". The Committee of Managing Agencies has committed to an adaptive management approach that recognizes that the future cannot be predicted perfectly and works to the following simple adage: expect the unexpected. As better information becomes available, experience expands and social expectations evolve, modifications to the strategy are anticipated, including the potential for revocation of permits and closure of the bear viewing operation if warranted.

In view of the many risks and benefits and potential for conflict, the Management Plan for the N'NSL calls for the development of a risk management plan that addresses impacts and operational contingencies for bear viewing. The Final Agreement also buttresses this direction and states:

“Yukon shall negotiate with Vuntut Gwitchin First Nation the terms and conditions of access for Grizzly Bear viewing which shall include public health and safety considerations and the identification of limited camping and viewing areas, and failing agreement, either party may refer the matter to the Surface Rights Board for resolution”.²⁸⁴

This plan is also to be developed and approved prior to allowing commercial operations within the Settlement Lands and Ecological Reserve. The Risk Management Plan is currently in the final stages of development and, should it receive the necessary approvals from the five participating agencies, it is anticipated that commercial bear viewing will begin in the fall of 2006.

The Committee of Managing Agencies serves in an advisory capacity for the development of the Risk Management Plan, and once approved, will oversee its implementation. In view of the inherent risk and potential to undermine the objectives for N'NSL, departure from the plan may be required, outside of regularly scheduled review periods.

The land claims settlement allows for subsistence wildlife hunting. However, the Vuntut Gwitchin First Nation have voluntarily chosen to forego hunting of grizzly bear in their Settlement Lands and in the Ecological Reserve, so as to enhance the opportunity for viewing and appreciation of an animal that figures largely in their traditional and contemporary culture. Although it was a close majority, this decision was not unanimous among all Vuntut Citizens, and is testimony to the challenge that a new shift in tradition presents. It is expected that this direction to voluntarily forego hunting will be formally authorized by regulation. It remains to be seen, however, if this action will bring a greater appreciation of the ecological and cultural values that most Vuntut Gwitchin desire.

4.7.5 Summary

The N'NSL adheres to a majority of governance principles. Direction is provided in recently prepared management plans and legitimacy is provided from three bodies of government via legal agreements. The achievement of fairness, at least in a specific historical context, has been achieved as potential opposition interests were addressed. While performance measures have yet to be implemented with rigor, accountability to the Vuntut Gwitchin constituency will likely encourage stronger adherence to this principle.

The most distinctive feature of N'NSL is the autonomous and independent governance regime that applies to the Settlement Lands and the commitment of this regime to conservation and protection. The protection mandate relating to these core Settlement Lands has also exerted a tremendous influence on surrounding lands to which other authorities contribute and has launched a system of protected areas for the Fishing Branch watershed and the headwaters of the Porcupine River. That these Settlement Lands arose out of land claims negotiations and now rest under Vuntut Gwitchin First Nation authority reflects the critical importance of land to achieving social, cultural and economic aspirations and the tenacity of the Vuntut Gwitchin to exert responsibility and real control over their Traditional Territory in perpetuity. The framers of the Vuntut Gwitchin First Nation Constitution captured this desire to exercise the inherent right to self-government and acknowledged that "having boundless pride in our ancient cultural heritage and ancestral homeland...provide(s) for the good government of...lands and resources".²⁸⁵

A formal protected area typology or classification has not been established for the Settlement Lands. Contractual and binding arrangements, however, have committed the lands to some of the highest of protected area principles and objectives. These principles include: the protection of ecological diversity and environmental integrity; the provision of traditional and contemporary use by the Vuntut Gwitchin; and ecosystem management. For this latter principle, the Settlement Lands are to be managed as a part of a larger ecological unit, rather than as a separate administrative land parcel, they are to incorporate scientific, as well as traditional knowledge and they are to integrate

traditional use in an ecological context. The Settlement Lands are also committed to performance monitoring and adaptive management as conditions warrant.

The Vuntut Gwitchin have voluntarily elected to forego hunting of grizzly bear and moose and fishing of chum salmon in the N'NSL to bring greater attention to non-consumptive values and recovery efforts. The Vuntut Gwitchin have also directed that, despite enabling provisions in the Final Agreement, no oil and gas or mining activity will be allowed in the Settlement Lands. Further, the Vuntut Gwitchin provided compensation to remove the spectre of surface mining located near the core lands. Will such demonstrable actions allow for protection in perpetuity for the lands surrounding the core Settlement Lands? Development pressures continue to mount and the long-term permanence of the Wilderness Preserve and Habitat Protection area that insulate these core lands is likely to face challenges from sub-surface and surface demands.

In view of the historical, political and environmental complexity surrounding the N'NSL, a complex governance arrangement has emerged. A superficial analysis might suggest that the governance of N'NSL is a sophisticated co-operative management regime amongst three parties - Vuntut Gwitchin, Yukon and Canada, and is merely a fine variation on shared partnership models among different government powers. Three aspects, however, set this governance arrangement apart from those that are more commonly pursued when First Nations are engaged in resource management.

The first is that self-government legislation will apply to the Settlement Lands. Two statutes, the Vuntut Gwitchin Land and Resources Act, and the Vuntut Gwitchin Fish and Wildlife Act, will govern the Settlement Lands of N'NSL, as well as the subsistence activities to occur on the Ecological Reserve. The Vuntut Gwitchin will be the authoritative and autonomous body that shapes the future direction and use of these lands. The sentiment of the Vuntut Gwitchin towards N'NSL has already been tested and suggests that these lands will be afforded protection for the long term. In comparison, the regulatory instruments under which the Ecological Reserve and surrounding lands have been established remain vulnerable and flexible to prevailing administrative action. Should lands be removed from the Ecological Reserve, the consent of the Vuntut Gwitchin is required.

Second, in the event that disputes arise among the central parties the final decision – making authority will rest with independent dispute resolution boards comprised of representatives from the various parties, with the authority to mediate or apply binding arbitration. Typically, final decision-making authority has remained the purview of a responsible Government Minister. For the N'NSL, where jurisdictional boundaries create an intricate web and rich opportunity for value disputes, the possibility for resolution within a third party arena is essential. Strong accountability measures will also assure that the parties remain committed to the objectives set for this area.

Third, comprehensive policy agreements and legal authorities provide the necessary governance framework for N'NSL, they are not sufficient, however, to create a climate of mutual assistance, trust, and respect that can advance mutual interests. The ongoing challenge is participating in a mosaic governance regime, while maintaining the distinctiveness of Settlement Lands under Vuntut Gwitchin authority and their place and role in the Vuntut Gwitchin culture. Have the Vuntut Gwitchin had their say in the evolution of N'NSL? Although it will be easy to retreat to and take refuge in the jurisdictional authorities of each of the respective parties – particularly in times of conflict or stress, the principles that govern N'NSL demand that it be managed as an ecological unit. A focus on the relevant principles outlined in the Final Agreement, rather than an insistence upon jurisdictional boundaries, may well avoid the potential for conflict and management gaps. It will also serve to consolidate and harmonize action among the three parties – the Vuntut Gwitchin, Yukon and Canada -- as they move ahead on N'NSL. Monitoring progress of the principles will also provide the parties with a common and mutual focus.

Through its dedication of Settlement Lands to protection objectives, the Vuntut Gwitchin First Nation has taken a risk. They have initiated an experiment to strengthen their renewable resource sector and pursue a variation on their traditional economy. There is a continuing need to promote employment opportunities and develop economic return. They have chosen to advance appreciation of the natural environment and, through the bear viewing ventures, to do so in a manner that leaves little impact on the landscape and transforms the visitor. Three decades ago, Thomas Berger asserted that in the northern Yukon, preservation of the wilderness and of the caribou herd would plainly be in keeping with the interests of the Native people. That the Vuntut Gwitchin

are continuing in their own tradition and evincing determination, will undoubtedly shape the evolution of protected areas for the north and elsewhere for the benefit of Yukon residents and all Canadians while respecting the rights of Yukon Indian People and Yukon First Nations.

CHAPTER 5

CROSS-CASE ANALYSIS: THE GOVERNANCE PATTERN

5.1 Introduction

This chapter draws on the governance profiles of the case studies and presents a governance pattern drawn from cross-case analysis. While acknowledging the limitations posed by the relatively small number of selected cases and a departure from the research methodology for one case (N'NSL), this chapter describes in two parts the governance pattern of PPAs studied in Canada. First, this chapter presents a general context of the private sector. It draws on the background and protected area values inherent in each of the case studies. It also outlines the advantages and limitations presented by the case studies in advancing protected area objectives.

Second, the chapter presents the overall governance pattern of the case studies. A cross-case analysis is presented and governance attributes are addressed so as to enrich and inform the discussion of governance principles. Questions that can be usefully explored within the governance framework are presented to guide discussion. Concurrence with major themes in the governance literature is also presented.

This chapter concludes by offering a summary of major findings and general observations about the governance pattern and its alignment with major governance themes.

5.2 The Context of the Private Sector Studied in Protected Area Management

Private sector engagement in protected area management is a relatively new phenomenon in Canada. Unlike the traditional state sector involvement, with its long history in establishing and operating protected areas, private sector activity remains comparatively recent. For this dissertation, four private sector authorities, each generally recognized by leading institutions as representative of the private interest, are the focus of research: namely, Individuals, First Nation, Non-government Organizations

and Corporations. For this research the authorities are owners of, or have secured, at their own volition, an area of land of any size that is especially dedicated towards biodiversity conservation and natural and associated cultural resources and is primarily managed for protected area values that are in the public interest, and remain accountable for the decisions that they make.

Although each of the private areas studied retained consistent ownership or management, thus suggesting organizational viability and durability, in every case under consideration, the protected area was established within the last two decades. The implications of a short evolutionary history are significant. Not only is there limited understanding of this emerging sector, but, given the relatively little opportunity for information sharing and idea transfer across the sector, there is also likely to exist a lack of cohesion and harmonization respecting governance, with more mixed, idiosyncratic and distinctive arrangements occurring than would otherwise be expected within a shared information and knowledge environment.

Although most of the authorities were found to retain title to land and to remain accountable for decisions made, two variants were occurred. In one instance, fee simple ownership had evolved into a long-term lease arrangement where, although land title had been transferred, management responsibility and extensive authority were retained by the previous land owner. In the other, the land title and final authority were retained by the registered owner, whereas implementation responsibility was delegated to a different, yet sympathetic, governmental authority. These variants were not considered to constitute exceptions to the definition advanced for this research. A mixed ownership and management regime does suggest, however, potential for tension between the respective authorities, unless the expectations and the treatment of the relevant issues are assessed carefully.

None of the cases studied fell into a recognized protected area typology and are merely referred to, by the respective authorities, by reference to their geographic place-name. Although key protected area concepts are very much in evidence in the case studies, the more conventional types of protected area, such as nature reserves, wilderness, habitat management areas, natural monuments are generally absent from relevant documentation.

The case studies were found to range along IUCN protected area classifications Ia, II, III, IV and VI, suggesting alignment with a broad spectrum of classifications advanced by this internationally recognized authority; no Category V was found to exist. One case was found to align with a typology advanced for the private sector, referred to as an Ecotourism Reserve, which is a hybrid that combines tourism with conservation (Langholz and Lassoie 2001a). More importantly, the overall classification alignment suggests that PPAs need not comprise landscapes where human intervention is a dominant feature in protected areas – a common assumption concerning PPAs, but rather that they can comprise landscapes where protection objectives are paramount. Departures in classification are evident in each of the cases and flexibility within the IUCN classification would appear to be necessary, should this avenue be pursued as a formal classification scheme for PPAs, as has been recommended by the WPC. For example, the case studies of N'NSL and SWI, noted for their exceptional natural features as well as for their potential for scientific research interest, at present or in the future will allow recreational activity, which may undermine complete application of the IUCN Category Ia – Strict Nature Reserve. This classification outlines that the primary purpose of a Strict Nature Reserve is that it be managed mainly for scientific research, with public access to be limited such that it be “significantly free of direct human intervention and capable of remaining so” (IUCN 1994). In these instances, IUCN Category III may offer an alternative classification.

Although the core concept or, indeed, the very term protected area is not one that is universally accepted or applied by all authorities studied, the values and objectives to which the various authorities subscribe do conform to recognized protected area concepts and management principles, such as ecosystem management and the precautionary principle. The PPA values demonstrated in the case studies include the following: ecological and biodiversity protection; aesthetic appreciation; resource sustainability; recreation and education; research; and traditional use. For example, research is an expressed objective of SWI and HF and while it has yet to mature and be evidenced in the SWI, it comprises a significant activity in the HF. In this case, acid rain monitoring is conducted by the federal government, related work on indicators has been conducted by a neighboring university and university students are active in the PPA. Although research may not be expressed as a formal objective, it also occurs in concert with the management of the PPA. For example, the N'NSL is the site for university

research on grizzly bear behavior, as well as for research on interactive geological and hydrological processes. The TGP is a site of university research of rehabilitation studies that will help to inform the scope of grassland restoration efforts taken by the NCC. The dominant values advanced and widely shared in the PPAs studied are biodiversity protection at the species and habitat level and, to a lesser degree, recreational experience and aesthetic appreciation. Values not widely shared among the case studies include traditional use and resource sustainability. Of the cases studied, the N'NSL is an exception by committing to "recognize and protect traditional and current use"; no other case recognizes traditional use as visibly. The objectives for the HF are based within a sustainability framework and a key objective is "sustainable resource use"; no other case commits to or practices sustainable use to a similar degree.

The expression of protected area values takes various forms, most of which are embedded in the stated objectives for the private area at issue. Across the case studies the objectives pertaining to biodiversity protection have a common refrain. The private areas commit to "protect the full diversity of wildlife"; "protection of ecosystems, biological diversity and ecosystem functions"; "a site of ecological importance and biodiversity"; "maintain... ecological integrity"; "protect ecologically sensitive lands"; "enhance and manage critical habitat for species at risk" and "preserve the integrity of natural landforms". Although definitions of biological diversity are not generally presented, the private areas investigated have adopted accepted interpretations of these complex concepts. HHP is the only case that is explicit about the priority commitment to ecological integrity.

Other protected area objectives advanced include the following: "to recognize and protect the traditional and current use"; "support of research"; "provision of educational opportunities"; "sustainable resource use"; "to increase landowner awareness", and "to promote long term change in land management practices".

Different degrees of human use and activity are also contemplated for each of the PPAs. In general, three distinct and relative clusters emerge, which range from intensive, moderate and light use and activity; in no case was public access prohibited. The spectrum of human use activity includes sustainable resource use and recreational activity that is strongly encouraged, to more moderate and highly constrained

recreational use and management activity. Active management intervention includes sustainable forest harvesting by mechanized and non-mechanized means, prescribed burning, rotational grazing, as well as the mechanical removal of exotics. Extractive activities are generally prohibited, except in one case that conducts sustainable forestry management. Recreational activity includes motorized and non-motorized options of varying use levels. As noted above, with a single exception, the potential for, or the conduct of, scientific research is evident in all PPAs. A summary of values, activities and classification potential of the PPAs studied is presented in Table 4.

The case studies illustrate a variety of advantages and limitations that may be assessed from environmental, social, economic and administrative perspectives. The cases studied are generally located adjacent to other protected areas established by private and state interests and, as a consequence, enhance the capacity for a systems approach rather than remaining as isolated or fragmented units. In some instances, such as the HHP, strategic and planned efforts among participating agencies are contributing to a bioregional approach; in others, the conservation of forest lands adjacent to a provincial park, such as the HF, is an inadvertent outcome of private action. The primary purpose of many PPAs is biodiversity protection at the species and habitat level at various spatial scales. Notable examples include the following: the protection of the globally imperiled western prairie fringed orchid in the TGP; the management of internationally significant grizzly bears; the restoration of the nationally significant garry oak-arbutus ecosystem; and the conservation of the provincially significant bunchgrass habitat in the HHP.

The contribution that these PPAs can make to advancing regional, provincial, international and global biodiversity agendas, however, appears to be insufficiently acknowledged. This is not to suggest that government does not support or acknowledge PPAs. Government funding is provided to land trusts, as in the case of the TGP. Financial incentives are offered to for-profit authorities, as in the case of HF. Government participates in inter-agency planning teams, as in the case of the N'NSL. Government has assumed direct management responsibility for the PPA, as in the case of the HHP. Each of these examples strongly suggests support for the private initiatives undertaken in the various PPAs. For example, in British Columbia, provincial

Table 4. Protected Area Concepts in the Case Studies

VALUES AND OBJECTIVES ¹	CLWR	HHP	TGP	HF	SWI	N'NSL
Scientific Research	N/A	2	2	2	2	2
Wilderness Protection	3	N/A	N/A	N/A	N/A	1
Preservation of Species & Genetic Diversity	N/A	1	1	1	1	1
Maintenance of Environmental Services	3	1	1	1	1	1
Protection of Specific Natural and Cultural Features	N/A	2	2	3	2	2
Tourism/Recreation/ Aesthetics	1	3	3	1	3	2
Education	2	3	1	2	2	2
Maintenance of Cultural/Traditional Attributes	N/A	N/A	N/A	N/A	N/A	2
Sustainable Use	N/A	2	2	1	N/A	N/A

Most Natural Conditions

N'NSL

SWI HHP TGP

Modified Natural Conditions

CLWR HF

Prohibits Resource Extraction

N'NSL SWI CLWR

TGP HHP

Allows Resource Extraction

HF

Prohibits Public Access

N'NSL

Allows Public Access

SWI TGP HHP CLWR HF

No Public Access Fee

SWI TGP HHP

N'NSL

Public Access Fee

CLWR HF

Non-mechanized Recreation Only

SWI TGP

N'NSL CLWR

Mechanized Recreation

HHP HF

IUCN PROTECTED AREA CLASSIFICATION POTENTIAL ²

Strictly Protected

Ia, Ib

II

III

IV

V

Sustainable Use

VI

N'NSL SWI

TGP

N'NSL

HHP TGP

HF

¹ Values and objectives that are currently managed or intended for the PPA and ranked according to primary, secondary or tertiary prominence. Primary pertains to more than 75% of the PPA.

² Case Studies with potential for more than one classification type are noted. HF does not meet fully the definition advanced by IUCN. CLWR did not align with the IUCN classification typology, but does align with a type – Ecotourism Reserve - advanced by Langholz and Lassoie (2001b).

government funding has recently been provided to establish a BC Trust for Public Lands whereby ecologically important private lands will be conserved for the benefit of the public and will be coordinated by a land use forum comprised of leading non-government organizations, such as The Land Conservancy, Nature Conservancy of Canada and The Nature Trust of B.C. (British Columbia 2004). There is, however, a general absence of documentation outlining the biodiversity contribution that these private forums are making to protected area systems and to the advancement of larger protection and conservation goals that are in the public interest; there is a virtual silence about the direct contribution that these new forms of governance are now making and can make in the future.

The social equity account of PPAs presents a complex challenge. The provision of goods and services arising from PPAs has not been fully documented and, as a consequence, the distribution of direct and indirect benefits and costs is difficult to determine. General commentary does suggest, however, that the PPAs studied enrich and strengthen communities, by providing examples of sustainable working landscapes and by engaging in collaborative relations at the local level, such as the HF and TGP. Direct ownership and management autonomy respecting the PPA strengthens authority and fosters pride as direct responsibility is assumed, such as in the SWI and N'NSL PPAs. Private authorities retain a strong vested interest in maintaining the area at issue.

One of the more significant aspects of a social equity consideration is protection "in perpetuity". In the majority of cases studied, formal provisions have been struck to ensure the long-term and permanent protection of the area according to stipulated objectives. In the remaining cases, such as the HF and CLWR, provisions that will bind future land owners have not been struck. It is possible, however, that custom and tradition will aid the expectation that protection and conservation measures will continue.

Three further considerations may impinge on social equality provisions and introduce an aspect of substantive inequality: community relations; access provisions and resource commodification.

The potential social benefits that can flow from PPAs to communities have been noted. The change in historical land use patterns, however, is not without some

attendant drawbacks to community relations. As resource conflicts suggest, changes to the *status quo* tends to foster debate and tension, particularly where vested interests are involved in land use activities. In this regard, private land conservation authorities shoulder a particular burden. Private authorities are often limited in their purchasing power of unaltered environmentally valuable landscapes and are often constrained to purchase land where the potential for biodiversity conservation must be revealed through intensive management efforts. Authorities must not only have the capacity to recognize the potential that altered landscapes may contain, they must also be able to successfully negotiate a vision for the area that can be supported by opposition interests. Landscapes requiring rehabilitation have typically engaged land use practices that are seen by the private conservation authorities as contrary to their protection mission: substantial changes, including a prohibition on traditional activities, can form part of the management repertoire. Impacts on community relations are inevitable as the right balance is sought between protection and accommodation of human land use activities. The TGP and the HHP, and to a lesser extent the HF, have invited criticism from the surrounding community as a new protection paradigm is imprinted on the landscape. Whether or not such criticism is temporary or will be sustained will be highly dependent upon the governance approach taken to address and resolve potential conflict.

General and open public access to the PPAs is prohibited by most private authorities; this has been justified as being required to protect environmental resources or to protect financial investments. Various degrees of restrictions have been introduced in the cases studied. No authority, however, prevents an interested individual from visiting the PPA in some capacity. Access, nevertheless, remains a substantial issue in all PPAs under study and a variety of approaches have been employed. For example, the general public is prohibited from overnight camping or using motorized vehicles on SWI and TGP; the public is also restricted to visitation at specified times and must meet documentation requirements in the N'NSL. In this latter case, it is anticipated that as a condition of entry, parties will need to demonstrate an understanding of the risk that grizzly bear viewing invites. The Hoodoos currently allows open and uncontrolled motorized and non-motorized recreational access; however, it is anticipated that this will be carefully scrutinized and constraints will be introduced in the future. Payment of fees by visitors is not a consistent requirement across all authorities but is necessary in the

case of CLWR, HF – the for-profit operations - and at specified times in the N'NSL for commercial guiding. Lands that are removed from the commons and consequently held under private authority are open to criticism if the public is excluded. With the exception of traditional territories, the lands at issue for this research were historically commonly held and vulnerable to that charge. In modern times, however, the authorities have purchased the lands from previous private owners and have also assumed, but have not exercised, the accompanying right of complete exclusion. As the complexities of management become more apparent to authorities and as the demands for demonstrated performance intensify, exclusion and public restriction is anticipated to become a significant issue in most, if not all, PPAs.

Commodification of resources, particularly where an environmental feature becomes an object and is removed or separated from its natural context or where eco-tourism becomes a planned, predictable event is likewise subject to criticism; vulnerabilities may be introduced into the ecosystem and there may be a diminishment of human experience. As the generation of ecologically sustainable revenue is a key challenge for PPAs, the potential for commodification is likely to arise.

To serve their client base better and to offset acquisition and management costs, commodification of conservation and protection resources took various forms. The most common form was provision of limited to moderate facility and infrastructure development for which a fee for service was solicited. The CLWR, HF and SWI charged visitors for facility use, albeit ranging from major to inconsequential levels. Facilities are currently under construction in the N'NSL.

In the HHP, grassland rehabilitation is anticipated to result in the harvest and marketing of softwoods that can be reinvested into land management. In the TGP, fees and charges are attached to grazing permits, albeit more as a consequence of administrative arrangements that acknowledge historical land uses rather than as a means of generating an ongoing source of revenue. In the HF, the sustainable flow of natural products provides revenue, although to a significantly lesser degree than the revenue derived from recreational venues.

In the HF, revenue from wolf viewing from a secure enclosure and, in the N'NSL, revenue from planned commercial grizzly bear viewing in a natural setting provides or is anticipated to provide, a major source of funding to the respective authorities. In the case of HF, this feature has considerably affected the image of the area by attracting 30,000 yearly visitors. Visitors to the N'NSL will be highly regulated.

The reality of PPA management necessitates attention to funding that is appropriate and sustainable to its mission, and, when successful, reinforces tenure security. In the case of N'NSL and HF, however, additional challenges must be confronted. To avoid infringement on ecological integrity or artificial relations between humans and the natural world, the authorities must seek the appropriate balance between revenue generation and access to these constructed events. No clear trend towards commodification can be discerned from the cases studied; bio-prospecting, game ranches or trading of environmental goods and services was not evident in these cases. The implications of commodification, however, are profound. As PPAs wrestle with options to generate revenue, clear bright line distinctions between appropriate and inappropriate activities will need to be drawn so that the long-term protection and maintenance of its biodiversity is assured.

An adequate evaluation of the direct and indirect economic benefits of PPAs requires an accounting of what is being provided for whom and at what cost. In this regard, a benefit/cost analysis might be instructive. Although the full scope of the economic benefits that PPAs provide has not been determined, there are three economic features that are distinctive in the cases studied. First, in all cases the benefits of ecosystem services flowed to their surrounding environs and to that extent provide non-market public goods, essentially at zero-cost. For example, the HF is the headwater for three major southern Ontario watersheds, the HHP provides key habitat for migrating ungulates in the interior region of British Columbia and the N'NSL protects the critical spawning grounds for a highly dependent downstream fishery in Porcupine River watershed. The PPAs also fill an infrastructure gap for tourism, education and research that public protected areas cannot provide and augment public sector efforts. Through their establishment and management, the PPAs have absorbed costs that the state would otherwise incur. Second, employment, seasonal and year round, is generated by each of the PPAs and in some cases is significant. For example, the CLWR provides

under 10 seasonal jobs; the HF provides 29 full-time, 13 seasonal, 40 contract and 30 indirect positions, making it the largest employer in Haliburton County; the SWI, TGP and HHP provides employment at the management and operational capacity within the land trust, as well as part-time positions outside the agency; and the N'NSL is anticipated to generate at least 2 seasonal or full-time positions, and will provide management positions to oversee the operations of the area. Direct market benefits include recreational services and sustainable timber; a fluctuating market, however, introduces vulnerabilities to the continued viability of the PPA. Indirect economic benefits are also expected to flow from the PPAs. It is anticipated, for example, that property values in the surrounding environs will rise due to the establishment of open space of the HHP and other land protection measures. The economic standing of the Haliburton area is believed to be strengthened considerably by 100,000 recreational visitor days to the HF, the peak of which occurs during the summer period.

Thirdly, many of the PPAs receive public funding to accomplish their mission. In the case of land trusts, incentives, such as financial public grants and reduced property taxes at the municipal level serve to encourage protection and conservation actions that are believed to be in the public interest. For example, direct federal funding of \$175,000 has been provided under the Environment Canada Habitat Stewardship Program to the TGP. In the N'NSL, costs are generally shared between the respective federal, territorial and First Nation governments and tailored arrangements are determined on a mutual basis. Despite the availability of incentives, however, the uptake is not as aggressive as would be expected. For example, in the case of SWI, the option to take advantage of reduced property taxes is foregone as the costs of administration are perceived to be higher than the return. In the case of TGP, the option to pursue reduced property taxes was also abandoned so as to engender support from the surrounding agricultural community for the mission of the NCC. The benefits that reduced property taxes would provide are perceived as insufficient to warrant the investment of scarce time or the attendant social criticism.

In the case of the corporate for-profit HF, the Ontario Managed Forest Tax Incentive Program offers a substantial property tax reduction at 75 per cent lower than the rate applying to residential properties when forests are managed to meet stewardship and conservation goals. HF has received the tax reduction for much of its terrestrial lands.

However, lands surrounding lakes, a critical component of the forest ecosystem in HF, are currently exempt from the incentive program and are taxed at the municipal rate. Based on an average of program participants, it is estimated that the tax saving amounts to \$696 per property; the HF comprises one of the largest areas in the program and is anticipated to have received an incentive higher than the average. The public benefits that the program seeks to provide – ecosystem stability, biodiversity enhancement, spiritual and psychological health, environmental barometer, recreational opportunities and climate maintenance – are obviously in the public interest and are values that are currently under tremendous threat as forested lands are converted to more lucrative purposes. In general, this case illustrates that a more efficient and effective balance between the incentives offered and benefits provided may be necessary in order to promote more PPAs. More specifically in Ontario, a better balance may also be needed to alleviate the claim made by the Ontario Environmental Commission Office that the present policy will lead to significant environmental harm.

A summary of the advantages and limitations of the cases studied in advancing protected area goals and objectives is outlined in Table 5.

In summary, five general and broad observations about the cases studied for this research can be offered. First, the cases are of recent origin as compared to their conventional state counterparts, suggesting implications for knowledge transfer and understanding of PPAs. Although in no cases had ownership changed since their establishment and most have provided a contingency safety net in the event of their dissolution, institutional longevity and durability nevertheless remains uncertain across the sector. Competition amongst land trust agencies, for example, for scarce public funding or limited private lands may upset commitments by the authority to its long term mission. Second, in most instances, the authorities were found to retain ownership as well as management responsibility. In two cases, however, formal involvement with government was pursued actively, suggesting implications for consistent and harmonious treatment of the protected area at issue. Third, none of the cases studied aligned with a generally advanced protected area typology. In all cases studied a tailored and individual approach to protected area classification was pursued, suggesting implications for development of a coherent and shared classification system. Fourth, the

Table 5. Case Studies: Advantages and Limitations

ENVIRONMENTAL ADVANTAGES	LIMITATIONS
<ul style="list-style-type: none"> • Increase protected area coverage and potentially aid landscape and bioregional approaches (<i>e.g.</i>, HHP, HF, TGP, N'NSL) • Protect globally imperiled species and regionally threatened landscapes (<i>e.g.</i>, TGP, HHP, SWI, N'NSL) • Provide ecological services that flow benefits to a larger area (<i>e.g.</i>, N'NSL) • Serves as an ecological corridor in a region note for ungulate species (<i>e.g.</i>, HHP) • Serves as an ecological benchmark and reference for monitoring change in adjacent areas (<i>e.g.</i>, SWI) • Committed to ecological and biodiversity protection; recreation and education; research; and traditional use (<i>e.g.</i>, N'NSL) 	<ul style="list-style-type: none"> • Small area may be insufficient to realize protection and conservation goals (<i>e.g.</i>, SWI) • Relatively small areas require protection buffers in surrounding and adjacent areas which are subject to development (<i>e.g.</i>, N'NSL) • Emphasis on socially related protected area values potentially at the expense of environmentally related protected areas values (<i>e.g.</i>, CLWR) • Contribution of the private area to provincial protected area strategies is not fully appreciated (<i>e.g.</i>, HHP) • Some areas are not pristine and require extensive rehabilitation and intervention to improve habitat (<i>e.g.</i>, HHP, TGP)
SOCIAL ADVANTAGES	LIMITATIONS
<ul style="list-style-type: none"> • Extends a conservation ethic to adjacent working landscapes (<i>e.g.</i>, HF) • Natural legacy intended to be passed to family or directly to future interests as protection in perpetuity (<i>e.g.</i>, HF, SWI) • Strengthens community relations by providing opportunities in which others can participate (<i>e.g.</i>, HF) • Absorbs land purchase and management costs the state would incur (<i>e.g.</i>, SWI) • Reliance on volunteers and collaborative efforts strengthens civil society (<i>e.g.</i>, TGP) • Autonomous direction strengthens community (<i>e.g.</i>, N'NSL) • Provides PA values to invited clientele or general public: aesthetic appreciation, recreation and education, research (<i>e.g.</i>, CLWR, SWI, HF, N'NSL) 	<ul style="list-style-type: none"> • Perception of free-riding on the surrounding environment (<i>e.g.</i>, CLWR) • Current landowners vision may not be sustained by future owners (<i>e.g.</i>, HF) • Commodification of resources – commercial bear and wolf viewing - may undermine larger recreational and aesthetic experience of other visitors (<i>e.g.</i>, HF, N'NSL) • Authorities control and constrain general public access and reduce access to a perceived commons (<i>e.g.</i>, TGP, N'NSL, HF) • Strains community relations as changes to historical land use patterns occur (<i>e.g.</i>, HHP, TGP) • Employment opportunities may be seasonally limited or subject to a highly fluctuating market (<i>e.g.</i>, CLWR, HF)

Table 5 (continued)

ECONOMIC ADVANTAGES	LIMITATIONS
<ul style="list-style-type: none"> • Showcase sustainability initiatives and the ability to integrate biodiversity goals with sustainable development (<i>e.g.</i>, HF) • Generate employment and income for the local area (<i>e.g.</i>, CLWR, HF) • Links conservation with the market, such as, nature-based tourism, ecological logging (<i>e.g.</i>, CLWR, HF, N'NSL) • Provide direct and indirect economic benefits, such as, improved water quality to downstream users and potential for improved property values in surrounding environs (<i>e.g.</i>, HHP) • Land trusts buy lands potentially not attractive to other willing buyers (<i>e.g.</i>, TGP) • Modest revenue generation from mutually compatible land based activities to offset operating costs (<i>e.g.</i>, SWI, HHP) 	<ul style="list-style-type: none"> • Sensitivity to market variations and pressure to generate revenue creates future uncertainty (<i>e.g.</i>, CLWR) • Finding the appropriate balance between protection and sustainability invites debate about the role of PPA (<i>e.g.</i>, HF) • Funding pressures severely limit PPA management operations and goals (<i>e.g.</i>, TGP) • Financial incentives available to land trusts may reduce property taxes and consequent delivery of services (<i>e.g.</i>, SWI) • Remote and inaccessible areas increase costs for effective management (<i>e.g.</i>, N'NSL) • Public returns on financial incentives to encourage land protection are broadly based and not directly linked to land management practices (<i>e.g.</i>, HF)
ADMINISTRATIVE ADVANTAGES	LIMITATIONS
<ul style="list-style-type: none"> • Formal mechanisms to encourage larger bioregional approaches are developed (<i>e.g.</i>, N'NSL) • Engagement of third-party evaluation enhances accountability and credibility of sustainability claims (<i>e.g.</i>, HF) • Development of management plans that set out goals and priorities (<i>e.g.</i>, HHP, TGP, HF, SWI, N'NSL) • Range of protected area types, such as ecological reserves, sustainable forests, nature-based tourism, species management areas, may encourage other private land to commit to protection and conservation (<i>e.g.</i>, SWI, N'NSL, HF, CLWR, HHP, TGP) • Demonstrated institutional longevity of two decades (<i>e.g.</i>, HHP, TGP) • Strategies and alliances between nations creates potential for an international protection corridor and enhances potential for success (<i>e.g.</i>, TGP) 	<ul style="list-style-type: none"> • Areas are isolated and not formally part of a protected systems network (<i>e.g.</i>, HF, SWI) • Demonstrated achievement of protection and conservation goals is absent (<i>e.g.</i>, TGP, SWI, N'NSL) • Lack of formal state recognition creates uncertainty about significance (<i>e.g.</i>, SWI) • Variation in management objectives, allowable activities, and level of protection challenges conventional understandings of PAs (<i>e.g.</i>, HF) • Dependent on current land owners/managers vision (<i>e.g.</i>, SWI, HF) • Scope of protection is dependent upon willing sellers of private land (<i>e.g.</i>, TGP) • Recently established with no institutional history (<i>e.g.</i>, SWI) • No subscription to a formal protected area system or typology (<i>e.g.</i>, HHP, TGP, SWI)

PPAs were found to potentially align, albeit loosely, with the broad spectrum of IUCN classification scheme, suggesting the potential for private areas to align with both protection and human interventionist themes in protected area ideology and management. However, the WPC recommendation that the IUCN protected area categorization system be refined and extend to privately managed protected areas may not be an easy accomplishment. The cases studied reveal departures, in some instances significant, from the accepted norms that frame the current classification scheme. Before PPAs are abandoned prematurely for not fulfilling the typology, the construction of a relevant and tailored PPA classification scheme may be required. In a majority of instances, formal commitments have been made to biodiversity protection. Other environmental, social and economic benefits are also derived from the PPAs. Finally, and most significantly, a majority of cases have taken steps to protect their natural resource base from being alienated for other land use purposes that would be detrimental to the area's biological diversity.

5.3 The Governance Pattern of the Private Protected Areas Studied

To derive the governance pattern arising out of the six PPAs studied, a cross-case analysis has been conducted with reference to each applicable principle. Attention is given to the attributes presented in the normative framework and to the case study illustrations respecting each of these attributes. To aid discussion, a summary of the governance profiles and attributes of the cases studied have been tabulated (Appendix 5). The analysis of the governance principles concludes with commentary relating to the way in which the major themes generated in the literature on governance and protected areas, which are outlined in Chapter 2, are manifested in the PPAs studied.

5.3.1 Direction: Is there an organizational framework – vision, planning and relations - where protected area values are represented?

The genesis of a governance regime most likely lies in the development of a management planning system and in setting a direction that articulates goals and objectives for the PPA in question. Researchers refer to this as the formal, as opposed

to, informal expression of governance (Short 1999). This formal structure takes on added importance when it is developed in collaboration with other parties (Conley 2003).

Visible framework

With the exception of one case (CLWR), all PPAs had visible organizational frameworks and management plans that were unambiguous in the presentation of protected area objectives and activities. Documents that set out a clear purpose and priorities over the short to medium term for the private area were a common occurrence. The documents, although varied in length and scope amongst the PPAs, are often referred to as Management Plans, Conservation Plans, or Resource Management Plans. Most of the plans had been prepared within the last five years.

In all cases, more detailed documents accompanied the management plans: agreements, covenants, implementation strategies, annual workplans and compliance certificates provided further elaboration on the scope of conservation and protection activities contained in management plans. In two cases, broader policies (for example, ecological blueprints in the TGP and financial incentive programs in the HF) and legislation (for example, constitutions pertaining to the authority and specific statutes respecting the establishment of the area as evidenced in the N'NSL), complemented the management direction and placed the private area in a broader context. For example, the TGP is guided by a comprehensive suite of planning documents prepared at the national, regional, management and operational levels. The SWI is guided by planning documents at the management and operational level; however, a larger policy framework document is absent. These administrative instruments, albeit at different spatial levels, serve to introduce a sophisticated organizational framework and considerably strengthen the direction for the private area.

This formal framework was aided by security in land tenure. With a single exception, land was held in fee simple title by the private authorities. This ownership has enabled direct investment in, or has at least encouraged, the development of formal documents than might otherwise occur under less certain tenure arrangements. Formal management plans, for example, are not developed by TLC where lands are expected to be sold to advance the mission of the organization.

Coherent Direction

The substance of the management plans was also found to be consistent with contemporary protected area concepts (Theberge and Theberge 2002). Although operational definitions were generally absent, most private areas adopted ecosystem management principles, including a precautionary, adaptive, science-based and landscape level approach, as well as a commitment to ecological integrity. The HHP was particularly instructive in this regard; the clear articulation of an ecosystem-based management philosophy framed operations for the short to long term. All other cases, with the exception of CLWR, made similar commitments to these contemporary concepts. The plans regularly employed a medium term planning horizon of 5 years and are constructed with an expectation of being updated – a challenge for organizations where capacity is limited. One plan, in the case of the N'NSL, was required to be regularly reviewed by participating agencies. Despite the medium term planning horizon, objectives are developed with a view towards the future; that is, expressed objectives are intended to serve well into the future. In the case of the HHP, for example, the protection of biodiversity conservation at the landscape level is a key management focus that will occupy the authority beyond the 5-year planning horizon.

All PPAs studied are located adjacent to other conventional or non-traditional protected areas, suggesting a potentially contributory role for this private type. There is no general consensus regarding the location of PPAs relative to a systems network. That is, some researchers argue that PPAs are isolated (Kirby 2003), others suggest that PPAs are directly part of a systems network (Thackway and Olsson 1999). This study confirms that the PPAs studied are adjacent to or contribute to conventional protected areas. In three cases, TGP, HHP, N'NSL, there is acknowledgement and explicit identification of their contributions to surrounding protected areas contained in their formal planning documents and reflected in management actions. The remaining case studies, CLWR, HF, SWI, do not explore the complementary relations between the protected areas and the potential for habitat corridors and connectivity appears to be lost.

Finding the right balance among potentially competing objectives, for example, protection versus sustainable development is not a challenge for most PPAs; many have made unambiguous commitments to protection goals. The dilemma that private

authorities can face, particularly with regards to revenue generation, is not a central issue. The authorities do not liquidate their resource assets to cover revenue shortfalls. The management task for most authorities is to determine the best way to achieve protection and conservation goals. The CLWR, for example, elected to transfer tenure to a public institution, rather than pursue alternative options when confronted with growing demands. The HF, for example, elected to pursue forestry certification and assume costs, at least initially, that would not be visited upon more conventional forest harvesting regimes.

Risk Management

Attention to risk management, and the attendant financial costs and impingement on protected area objectives, is taken into account by authorities at the initial land acquisition stage, as evidenced by SWI, HHP and TGP. An accounting of risks – largely in the form of SWOT analyses - has shaped the scope of management activities. In two cases, detailed risk management plans were prepared during implementation stages. Notably, exotic plant management plans are prepared for SWI and grizzly bear risk management plans are prepared for N'NSL. Long term risks – notably, regarding climate change, acid rain – are considered by two PPAs, namely, HF and HHP.

Collaborative Management

In all cases, collaborative partnerships with government, as well as with academic and non-government institutions and individuals were entered into in an effort to advance knowledge of the private area and to shape its direction; no private authority acts alone. The number and types of collaborative relationships were found to vary across a wide spectrum - from informal to contractual and from service-oriented to information collection and from volunteer service to financial contributions. However, in each case, they also considerably aided the legitimacy of the private area at issue. For example, the CLWR has entered into a joint agreement with a public institution, the HHP and TGP participate in multi-agency planning teams to advance mutual interests, the HF regularly invites interested agencies to conduct research in the area, the SWI engages volunteers to assist in the control of exotics and N'NSL encourages university research that is relevant to the mission of the area. In one case, the HHP, the need for collaborative relationships is also a reflection of practicalities as much as it is of a greater strength arising from combined talent and knowledge . That is, the small complement of

HHP staff requires that it enter into relationships with partners to advance its mission. The scope and diversity of these collaborative relationships and cooperative partnerships in research and management among the PPAs studied is a noteworthy feature ; it constitutes a compelling feature of a strong governance regime.

Effective leadership

The most distinctive feature of all the private areas studied is their common commitment to a stewardship ethic that underlies the leadership authority; this aspect is universal among the cases studied and represents an underlying foundation for the direction of all PPAs. The desire to pass along a natural legacy to future generations is particularly salient among all private authorities at issue. For example, there is potential in the CLWR and HF to transfer the lease agreement and management operations as part of a family legacy, the HHP maintains biodiversity values in perpetuity, the TGP is managed for the “benefit of future generations and nature” and the SWI is managed to ensure “protection in perpetuity” and “on behalf of the public”. N’NSL is to be protected and maintained “for the benefit of Yukon residents and all Canadians”.

Active oversight by boards of directors or by single landowners ensures that the core protection and conservation objectives for the area are maintained and that there is no disjuncture between values and practice. Lucrative economic opportunities, for example, have been foregone in all cases, representing a loss of indirect income. Grazing leases have been suspended or cancelled in HHF and TGP, potential development was rejected in CLWR, a lucrative recreational activity was dismissed in HF and use of housing for residential purposes was abandoned. In the case of the N’NSL, financial compensation was provided directly to interests deemed contrary to the protection objectives of the area.

Four themes arising from the literature are evident from the analysis of case studies as regards this principle. First, Ostrom asserts that “any governance system that is designed to regulate complex biological systems must have as much variety in the actions that it can take as there exists in the systems being regulated” (Ostrom 1995:34). To be effective, a governance regime must reflect the context in which it is embedded (Schneider 2002). For example, the N’NSL reflects the traditional and cultural context, as well as interactions among unique geological and biological features. Complex

structural and procedural arrangements – management plans at various scales, focused risk management plans and elaborate administrative decision-bodies - have developed in response to this interaction.

Second, studies of governance have revealed that authorities engaged in environmental resource matters are neither isolated nor autonomous entities, but rather are relational and very much a part of a nested enterprise that requires harmonization and coherence (Gleeson 2001, Sand 1990). Authorities do not possess complete knowledge nor do they have full access to information to solve complex and dynamic problems; they cannot dominate in a particular governing model (Kooiman 1993). Not all private authorities studied participate in shared relations; however, most do. Most notably, the HHP participates in a leadership capacity on an inter-agency team that oversees the PPA and it likewise participates in a membership capacity on a different inter-agency team to chart a protection direction at the regional level. A nested series of plans are constructed at the bioregional, management and operational level and they incorporate contemporary concepts in protected area management. Greater organizational maturation is anticipated to lead to more sophisticated relations and self-regulatory actions.

The third theme arising from governance studies suggests that collaborative efforts not only enhance protected area management capacity, but actions that strengthen local institutions also foster citizen participation and bring together diverse stakeholders, which also builds civil society and aids social cohesion (Brown and Mitchell 1999). By way of illustration, the HF has accessed third party independent institutions, encouraged university students to rely upon the forest as a site of enhanced learning and has drawn upon non-governmental agencies to assist it in generating a particular direction for forest protection.

The fourth theme suggests that in order to enable effective governance, private sector authorities must have a cultural and value preference for sustainable management and must also have appropriate beliefs and understandings as to what actions are necessary for protection and conservation (Hurley et al. 2002, Singleton 2000). Across all PPAs, commitment to a stewardship ethic is a salient feature.

5.3.2 Legitimacy: Does the PPA have legitimacy and do interests, beyond those of the private land owner, participate in shaping the direction of the PPA and do they demonstrate trust in, and show support for, the PPA?

The expression of legitimacy can take various forms. Documents to which participants are signatories are one of the more common forms of expression: have the relevant interests signed-on? Procedurally, forums where views and opinions are expressed and other methods by which protected area values can be captured engender legitimacy for a particular area. Bruch (2002) argues that governance and legitimacy are advanced considerably when structures and processes are transparent (Bruch 2002). The absence of legitimacy is a potent force; it can directly undermine a protected area as opposition interests work to thwart the implementation of policy and management objectives (Graham et al. 2003a).

PPAs also have a particular responsibility to bear, which extends beyond that of conventional property rights holders. In addition to protecting the direct interests of the private land authority, for this research PPAs must also be answerable to, and govern on behalf of, those not at the table. A trust-like relationship that demonstrates a fiduciary obligation to nature, to future generations and to the global community as a whole ensures that PPAs remain distinctive from other private land authorities practicing conservation, where benefits are directly solely to ownership interests.

Expression of protected area values

Expression of protected area values is in evidence in the case of all PPAs studied. All PPAs subscribe to recognized protected area values and the spectrum ranges from protection to more cultural aspects. Formally expressed values that are widely shared include protection of ecosystems, biological diversity and ecological integrity. The HHP, TGP, HF, SWI and N'NSL formally subscribed to these significant values. One case, the CLWR, is highly dependent upon ecological integrity for its continued operation and pursues values attached to nature-based tourism and recreation.

Transparent rules of engagement

The existence of transparent rules of engagement varies among the cases studied, ranging from highly informal, discrete and *ad hoc* in the case of CLWR and HF to formal,

visible and regularized in the case of N'NSL. In this latter instance, a planned process was instituted to solicit public views and opinions on the establishment of N'NSL. In this case, there was a majority expression of public opinion demonstrating overwhelming support for the establishment of a protected area; minority interests were concerned about the loss of oil and gas development potential. Many processes, such as in the cases of TGP, HHF, SWI, tend to rely on representatives of public interest groups to capture general public views and opinions. Although no public would be prevented from expressing a view about a particular PPA, formal processes have not been established to actively solicit views, except in the case of the N'NSL. In the case of HF, an open house was held to inform the interested public about the management directions for the area. The views of those formally represented at planning tables, in management agreements or in contractual arrangements are assumed to warrant greater weight in the decision-making process.

The continual, direct engagement of large numbers of volunteers on the ground, particularly in non-government protected areas, and to a lesser extent within private individual authorities, serves to build further trust and support. Volunteers participate in land restoration and monitoring activities or offer interpretation services to recreational visitors. The cooperative involvement of volunteers, as well as their potential contribution to building social cohesion, is a distinguishing feature that sets these authorities apart from others. Volunteers are not actively engaged in implementation in either the HF or N'NSL.

Trust and reciprocity

Trust and reciprocity is clearly evident in all the PPAs studied. All of the cases studied had demonstrable political support from a broad community of interests at the regional, national or international levels as well as from government or non-government sectors. For example, the CLWR received recognition from a public institution and provincial government, the HHP and TGP has received support from special interest groups, as well as the provincial government, the HF has received recognition from the provincial government, as well as independent institutions, the SWI has received support from other land trust agencies and is recognized under provincial legislation, and the N'NSL has received support from local to international special interest groups and is recognized in legislation attended to by three major administrative parties.

A range of administrative instruments is relied upon to convey this legitimacy. Among these instruments are management lease agreements (CLWR), conservation covenants (SWI), lease (HHP), land title registration (TGP), legislation (N'NSL) and written public submissions (N'NSL). By mean of these instruments, many of which require signature, or other formal methods of execution, the PPA is shaped by either informal or formal participation from direct and indirect participants.

Interests also directly participate in the PPAs through, for example, research, interpretation, advisory capacity and monitoring. This collaboration also helps to cement trust in, and support for, the private area.

This is not to suggest, however, that there is no tension or conflict surrounding the private areas and that establishing and retaining trust is one-time affair. Indeed, in most cases, issues management, some involving unorganized opposition interests, demanded the ongoing attention of authorities. Issues included the allocation and access to grazing opportunities (TGP) and grizzly bear viewing (N'NSL), provision of mechanized transport into a wilderness area (CLWR), protection of vulnerable protected areas from uncontrolled access (HHP) and finding a sustainable balance between resource use and protection (HF). In no case, however, were active efforts underway to thwart the ability of private authorities to achieve their stated goals or objectives.

Trustee relationship

A trustee relationship is expressed in various forms and degrees of interest, ranging from a narrow relationship, where there is consideration beyond direct ownership interests, to a broad one, where the interests of the global community, future generations and nature are expressly provided. For example, the CLWR is stated to be managed for the rights of non-owners; although currently it would appear that these are largely visiting clientele and do not represent the larger public interest. The SWI, the HHP, and the N'NSL are managed to return a wider scope of benefits to current and future generations and to nature. For example, the mission of the SWI is "to reflect the public interest in the protection, preservation, conservation, maintenance, enhancement and restoration of the natural state of the land and the amenities of ecological and environmental reasons" (Conservation Covenant 1998:8). The mission of TGP is to "protect areas of biological

diversity for their intrinsic value and for the benefit of future generations” (Nature Conservancy of Canada 2004:1). The role of special management areas, such as the N'NSL, is “to maintain important features of the natural or cultural environment for the benefit of Yukon residents and all Canadians while respecting the rights of Yukon Indian People and Yukon First Nations” (Canada, Yukon and Vuntut Gwitchin First Nation 1993:Section 10.1.1).

Objectives expressed for the private areas may not specifically reference the broader public interest. However, the objectives have the potential to spill broadly across the protected area boundary that they nevertheless must be taken to constitute a public good. The most notable expression of this benefit is the “protection of ecosystems, biological diversity and ecosystem functions”, which is expressed by the HF. Management, of course, must be undertaken so that ecosystem benefits can indeed flow beyond the protected area boundary.

The protection of the public interest in perpetuity was expressly addressed in two cases, the SWI and HHP. In the former case, lands declared as inalienable must be protected in perpetuity and they cannot be sold to another interest or be used for a different purpose. In the latter case, the vision statement provides that the biodiversity values are to be maintained in perpetuity; the 99-year lease is anticipated to reflect this vision.

In most cases, should the private authorities dissolve, the private protected lands held by land trusts, the HHP, SWI and TGP are to be transferred to a sympathetic agency, which is often stipulated to be the Crown. In two cases, the CLWR and HF, should the dissolution of the authority occur, it remains uncertain whether the lands would enjoy the same level of protection and conservation. That is, although there is an expressed desire for continuing stewardship on the part of the current authorities, there are no instruments that would bind future land owners to a similar mission. While precedent and tradition may influence future owners, there are no guarantees that this will occur. Indeed, it is more likely that, in the absence of incentives and rewards or binding provisions, future owners would pursue a course that was more narrowly fiscally-oriented.

Two major and closely related themes in the literature are prevalent in the analysis of legitimacy. First, if the public interest is to be addressed, its value content must be identified (Feintuck 2004). All PPAs are structured around values that are widely recognized as being directly attached to protected areas and shared by a wider community. Substantive and procedural avenues have been pursued to bring meaning to these values in the PPAs studied. For example, commitments are made to protected area values, actions have been avoided that could undermine those values, in perpetuity protection is provided to benefit future generations and benefits flow to the public, including access.

Second, the PPAs gain legitimacy and the social licence to operate because they take into account interests that lie beyond that of the private land owner (Eckersley 1993, Pellizzoni 2004, Schacter 2000). The PPAs studied flow benefits to interests that lie beyond those of the private authority. The provision of protection and conservation benefits in perpetuity for future generations is a significant expression of such interests.

5.3.3 Fairness: How does the governance regime accommodate past grievances, current conflict and is it equitable in the sharing of benefits and burdens that flow from the area?

The treatment of fairness in governance is rooted in the allocation and equitable distribution of benefits and costs; good governance must contain rules that address entitlements, constrain human action and be enforceable (Ostrom 1995). The implications arising from the absence of fairness are profound; they will be manifested in underlying tension or overt conflict and will damage the environment or relations between parties (Hanna and Munasinghe 1995a, Singleton 2000).

Just, impartial and ethical

Amongst all the PPAs studied, there is no evidence of unjust, partial or unethical actions. All land transactions have been conducted between willing parties, common tools of impartial assessment have been relied upon (for example, risk assessments at the time of land purchase in the HHP) and broadly accepted forms of compensation (for

example, financial compensation in the case of the N'NSL) have been used to address vested rights and interests.

Fairness is also evidenced by the opportunities granted and limitations imposed with respect to general public access. Although no policies on public exclusion existed in any case at issue, all cases regulated and controlled general public access, although to varying degrees and likewise by varying means, ranging from moral suasion and education to market control to regulatory sanctions.

Across the sector, policies on access to information and transparency are not evident and decisions to release materials appear to be made on a case by case basis, with very few authorities disclosing relevant information willingly. In order to retain their charitable status, the non-government authorities are prevented from realizing financial profits from the PPAs, including through the sale of lands, and benefits are to be re-invested to further their mission. The for-profit ventures re-invest in the private area and also distribute benefits to their private shareholders.

Manages conflict and sensitive issues

Management issues arose in all cases. No demonstrable conflict, however, was evident in any of the protected areas considered, which suggests that fair and just arrangements had been made. In the single case, of the N'NSL, the settlement of First Nations land claims and financial compensation to an alternative land interest enabled the area to be established. First Nation land claims were not directly involved in the remaining private areas studied.

In many PPAs, finding a balance between protection and resource use is a central management challenge. In the TGP and HHP, for example, constraints on agricultural grazing leases to protect grassland habitat have provoked criticism from surrounding landowners and require ongoing management attention. Should the issues be inadequately addressed and resolved, the potential exists for protection and development interests to become deeply entrenched and intransigent. Third party mediators may be required to assist in finding common ground as interests compete for scarce land. The implications of inadequate resolution are sobering. Although the privilege accompanying land tenure may be aggressively invoked by the private

authorities, lack of issue resolution invites damage to the reputation of land trusts and a diminution of the protection agenda.

In the case of the N'NSL, creating commercial opportunities and access to enable viewing of grizzly bears may invite conflict if the carrying capacities required for bear behavior are upset and if significant risks to visitors are introduced. Unlike the previous PPAs, this latter case is anticipated to be resolved relatively easily since changes to the *status quo* are not required.

In the case of the for-profit PPAs that are directly reliant on the area to generate management income, striking the right balance is a particular challenge. In the HF, finding the balance between tree harvest and sustainability of forest ecosystems and in the CLWR, finding the appropriate level of mechanized transport into a wilderness area without upsetting carrying capacities and creating serious environmental impacts are sensitive matters that are central to management of the PPA. However, without access to the revenue that is generated from these operations, it is unlikely that the PPAs in these cases would be viable.

Only one case, the SWI, remained relatively free of resource management conflict between protection and development interests. This PPA is, however, under active management for the control of exotic vegetation.

Equitable

Across the cases studied, authorities were found to be moving towards more equitable arrangements. Most authorities attempted to access a broad base of competencies and interests in land protection and conservation, either through collaborative relations or directly through boards of management. First Nation representation on management boards is sought by the NGOs and land trust sector and occurs on a sporadic basis in all these authorities. Particular mention must be made of the TLC. This authority has established a First Nations Land Trust and actively promotes the role of traditional ecological knowledge in resource management. In the case of CLWR, First Nations are employed. First Nation representation in the N'NSL is an obvious requirement.

In the governance literature one theme is evident in the analysis respecting the principle of fairness. It is argued that when equity is properly embedded in a governance regime, it helps to create an incentive structure that can promote, or inhibit, the stewardship of resources (Adger 2003, Young and McCay 1995). No evidence exists of unjust, partial or unethical actions in any of the cases studied. However, there are some instances of unfairness within the PPAs studied – conflicts are beginning to emerge, the potential for further conflict exists and equity goals are not fully achieved. As a consequence, there is greater likelihood that stewardship of resources in the PPAs will be inhibited and constrained.

5.3.4 Performance: To the extent that performance can be readily measured, is the PPA making effective progress in achieving conservation and protection outcomes?

The most important role and function of governance is to lead to outcomes that parallel those of the traditional institutions of government: governance is about shaping a society that should be ideally different and better than the present one (Rhodes 1996). Measuring and reporting on performance, and the outcomes that are achieved, are essential features of governance (Graham et al. 2003b, Kettl 2002). For protected areas, this principle assumes particular salience. It is not enough to merely establish and manage a protected area; attention must also be given to its effectiveness, and, “in the final analysis, outcome evaluation is the true test of management effectiveness (Hockings et al. 2000:14).

Standards and Expectations

Performance expectations are most often embedded in the goals and objectives established for the private area. For example, the goal of the N'NSL is to protect the full diversity of wildlife populations, particularly salmon and grizzly bear. There is considerable potential across most cases to derive outcome-based measures. A majority of case studies, however, did not present clearly measurable performance standards. As a consequence, the authorities do not know how well they are meeting their strategies goals. In the case of HF, universal forest stewardship standards have been determined by third parties and applied to the HF; these standards appear to serve in a *de facto* performance role. An evaluation of sustainability indicators for HF has also

been conducted. In two cases, the TGP and SWI, the authorities are determining the relevant application of general management framework advanced by the Land Trust Standards and Guidelines (Land Trust Alliance USA 2004).

This is not to suggest, however, that authorities are not committed to performance measurement. In most of the PPAs studied, HHP, TGP, HF, SWI, N'NSL the authorities do appreciate its significance and are increasingly seeking ways to understand the impact of their work. Notably, the HHP commits that management actions will be measured in terms of conservation outcomes and not the completion of management tasks. Implementation across the cases studied, however, appears to be significantly delayed or to be accorded a low priority in practice.

Monitors, evaluates and reports

In general, across all PPAs studied, monitoring is highly fragmented and the synthesis and integration of disparate data and information appears to be inconsistent and lacking cohesion. There are gaps in coverage and systems approach for monitoring is absent. As a consequence, interpretation and understanding of ecological integrity or biodiversity standing remains generally inaccessible and the conservation significance of PPAs remains uncertain.

Formal monitoring is conducted by three authorities, albeit at varying scales and addressing varying aspects: the TGP reports on organizational outcomes, typically the numbers of hectares protected; the HF monitors at various levels, the results of which are incorporated in revised forest management strategies; and the SWI is monitored for its compliance with conditions outlined in the Conservation Covenant governing the area. In two cases, the HHP and N'NSL, a monitoring strategy has been outlined and initial steps are being taken towards implementation. Informal monitoring, however, across all PPAs occurs; authorities are continuously taking stock and conducting assessment of their strategies.

Monitoring is conducted by the authority as a self-assessment management tool (TGP, HF), by collaborative partners with an interest in the private area objectives (N'NSL, HF) or by arm's length agencies (HF, SWI). Monitoring also provides the

foundation for enforcement; if activities within a PPA cannot be readily monitored, they likely will be unable to be sanctioned through enforcement measures.

Ability and capacity

Within the PPAs studied, there are varying capacities to undertake performance measurement and to understand better the biodiversity values, for example. It appears that there is a willingness and an ability within authorities to approach performance more vigorously than is currently evidenced. For example, in the CLWR, the functions of a public institution could be accessed to develop a sophisticated performance program and, in the HHP and TGP, there is likewise the potential for a shared and collaborative monitoring system.

Progress and improvement towards the purposefulness of governance

Across the PPAs studied there is a general absence of reporting on performance outcomes. There is no consolidated, comprehensive report on the state of the PPA; there is no overall picture of the PPA or how it is changing over time. Reporting, when it is conducted, typically refers to organizational activities or inputs, rather than to the results to be achieved; there is a general silence on the status or progress in implementing the principles or objectives set for the PPA. The HF departs from this approach. An evaluation of sustainable forest management has been conducted and the requirements of a forest stewardship certification program are reviewed regularly.

The central theme to emerge respecting the principle of performance is that it is not an isolated activity, but is a systematic component of a larger management framework and process (Hockings et al. 2000). Ideally, performance evaluation should occur at the various evolutionary stages of a protected area: context; input; planning processes; outputs; and outcomes. It is demonstrated that the principle of performance is not well advanced in the PPAs studied. Should PPAs employ a visible performance approach that is aligned with the framework, a more confident reply to the central question that governance seeks could be offered, namely, is progress being made?

The more pressing challenge is to give an explanation for why so little is being done in performance and reporting of conservation outcomes in PPAs. The apparent complexity of the task, the potentially confusing array of standards and benchmarks,

competing demands on constrained finances and staff as well as a focus on PPA establishment may be diverting attention away from this key principle.

For PPAs there is a need for a performance approach that is tailored to the conservation significance of the area and to the capability of the authority. There is a need to find the right balance of performance monitoring and reporting that covers the full spectrum of those matters for which the authority has responsibility. Onerous reporting requirements could have the unintended effect of undermining protected area objectives.

5.3.5 Accountability: Where does authority reside? How broad is accountability – to the global community, future generations and nature - and what checks and balances are in place to ensure accountability?

As a central principle of good governance, accountability is of ever increasing importance; accountability builds social trust, legitimacy and support (Graham et al. 2003). It also enhances capacity and the ability to engage in critically important problem-solving (Rhodes 1996). Accountability, however, is not only the exercise of responsibility to deliver a mandate. It also confers an obligation on authorities to provide an explanation for any departures from, agreed upon expectations (Broadbent 1999).

Clear authority

Interest and certainty in land is a critical prerequisite to the exercise of authority. With the exception of a single case, all the authorities held fee simple title to the land area in question. In the exception, land title had been held until recently by the present land manager and future directions by the current land owner remain uncertain. Where protected area values are at issue, certainty in land title and the resulting authority attached to that title cannot be overestimated. Where private authorities are committed to protection and conservation and where provisions are introduced to prevent departures from such commitments, the risk of the land being subdivided or developed to its highest economic alternative use is abated.

Protection in perpetuity is assured by most PPAs; constitutional provisions and legal agreements confer permanent protection. In two cases (CLWR, HF), however, some uncertainty exists about the directions that future land owners may pursue.

Broad accountability

Across the PPAs studied, accountability was found to be multi-dimensional and multi-layered. Accountabilities exist, for example, from the authority to direct shareholders and employees (HF, CLWR), to members and assemblies (SWI, N'NSL), to the general public (HHP) and to nature (TGP). In general, direct accountabilities are relatively more narrow for the for-profit PPAs (CLWR, HF) than for non-profit PPAs. The desire to pass on a natural legacy for future generations, either as direct descendants of the private authority or to those in the general Canadian community, was a widely shared theme in all cases studied.

Authorities are accountable for a variety of responsibilities, including, for example, the provision of recreational experience and the advancement of environmental education (HF, CLWR, TGP), the protection of biodiversity (SWI), ecological integrity (HHP), as well as the protection of First Nation cultural and traditional uses (N'NSL).

Many different administrative methods are relied upon to convey these accountabilities; they include legal contracts, stewardship actions and fiduciary and trusteeship undertakings. For those authorities that enjoy tax privileges, such as the HF, certain additional responsibilities and obligations of accountability are also created.

Rigorous decision-making

Authority for decision-making also rests in a variety of forums – from single decision-makers (the land-owner in the case of HF) to many decision-makers (boards of directors and a general assembly in the case of SWI and N'NSL). Routine and substantive decisions are made in each of these forums, some of which are delegated to a management body or shaped by an advisory body (TGP). The most critical decisions included whether or not lands should be purchased or permanently protected in other ways, and the type and level of management that is deemed appropriate. For example, the prerogative to declare land inalienable is made on a case-by-case basis by the

Board of Directors of TLC. A blanket policy decision that prevents Settlement Land from being sold is outlined in the VGFN Constitution.

Decisions are most often made collectively and by consensus, and when necessary, by a majority, as in the case of TGP. It remains the duty of boards of directors or single landowners, however, to oversee the conduct of the authority; the most important duty is to provide a definition of the goals, strategy, and mission for the protected area.

Reliable monitoring and enforcement

Various Forms of monitoring and enforcement exist across the PPAs studied, ranging in intensity from relatively inconsequential to more robust in nature. This occurrence is likely a consequence of the perceived threats to the values that the authority seeks to provide. Enforcement issues, although they exist, have not proven to be a major impediment for the authorities. Current issues include such matters as uncontrolled public access onto private lands (HF) and deviation from contractual agreements and understandings (HHP).

Independent checks and balances

Independent oversight monitoring, outside of expected financial reporting systems, is employed, albeit infrequently and in different forms, across the PPAs studied. Compliance with independently derived standards (HF), potential employment of environment auditors (HHP) and third party general oversight (SWI) are judiciously relied upon. It is accepted by many authorities that accountability is best achieved through a mix of self-regulatory and independent, external assessments; ascertaining the practical effect of these measures, however, is still very much in its infancy. In the case of land trusts, the regular issuance of annual reports remains the most common accountability mechanism. Stakeholder roundtables, often in the form of local advisory boards, are established infrequently. In the event of conflict, three cases provided for dispute resolution in the form of a third party mediator or arbitrator (CLWR, SWI, CLWR).

A theme emerging in the studies of governance suggests that ambiguous statements regarding accountability and authority invite uncertainties that can undermine governance (Broadbent 1999). The absence of an accountability declaration can upset the achievement of short and longer term goals for the protected area (Graham et al.

2003a). No case studied presented expressly provided accountability statements: rather accountabilities are scattered within documents and within the management culture of the authority. This multi-dimensional characteristic suggests that any attempts to strengthen accountability will be a complex task tailored to the mandate of the specific area in question. A first step that authorities would benefit from is considering: to whom are they accountable and for what?

5.4 Summary of Findings

Governance is widely perceived as affecting outcomes, with good governance more likely to result in the achievement of goals and objectives (Glasbergen 1998). The PPAs studied evidenced general adherence to the principles of good governance. A summary of findings – the similarities and distinctions - within the PPAs studied reveals:

Direction

- With the exception of one case, all PPAs had visible organizational frameworks and management plans that were unambiguous in the presentation of protected area objectives and activities.
- The substance of management plans was also found to be consistent with contemporary protected area concepts. Most private areas adopted ecosystem management principles, including a precautionary, adaptive, science-based and landscape level approach, as well as consistently reflecting commitments to ecological integrity through protection actions. The HHP, however, was the only case that expressed formally “ecological integrity” in its mission statement as the top priority. An ecosystem-based approach also framed direction for the short to long term and was a distinctive feature of the management plan.
- Attention to risk management, and the attendant financial costs and impingement on protected area objectives, is taken into account by authorities most often at the initial land acquisition stage. Two cases, SWI and N'NSL, provided specific risk management plans and were the only cases to do so.
- In all cases, there were collaborative partnerships with government, academic and non-government institutions and individuals in an effort to advance knowledge of the private area and to shape its direction; in no instance did a private authority act alone.

- The most distinctive feature of all the private areas studied is a commitment to a stewardship ethic that underlies the leadership authority; this aspect is universal among the cases studied and forms a foundation for the direction of all PPAs at issue.

Legitimacy

- Expression of protected area values is evidenced in all the PPAs studied. All PPAs subscribe to full spectrum of recognized protected area values, albeit with a different emphasis in each case. Formally expressed values that are widely shared include protection of ecosystems, biological diversity and ecological integrity. Other values that are expressed include science and research, environmental education, recreation, aesthetics, traditional and sustainable use. Two cases stand apart from these expressions. The N'NSL is the only case that commits to the protection of traditional use. The HF is the only case that commits to sustainable use.
- Transparent rules of engagement are mixed, ranging from highly informal, discrete and *ad hoc* to rules that are formal, visible and regularized. The N'NSL is the only case that relied on a formal public participation process to solicit views from the general public and specific interest groups.
- Trust and reciprocity is evidenced. All of the cases studied had demonstrable political support from a broad community of interests at the regional, national or international levels and from government or non-government sectors. The N'NSL is the only case that has received direct legislative support.
- A trustee relationship is expressed in various forms and degrees of interest ranging from narrow, where there is consideration beyond direct ownership interests, to broad, where the interests of the global community, future generations and nature are expressly provided. The TGP is the only case that makes an explicit and written commitment to "future generations".

Fairness

- There is no evidence of unjust, partial or unethical actions. All land transactions have been conducted between willing parties, common tools of impartial assessment have been relied upon and broadly accepted forms of compensation have been employed to address vested rights and interests.

- Management issues arose in all cases. No demonstrable conflict, however, was evident in any of the protected areas considered, suggesting that fair and just arrangements had been made.
- Authorities were found to be moving generally towards more equitable arrangements. Most authorities attempted to access a broad base of competencies and interests in land protection and conservation, either through collaborative relations or more directly through boards of management. TLC, the governing body for SWI, is the only authority that has established a First Nations Land Trust.

Performance

- Performance expectations are most often embedded in the goals and objectives established for the private area.
- In general, monitoring is highly fragmented and the synthesis and integration of disparate data and information appears to be inconsistent and lacking cohesion.
- Various capacities exist to undertake performance measurement; it appears that there is a willingness or an ability within authorities to approach performance more vigorously than is currently evidenced.
- There is a general absence of reporting on performance outcomes. Reporting, when it is conducted, typically refers to organizational activities or inputs, rather than to the results to be achieved; there is a general silence on the status or progress towards the principles or objectives set for the PPA. The HF is only case that has attempted a comprehensive progress report for the PPA.

Accountability

- Interest and certainty in land is a critical prerequisite to the exercise of authority. With the exception of one case, all the authorities held fee simple title to the land area in question.
- Accountability was found to be multi-dimensional and multi-layered.
- Authority for decision-making also rests in a variety of forums – from single decision-makers to many decision-makers, in the form of boards and assemblies.
- Monitoring and enforcement exists in varying degrees, ranging from relatively inconsequential to more robust.

- Independent and oversight monitoring, outside of expected financial reporting systems, is employed, albeit infrequently and in different forms. Compliance with independently derived standards, potential employment of environment auditors and third party general oversight are judiciously relied upon. The HF is the only case that has regularly employed an independent evaluation scheme.

This pattern also suggests a close alignment with major governance themes. First, governance involves a blurring of boundaries between traditionally distinct roles (Stoker 1998). These cases have revealed that non-government organizations maintain close structural relationships with government, that corporate authorities voluntarily pursue certification standards akin to regulations and directives and that First Nations are embedding governance customs and tradition in new and universally recognized government regimes. Second, governance is also about interaction and cooperation (Singleton 1998). All cases studied engaged other parties in relations ranging from those that are limited and distant to those that are extensive and close. Third, a mix of formal and informal processes – from regularized advisory committees to *ad hoc* events - is relied upon to accommodate conflicting or diverse interests (Hanna and Munasinghe 1995b). Fourth, governance is not an ethereal construct, but is a direct reflection of prevailing issues, conditions and trends affecting the protected area; governance is “the sum of the many ways individuals and institutions, public and private manage their common affairs” (Commission on Global Governance 1995:2). Moreover, to be effective, governance must reflect its context (Ostrom 1995). Finally, governance is about purposeful direction and pursuing outcomes that parallel those of the traditional institutions of government (Rhodes 1996). For all cases studied, the pursuit of protected area values and objectives is a central and defining component.

CHAPTER 6 CONCLUSION

6.1 Introduction

This chapter addresses the governance of PPAs, and the promise and uncertainty that these new forms of authority offer the public interest in conservation and protection. The chapter is structured around the goals and questions that framed this research, as well as the general findings that have emerged from case study analysis. In the light of those findings, this chapter outlines the implications that the increasing number of PPAs present and also addresses the role that the private sector can potentially play in protected area systems. It concludes by outlining directions for future research.

The conclusions offered are based upon the analysis of six case studies. These case studies are illustrative of a particular sector and are not representative of that sector. Rather, they have been purposely selected to fulfill a typology advanced by researchers studying the private sector and protected areas (World Parks Congress 2003a). The limitations of a poorly documented sector and the status of research knowledge of PPAs in Canada have been canvassed previously. A multiple research methodology is employed. The emphasis on document analysis, however, may invite bias in interpretation. These three limitations – state of knowledge, selection of cases and emphasis on documents – invite caution about the interpretation of conclusions as being definitive or as having general application to the private sector as a whole. They do, however, offer useful insights about an emerging form of governance in Canada and they provide a platform from which other enquires may spring. Given the nascent field of governance and PPAs in Canada, the conclusions also have their own intrinsic value. They provide generalizations that are broad enough to be considered relevant for the cases studied as a whole, but specific enough to impart useful knowledge about the shape and form of governance in private authorities that are committed to protected areas.

This research was framed to achieve the following goals:

1. To improve understanding about the governance profile and pattern of private protected areas in Canada; and
2. To add to the general body of knowledge about governance and protected areas.

The questions that this dissertation seeks to answer are as follows:

1. Do the Canadian private protected areas studied adhere to principles of good governance?
2. Do the private protected areas studied advance the public interest in conservation and protection?

6.2 The Principles of Good Governance and the Governance Pattern in Private Protected Areas

The first research question that this dissertation seeks to answer is: Do the Canadian PPAs studied adhere to principles of good governance? Through analysis of selective case studies and their governance profiles, six conclusions are presented.

First, the results of this research suggest that the PPAs studied generally adhere to principles of good governance. With a single exception, the cases studied were exceptionally strong in fulfilling the principles of Direction and Legitimacy. Evidence also suggests that, despite the need to address certain management issues, the principle of Fairness was fulfilled. In contrast, the principle of Performance was the least advanced across the sector. Accountability was found to be multi-dimensional.

Second, the research results also suggest that the governance pattern is not strongly differentiated across the cases studied. Although there is a varied emphasis on particular governance attributes and distinctions occur, the general pattern evidences uniformity in both its strengths and its limitations.

Third, the research also determined that there is richness in the governance principles; that is, where the PPAs were exceptionally strong, they adhered to many of the attributes advanced in the normative framework and where they were least

advanced, fewer attributes were addressed or significant attributes were missing. Visible frameworks employed a coherent direction and risk management approaches. Formal management documents for the private area generally employed a long-term approach and relied upon contemporary concepts such as ecological integrity and landscape management in order to secure protected area values. In particular, authorities attempted to locate the private areas adjacent to existing protected areas or to manage the private area in anticipation of an expanded protection network. The research also reveals that the private areas are shaped by the collaboration and support received from a diverse array of interested parties ranging from the local to the international arenas. Some authorities also pursued collaborative efforts outside the protected area boundary and joined with other initiatives to increase the effectiveness of the initiative at issue. Strong leadership – demonstrated by consistency of authority - was evidenced across all cases. Expressed values that were found to be widely shared across the cases studied include a commitment to the protection of ecosystems, biological diversity and ecological integrity. Formal and informal participation mechanisms were employed to solicit views and opinions. The desire to pass along a permanent, natural legacy to future generations and the expression of a trustee relationship are recurring salient features in all cases analyzed. Issues management commanded varying degrees of attention in each of the private areas studied. There is, however, no evidence of intractable disputes over control and access to land and resources. In all cases, generated revenue was reinvested into the PPA. In general, performance standards are not well defined, monitoring is highly fragmented and uneven, and there is an absence of reporting on performance outcomes, creating uncertainty as to the protection and conservation values. Accountability to different stakeholders for various goals and activities by many different means is a distinguishing feature across the cases studied. There were various accountabilities vis-à-vis direct and indirect interests, such as to employees, members and the general citizenry for both short and long term commitments. Mechanisms to secure these accountabilities were highly varied and included moral commitments, general management plans, contracts and constitutional provisions. Independent oversight was employed infrequently, with most authorities relying upon a self-regulatory capacity.

Fourth, this research also confirms that governance occupies an important role in the management of PPAs. Contrary to an expectation that the private sector will not be

actively engaged in matters of governance – largely due to the attachment of privileged interests and authority to private property that potentially negates the relevancy of governance – results suggest that private authorities employ various means to exercise their power and responsibility and to manage their common affairs. Processes that can be counted amongst the cases analyzed include the development of tailored management plans, formal as well as informal discussion and decision forums, and collaborative efforts to achieve direction, control and coordination for the area at issue. These processes are not imposed upon the private authorities; rather, they are willingly adopted and incorporated into a continuing process of management and action.

Fifth, this research also reaffirms the significance of governance principles that have been advanced by researchers for application to protected areas (Abrams et al. 2003, Graham et al. 2003a, and World Parks Congress 2003a.) The principles were not only found to be relevant to private authorities pursuing protected area values and objectives, they were also found to be all-encompassing and complete. In other words, no governance issue or feature emerged in the case studies that could not be accommodated by the principles advanced.

The significance of this pattern and general adherence to the principles of good governance principles cannot be understated. Governance – the interaction between processes, structure and tradition to achieve direction, control and coordination – is widely considered to be a major determinant that shapes the achievement of goals and outcomes. The good governance principles not only transcend a particular context, they are also seen as necessary conditions: an authority cannot succeed in the long run without them. Where governance is weak, the authority becomes ineffective and the ability to achieve results is undermined. Where governance is robust, there is a stronger likelihood of meeting protection and conservation objectives. There is also a stronger likelihood that as the private authority persists through the avails of good governance, that the PPA will indeed be able to make a permanent contribution to a natural legacy. These observations lead to the last, and significant, conclusion pertaining to the research question.

Sixth, as the PPAs studied were found to generally adhere to principles of good governance, this research also suggests that the authorities responsible for the PPAs

are more likely to achieve protection and conservation goals and to advance the public interest than those authorities that do not adhere to governance principles. Research suggests that good governance, and its influence on management, will contribute to the achievement of protection and conservation objectives.

Accounting for the governance pattern and its coherence across the cases studied, however, presents a more challenging task. The fulfillment of governance principles is likely a reflection of the organizational maturity, size and complexity of the protected area authority, its relationship to leaders in protected area management and its willingness to adopt new protected area concepts and to innovate. It is an underlying truism that “no single actor...has all knowledge and information required to solve dynamic and diversified problems...no single actor has sufficient action potential to dominate unilaterally in a particular governing model” (Kooiman 1993:4). In this light, it can be argued, that private authorities have emerged to supplement the traditional state role in protected area management. However, as various authors have commented, a greater role for private authorities has assumed both positive and negative implications (Bergkamp 2002, Cashore 2002, Schater 2000). Good governance within the private sector is also likely a pragmatic response to public criticism that the sector does not operate outside of itself; the requirement to communicate objectives to, and solicit support from, interested and critical parties necessitates reliance on legitimate methods of public participation. The growing attention to governance, in general, and to accountability more specifically, may also assist in an expansion of governance mechanisms within the private sector. A commitment to a stewardship ethic also appears to provide one of the strongest underlying motivators to achieving good governance in PPAs; private authorities appear compelled to act beyond their own self-interest. All cases were situated in one country, generally applauded for its commitment to democratic ideals and for its complex and creative civil society; this may also account for the coherent governance pattern that emerged. All of these factors likely assist in the diffusion and transfer of experience and expectations and to a consolidation of governance approaches within the sector.

6.3 The Governance of Private Protected Areas and Advancing the Public Interest

The second research question that this dissertation seeks to answer is: Do the PPAs studied advance the public interest in conservation and protection? Through analysis of selective case studies and their governance profiles, one major conclusion is presented.

The public interest in PPAs has been determined to be a collective, rather than a sum of individual, expression of values. These values include those of a more instrumental nature such as biological conservation, amenity protection and maintenance of future options, as well as values captured by a new environmental paradigm that are morally based (Dunlap et al. 2000). In this latter expression, values are centered not only on a perceived urgency to bring greater protection to protected areas, but values are embedded within a moral framework that calls for a completely redefined relationship between humans and nature, where nature, rather than people, are placed at the centre. Schools of political economy suggest the private sector will not, or cannot, make a contribution to the public good as the benefits that flow from protected areas are, in essence, public goods that can only be provided by the state. Schools of moral economy likewise suggest that the private sector can act outside of itself and serve a larger interest.

The findings of this research have determined that the private authorities studied have made commitments to protected area values – including biological diversity, ecological integrity, ecosystem protection, aesthetic appreciation, resource sustainability, recreation and education, research and traditional use, and that these commitments are manifested in two major ways. First, commitments to, and practice of, a stewardship ethic are made and actions that would otherwise impinge on these values are avoided. For example, more lucrative revenue options have been foregone so as to secure ecological integrity. Second, commitments are made to a trust relationship that binds current and future authorities to protection in perpetuity. Protection is undertaken in the PPA for the benefit of future generations and is expressed informally, through stewardship, and formally through legally-binding contractual arrangements that ensures durability and long-term conservation. Boundaries of the PPA are secured in tenure; in a majority of the cases under study boundaries are secured through fee simple title or long-term lease arrangements. The boundaries, however, are not permanently fixed in

all cases; some are open to revision as a consequence of demands arising from future land owners and others are potentially vulnerable if they are transferred to the state or to an organization that is not bound in the same manner or to the same extent. Despite the constraints that property boundaries confer, the authorities often situate the private tenured area at the landscape level, so as to enable an ecosystem approach and to enhance the ability to flow benefits from ecosystem services or to potentially serve as a buffer that would increase the effectiveness of surrounding legislated protected areas. Most private areas, for example, were located directly adjacent to, or nearby, other established public or PPAs. Integrated management strategies for land and water and living resources, however, had not been developed in most cases. Most PPAs were also shown to generate direct benefits, to promote social stability and to encourage local capacity-building. Although private ownership confers certain privileges, general public access to PPAs is not prohibited, but rather is constrained so as to safeguard protected area values and to secure the flow of direct benefits to the land owner. The most common forms of resource commodification – a general criticism of private investment in conservation and protection – are infrastructure/facility development to service interested users and sustainable resource extraction to finance management operations or to flow products and services to meet community needs. Existing and planned commercial wolf and grizzly bear watching ventures, for example, are seen by the authorities as enhancing visitors' experience and appreciation. With the exception of one case, First Nations participation in PPAs is mixed, with representation on limited advisory committees, rather than decision-making forums at the fore. It is noteworthy that in all cases, the decisions to establish the private areas have not been capricious, but carefully considered; one area in particular has had a long, complex and intense history predating its establishment (N'NSL). In general, minimum protection thresholds within the cases studied have not been defined through zoning or in policy. Descriptive objectives, such as to provide protection across the entire case study are the norm. As cases, and not systems, are the focus of this research, this finding is not unexpected. One case (HF), however, due to its large size and emphasis on resource sustainability, has established HCVF within a larger management area and has, *de facto*, established a minimum threshold of 7.5 per cent of the forest management area.

Mechanisms to account for the substantive public interests are present but limited in scope. Formal participation processes are rare and most authorities rely on informal

means of securing public views and opinions. More often, advisory committees are struck, comprised of individuals deemed representative of the general community. Collaborative partnerships, reflective of community interest, are entered into quite frequently in PPAs. The regularized release of information in the form of annual and general reports, rather than comprehensive state of protected area reports, is a common feature of non-government authorities.

Nevertheless, PPAs face significant limitations, which may undermine their ability to advance the public interest. Most private areas are relatively young, with a consequent emphasis by the authority on the early stages of acquisition and establishment, rather than on the later stages of management and evaluation. Knowledge and understanding of the private area at issue will thus be constrained, as authorities forego thorough evaluation in exchange for the kind of work normally required at the establishment phases. As a consequence, attaining confidence in the quality and integrity of the protected area is difficult. PPAs are often not pristine in nature. They have been subject to considerable resource development and disturbance pressures and require tremendous investment in restoration and recovery. The role of significant restoration in protected areas is further complicated by endangered species and landscapes that are difficult to recover and sustain. PPAs face another burden. A public sympathetic to the missions of land trusts, for example, prefer to have their monies invested in land purchase that is visible and expands the conservation authority, rather than placing competitive dollars in recovery and restoration that is 'behind the scenes'. For those private areas in remote locations, meeting operational requirements puts additional pressure on strained financial and human/organizational resources. There is often little opportunity to redirect resources from alternative sources and as private authorities are generally constrained to cost-recovery within the area boundaries; the area becomes vulnerable to changes in land tenure and authority if the area cannot be sustained. For those private areas located in more developed regions, encroachment and development pressures beyond the borders of the private area are expected to continually frustrate authorities from being able to fully achieve their goals and objectives. For the near future, PPAs face considerable challenges to safeguard conservation and protection values.

In view of the findings of this research, it is concluded that, PPAs not only have the potential to advance the public interest through the avails of good governance, but that they do advance the public interest. Most notably, commitments to protected area values, dedications to future generations and permanent in perpetuity protection are salient. Moreover, this research also suggests that, notwithstanding the challenges that PPAs must face, PPAs offer considerable promise in making further advances to the public interest in conservation and protection.

6.4 The Complementary Role of the Private Sector

Given the general adherence by PPAs to principles of good governance and their direct potential for contributing to the public interest, PPAs can play a strong complementary and contributory role in advancing protected area goals and management philosophy. A complementary, rather than alternative or substitute, role for PPAs is deliberate. Although this research demonstrated that the cases studied offer a means of achieving conservation values and objectives and that private forms are undertaking the activities of a public agency, uncertainty about the scale and scope of the sector and understandings about its long-term consequences mitigates against making confident investment in this form of governance. Notwithstanding the strengths demonstrated by the cases studied – notably, their commitment to a long-term direction, their purported desire to pass along a natural legacy to future generations and their shared values respecting ecosystem protection and conservation of biological diversity - society's needs may, at this stage, be better met by the actions of government rather than by exceptional citizens given to altruism, philanthropy and courageous investment. Although considerable promise and ability evidently exists within the private sector, until more is known about the scale, scope and outcomes of the sector, a complementary role that reinforces the actions of government appears to offer the greatest possibility for progress.

This is not to suggest that the private sector role is not significant, nor warranted. Indeed, other jurisdictions, such as Australia, have formally recognized the private sector's contribution to protected area objectives and have provided it a status equivalent to that enjoyed by state initiatives. Canada could benefit from similar national

approaches. The paradox exists, however, that, until the state invests in the private sector, provides formal recognition of its contribution and invites it to be a full and equal partner in protected area conservation, the private sector will continue to be cast in merely a supporting role. This role may be sufficient; public-private partnerships may be an anathema to a sector looking to be free of government involvement and wanting to pursue its vision of protected areas on its own. Governance reminds us that a substantial break from the past is occurring and that the boundaries between traditionally distinct roles are blurring. More significantly, as the transformation to new types of organizations occurs, so does the privilege of allocating values. Private authorities may desire the national recognition and acknowledgement of a strong leadership role in conservation and protection traditionally reserved for the state. The considerable investment and difficult choices that most private authorities have had to make suggests that they may be aspiring to this role and the responsibilities and recognition that it confers.

6.5 Implications that Growing Private Protected Areas Present

Despite the explosive growth of private authorities, particularly that of land trusts and non-government organizations in select jurisdictions, virtually nothing is known about the spatial and temporal scales of the sector. It has been assumed, however, that, like other advanced industrialized nations, a quiet conservation revolution is occurring in Canada and that a complex conservation situation is taking form. The implications of this growth are multi-faceted and at least four strategic themes can be identified. These themes should help to sharpen the debate about the directions that PPAs should take.

- *Calls for an ecological systems approach that includes PPAs*

The growth of PPAs suggests the need for an ecological systems approach at the national and provincial level, to coordinate better the patchwork quilt that may be emerging, and to guide the identification and establishment of new PPAs. However, the biggest obstacle to a more rational systems approach for PPAs is that the nexus between the opportunity to purchase private property and its ecological significance is often a coincidence and not one that can be consciously planned by private authorities;

private authorities are more often reactive than strategic. Private authorities do not have at their disposal the financial, regulatory or expropriation options otherwise available to the state. A range of environmental, social and economic variables represent significant drivers to the establishment of PPAs and the eventual pattern that occurs. Variables that affect the private sector's ability to pursue conservation include for example: the availability of funding; market conditions and land value; significance of the area vis-à-vis the mission of the authority; staff; portfolio size; and opposition and sympathetic interests. The effectiveness of PPAs in conserving biological conservation and their ability to respond to social and ecological change over the long term will also need to be demonstrated to gain entry into a systems framework. Despite efforts, however, to establish a systems approach, the existence of an incoherent, fractionalized PPA network – a protection portfolio - may be a continuing tradition.

- *Towards a coherent classification scheme and governance regime for PPAs*

The emergence of a variety, indeed a plethora, of PPAs suggests potential differences in protection standards and guidelines, as well as differences in the accommodation of human uses in a landscape dedicated to biological conservation and protected area values. This appears to be an expected consequence of an unregulated and voluntary sector. Most private authorities, for example in the cases studied, do not subscribe to any recognized classification typology at a specific level, nor do they subscribe to generally accepted standards respecting protected areas advanced by international agencies. The PPAs are, in effect, being built from the ground up and are a response to local conditions as they occur. There is convergence towards protected area concepts in management planning. However, classification uncertainty remains and PPAs tend to remain isolated in emergent and highly tailored classification schemes. A generally-accepted classification scheme, such as the recommendation by the WPC that the IUCN classification scheme be applied to PPAs would bring greater rigor to the types of development and activities allowed in PPAs and would provide some much needed consistency. As the cases have demonstrated, however, flexibility in the classification system is needed to accommodate the scope of PPAs. More significantly, any classification scheme pertaining to PPAs must confirm the provision of public benefits. The adoption of any general classification scheme by authorities intent on pursuing their own conservation mission, however, remains to be seen.

On a related matter, compliance by the sector with accepted principles and criteria of good governance tailored to PPAs would enhance the confidence of policy-makers in the effectiveness and credibility of these new forms, and their contribution to advancing public interest goals. Carefully chosen performance levels could not only have information value, they could also serve to motivate and communicate. Agreement by the sector on basic standards and benchmarks of excellence – a Governance Assessment - to guide the maturation of small to large authorities would strengthen its place in the conservation and protection agenda and potentially create public will for the initiative. The challenge is setting the bar high enough to inspire confidence, while at the same time allowing for flexibility and accommodating different capabilities. For example, participatory processes that engage the general public, as well as direct interests would shape the governance standard. Such an approach, however, begs the question of whether the sector is amenable to self-regulation or requires independent certification that may involve the state. This approach also assumes that there is capacity to invest in sustained data collection and evaluation to determine compliance. Other potential coordination avenues include: information sharing, event showcasing and exchange forums. Application of a Governance Assessment to the public sector responsible for protected areas would also reveal strengths and limitations.

- *Development of a policy mix of incentives, rewards and recognition from the state when public benefits are provided*

The private sector already commands some attention from the state. The sector receives financial and program support, it is offered tax incentives in the form of reduced property taxes and it is invited to participate in policy forums and information exchanges. If the capacity of the private sector is to be enhanced, however, governments need to be more actively involved in providing the right mix of incentives, rewards and recognition that will not only strengthen governance, but also be respectful of an autonomous sector that explicitly exists independent of traditional government and is pursuing a conservation mission of its own choosing and of its own making. Rather than fostering the existence or perception of two solitudes, learning how to harness the private sector and pursuing a shared interest in a common fate calls for a strongly compatible and mutually coherent approach between both private and public interests. The privilege that is seen to attend private property and the secure tenure that it provides offer a

potent mix to complement public protected area systems. The challenge is to take full advantage of that mix. A full partnership with government is sought, rather than a merely supporting role. Meeting the demands of governance can easily outstrip the resources available to the private sector, particularly when it is engrossed in the early stages of management. Provision of technical support, shared data repositories and interest in the sustained existence of the private authorities are areas of potentially fruitful government involvement. The provision of public benefits that are related to protected areas, however, should be confirmed before the private authority is in a position to receive public support, as is the case, for example, with the federal Ecogifts program. That is, public support for private initiatives must be linked directly to the provision of public benefits that are within the control of the landowner. Similarly, public support should be eliminated when public benefits are no longer provided. Policy incentives should also be offered on a graduated and progressive basis and reflect the scope and challenge of providing public benefits.

- *Elimination of the Term Private and a Two-Tiered Protected Area System*

The concept of PPAs immediately suggests that they are distinctly different from conventional protected areas. Until greater understanding and certainty is established about the sector, and, in particular, its ability to achieve conservation outcomes in the protected area complex and its ability to respond to social and ecological change over the long term, this distinction may be warranted. The durability and tenacity of institutions – some of which have an established history – is also to be considered. A two tiered protected area system, nevertheless, invites the perception that a PPA is exclusionary, subject to commodification, available only to a moneyed public and is focused on values to the exclusion of biological conservation and the protection of nature. It also invites the view that private, individual interests will not serve the collective community interest. Given the balancing act that most protected areas inevitably face, the assumption is that the private reserve will fall towards an accommodation of human uses and related social and economic benefits, rather than a protection of ecological integrity; a trumping of private property claims over competing democratic and public interest claims occurs. The continuing use of the term private may not only embed the negative assumptions in reality, it may also create the

conditions that allow PPAs to pursue a path that is radically different path from conventional protected areas.

The notion of the term private is not to suggest that PPAs are distinctly different in character or intent from their conventional counterparts. Rather, the term private is intended to merely draw attention to the fact that the source of authority and ownership does not belong to the state, but to individuals, corporations, First Nations and non-government organizations that are pursuing stewardship and land protection goals that have traditionally been the purview of the state. If governance is about seeking the well-being of citizens and applying a purposeful direction, the term private becomes an unnecessary obstacle. Elimination of the term would create clarity about the goals and larger purpose that protected areas seek to achieve.

6.6 Future Research Directions

Through analysis of selected PPAs, this research intends to expand understanding about the governance profile and pattern of PPAs in Canada. It also intends to add to the general body of knowledge about governance and protected areas.

This research has provided a description of selected cases that have not been examined previously through a governance lens and, to that extent, illuminates the scope and scale of the engagement by the private sector in governance. Contrary to potential expectations respecting an absence of governance in the private sector, governance is pursued with relative vigor. This research has confirmed that the governance principles advanced for protected areas are relevant to a private sector pursuing similar protected areas goals. It has also revealed that a relatively undifferentiated governance pattern appears to exist across the sector and that shared strengths and limitations appear to exist within the sector. This research has shown that in the cases studied that the private sector has demonstrated a willingness and a capacity to protect natural habitat and to advance protected area values. This research has also begun to document the scope and scale of a private investment in protected areas in Canada. It has adverted to the directions that policy-makers could take to strengthen this new emerging form of governance.

Given that PPAs are a relatively new phenomenon in Canada that has not been subject to research analyses, these confirmations establish a reference point from which other enquiries may spring. These confirmations have also helped to establish and cement Canada's place in the general body of knowledge that exists about governance and protected areas.

Through case study analysis, this research has also attended to a common and recurring question in matters of governance and protected areas, notably, the relationship between governance and performance. However, given the virtual absence of information and data respecting performance, this research has concluded that a relationship cannot be ascertained at this stage. This research posits that a private authority that embodies all five principles of good governance is better positioned to contribute to conservation and protection outcomes and to advance the public interest than one that does not.

This research, however, is based on the analysis of six case studies and, as readily acknowledged, they cannot be taken as representative of a potentially broad and deep sector. The illustrations provided have offered only an initial view into a complex phenomenon. This research has employed a multiple methodology – document analysis, confidential interviews and field observation. It has also relied upon materials and information that could be corroborated and verified and that are fully accessible to subsequent researchers. In view of the nascent developments respecting governance and protected areas and the initial findings that this research has revealed, further areas of enquiry are obviously necessary. Six research areas have been identified.

- *Development of a Governance Framework for Protected Areas*

Governance is enjoying considerable upswing in academic and popular arenas and much work has been undertaken of late. The main criticism of governance frameworks and their relevance to protected areas, however, is that while they are rooted in the democratic tradition, they are not entirely reflective of contemporary concepts underlying protected areas; a tailored balance needs to be sought in governance frameworks between the larger ideal that governance embodies and the more specific understandings of protected areas. Further work on governance frameworks by

researchers with expertise in both traditions will strengthen the consideration, and benefits, of this emerging concept to protected areas. For example, incorporating recent work on the management effectiveness of protected areas (Hockings et al. 2000) within the principle of Performance would be instructive. Assessing the financial and human capacity of the private authority to fully undertake their mandate is another area of governance enquiry. It is also important that attention be given to practical considerations. A complicated and demanding governance framework will not enjoy widespread application. To that end, consideration must be given to either reducing the number of attributes that authorities must consider or to arranging the scope of governance criteria so that it appeals to small, medium and large private authorities of varying ability.

- *A comparative analysis of public and PPA governance frameworks*

A comparative analysis of the governance frameworks governing private and public protected areas would reveal the distinctions and similarities of these two regimes. It would also enhance understanding of the advantages and disadvantages of each sector in the conservation and protection agenda and it would reveal where a private sector role might be more useful than the conventional alternatives. Distinctions should be also sought, for example, between non-profit and for-profit ventures within the private sector. A focus on the custodian and self-benefiting entrepreneurial role would be instructive in this regard. A discussion of the relationships between public and private sectors – their respective behaviors, administrative roles and responsibilities, expectations – would also bring a much needed dimension to this dynamic. An assessment of the opportunities and obstacles that benefit and burden each sector would be beneficial. An understanding of the factors that motivate the private sector towards, and away from, land conservation is essential, including an analysis of financial incentives and social recognition. Economic opportunities might include the following: aggressive property tax exemptions; income tax reductions; compensation payments for provision of ecological services; development of markets for environmental goods and services; trust funds; and a protected area credit trading scheme. Although not a major issue currently, shared enforcement may offer the potential to reduce the administrative costs borne by the sector. This analysis, however, is predicated on the availability of basic and accessible inventories of protected areas pursued by both private and public ventures; an effort to

address this missing and vital link is an essential component of any future research. Related information networks that can be shared among the private sector would aid the transfer of knowledge and experience and also advance collaborative and self-regulating efforts.

- *First Nations and protected area ownership and management*

It is anticipated that, as land claims and treaty settlements become more widespread, First Nations will take on increasing management responsibilities for protected areas located in their traditional territories, as well as ownership obligations for protected areas located in settlement lands. Close historical and contemporary connections between First Nations and the land have been instructive in guiding new relations between humans and their environment. The challenge that First Nations will face is fulfilling the goals of protected areas, as well as providing a source of much needed employment and revenue generation. Research that examines the potential for cultural development, economic opportunity and ecological protection may encourage First Nations to make greater investment in protected areas. The extractive reserve systems in Brazil, for example, may provide an appropriate reference in this regard.

- *A social equity statement on PPAs*

Most of the PPAs studied in case analysis were found to receive, or had the potential to receive, concessions from the state so as to ostensibly advance the public interest in conservation and protection. Opportunities include direct public funding, reduced property taxes, as well as direct and indirect management and enforcement responsibilities that are held by the state and bring benefit to the private authority by offsetting costs that the authority would otherwise incur. These concessions come at some public cost, the most obvious being a reduction in the deployment of tax revenue to activities that would benefit the public welfare in other areas. Although this research has begun to identify, the goods and services that the public receives from PPAs in exchange for this investment, the issue of social equity remains largely undocumented and free of critical analysis. It has also been previously commented that the public interest in protected areas has not received the attention that it is due and that tremendous potential remains. While initial aspects of the public interest as they pertain

to PPAs have been identified, it is readily acknowledged that a comprehensive expression has not been undertaken in this research. The suite of collective environmental, social and economic values that PPAs embody and potentially flow to the public has not been documented. Quantitative and qualitative documentation of the public values attached to PPAs would reveal the scope of these new governance forms. Further, the benefits of such research would not only build towards a fair balance on the return of public investment in private operations, it would force an identification of the many public interest benefits, goods and services that are embedded in private and tenured property operations.

- *Development of a comprehensive statement on the standing of the nation's protected areas*

A national, comprehensive overview of the state of the nation's protected areas, with a focus on the policy framework and on the ground representation, pursued by federal, provincial and regional governments would document the scope of the issue of protected area management in Canada. Although the federal government regularly releases reports on the state of its heritage areas, these are focused on national programs and do not adequately account for the efforts undertaken by other jurisdictions. Canada's standing in protected areas, for example, suggests that it is a laggard, rather than a leader (World Resources Institute 2003). Greater coherence needs to be brought to the myth and the reality of protected areas in Canada and to appreciate better the domestic concern that protected areas present. A comprehensive, thorough and current assessment would not only reveal gaps, limitations and priorities for protected areas, it would also provide a substantial framework within which the private sector could follow in policy, program management and operational areas. An assessment could prompt more vigorous attention to the private sector and the potential role that it could fill.

- *Opportunities in private lands for significant expansion of protected areas*

Private land owners of PPAs have demonstrated a commitment to protection and conservation under a voluntary regime. If property definitions are seen to be dynamic and evolving, the governance of PPAs suggests that the more traditional notions of private land ownership where economic interests tend to dominate may be subject to

transition as well; private interests can become subject to public claims. The growth of PPAs has the potential to affirm ecological perspectives and incorporate non-commodity values in conventional property rights; legal experts have referred to this perspective as transformative and ecological where private property can serve two masters: the community and the individual (Sax 1993).

Non-commodity values are under severe threat. Greater collaborative efforts are needed, not only between the traditional state and private conservation authorities, but between private conservation authorities and conventional private property owners as well. Sympathetic outlooks shared amongst private property holders may prove more successful than previous solutions attempted between public and private interests.

Further research that encourages land stewardship and new forms of governance for land protection would continue to stimulate the search for answers in this important area.

¹ Primary documents reviewed for this case study include:

1. Ministry of Parks. 1989. *Master Plan for Cathedral Provincial Park*. Victoria: Province of British Columbia. (Master Plan).
2. Ministry of Environment and Parks. 1987. *Cathedral Park Master Plan: Background Report*. Victoria: Province of British Columbia. (Background Report).
3. *Lease Agreement* between Okanagan University College and Cathedral Lakes Lodge Ltd. April 30, 1996. (Lease Agreement).
4. *Park Use Permit* between Province of British Columbia and Cathedral Lakes Lodge, November 16, 1997. (Park Use Permit).
5. Materials respecting the transportation corridor from 1995-2005 made available under the *BC Freedom of Information and Protection of Privacy Act*. (Materials).

² Background Report at page 29. In the early 80s, financial difficulties faced by the then private owner witnessed the issuance of 189 non-interest bearing Perpetual Participation Bonds at \$10,000 each which would allow the purchaser privileges as a member of the Cathedral Lakes Wilderness Society. The program was unsuccessful.

³ Lease Agreement.

⁴ Lease Agreement at page 12.

⁵ A Class A Park is Crown land designated under the *BC Park Act*. In particular, s. 8 and 9 of the Act direct that a park use permit must not be issued respecting an interest in land or natural resources "unless, in the opinion of the minister, to do so is necessary to preserve or maintain the recreational values of the park involved". Uses in parks that existed at the time of establishment, such as grazing, hay cutting and other uses (except commercial logging, mining, or hydro electric development) can be accommodated.

⁶ The original park boundary encompassed 7,372 ha. In 1975, 25,900 hectares were added to the park with the view of establishing natural watershed boundaries; forfeited mineral claims in 1976 also expanded the park area. In 2001, an additional 353 hectares was added to the park to enhance the ecological viability and to protect low elevation forests.

⁷ Evans, M. 1997. *Holocene sediment yield and geomorphic sensitivity in alpine landscapes, Cathedral Lakes, British Columbia*. Unpublished doctoral dissertation, University of British Columbia, British Columbia.

⁸ Lodges imperil B.C. wilderness, critics say. 2005, February 24. *Globe and Mail*, p A12. The inadvertent discovery by environmental organizations that the government intends to introduce lodges into wilderness parks in BC currently only accessible by hikers, elicited cries of complaint: "when you allow lodges to be built in parks, you are conferring private-property rights to the lodge owner. After they become established, they can make demands for things like snowmobile access or an expansion in the number of rooms".

⁹ Background Report at page 29.

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- ¹⁰ Background Report at page 29.
- ¹¹ Master Plan at page 10.
- ¹² Master Plan at page 46.
- ¹³ Master Plan at page 8 and 35.
- ¹⁴ Background Report at page 14. Although Species at Risk have not been formally documented in Cathedral Provincial Park, a 1986 plant inventory recorded 237 plant species, 10 per cent which have been reported to be rare in BC. Present stocks of sport fisheries originate from introductions in 1932 and 1938. Hunting is currently allowed.
- ¹⁵ Langholz, J., and Lassoie, J. 2001. Perils and promise of privately owned protected areas. *BioScience* 51,12 at page 1082. The researcher suggests that "Ecotourism Reserves" are a type of privately owned protected area where they "combine nature conservation with tourism. Tourism is a principal revenue generator and takes place on part or all of the landholdings". The eco-tourism reserve is also suggested as being loosely aligned with and based upon the World Conservation Union's (IUCN) existing typology for publicly owned protected areas, in this case, Category III – Natural Monument, where a protected area is managed mainly for conservation of specific natural features.
- ¹⁶ Lease Agreement. Selected administrative terms of the lease include, for example: provision of 500 guest days per year, with 100 available during the peak season to Okanagan University College (OUC); right of first refusal; compliance with BC Forest Practices Code; responsibility to do no environmental harm, and commercial arbitration in the event of disputes. As OUC is the responsible authority for Cathedral Lakes Lodge it is positioned to receive complaints about operation and management. Issues respecting generator operation and animal management have been received.
- ¹⁷ Lease Agreement at page 15.
- ¹⁸ Lease Agreement.
- ¹⁹ Background Report at page 51.
- ²⁰ Ministry of Environment and Parks. 1987. *Assessment of Impacts from Intensive-Use on Alpine Tundra Vegetation and Soils in Cathedral Park, BC. Technical Report 26*. Victoria: Province of British Columbia.
- ²¹ Another example of "shared and mutual public and private interest" occurred in 1998. In this case, routine management of privately operated diesel generator for electricity resulted in a fire in

1998 with potential to burn a significant area of the park and create harm to life. As the fire was not located in the core area of the public park and perceived to be on private land, it was initially excluded from public sector fire-fighting efforts normally equipped to address inaccessible terrain. As the fire grew and was unable to be contained, the risk to the park became evident and successful fire-fighting efforts were subsequently deployed.

²² For example, the Parks Canada Agency documents that utility corridors are one of the top five stressors in the National Parks and that, in many parks, the stress is increasing. Parks Canada Agency. 2000. *State of protected heritage areas: 1999 report*. Ottawa: Canada at page 69-70. Researchers also document that road fragmentation is a concern for wildlife viability in and adjacent to protected areas in the Rocky Mountains. Alexander, S. and Waters, N. 2000. The effects of highway transportation corridors on wildlife: A case study of Banff National Park. *Transportation Research Part C: Emerging Technologies* 8,1: 307-320.

²³ Background Report at page 46.

²⁴ Park Use Permit. Permit Modification Agreement 2000 respecting the Park Use Permit between Province of British Columbia and Cathedral Lakes Lodge, November 16, 1997.

²⁵ Park Use Permit.

²⁶ Master Plan at page 4.

²⁷ Materials made available under the *Freedom of Information and Protection of Privacy Act*, BC were severed due to "disclosure harmful to business interests of a third party", as provided for in s.21 of the Act. No public complaints about the existence of the road were formally registered in these materials. Concerns, by public officials, regarding road quality, erosion and stability are noted in the 2003 road inspection report. Comprehensive liability insurance of \$5M covers operation of the Wilderness Resort. Other permits required include a canoe dock, and right-of-way for the water line and intake. For comparison, fees for the road access in 2004 were \$321.00 and in 1998 for the road access were \$214.00.

²⁸ Materials. Correspondence from Cathedral Lakes Lodge to BC Parks, November 19, 1998.

²⁹ Master Plan.

³⁰ Background Report at page 27.

³¹ 1995, August 24. *Seattle Post Intelligence*, p A25.

³² Background Report at page 53.

³³ Primary documents reviewed for this case study include:

1. The Nature Trust of British Columbia. *2003 Annual Report, Keeping BC Beautiful*. (2003 Annual Report).
2. The Nature Trust of British Columbia. *2002 Annual Report*. (2002 Annual Report).
3. The Nature Trust of British Columbia. 2004. *Hoodoo/Hofert Property Management Plan, East Kootenay Region*. Vancouver: Nature Trust of BC. (Management Plan)
4. The Nature Trust of British Columbia. n.d. *Hoodoos Press Release*. (Press Release).
5. East Kootenay Conservation Program. n.d. *Conserving Working Landscapes: A Framework for Conservation on Private Land*. The Rockies Network. (Framework).

³⁴ Management Plan. The groups involved in acquisition of the property included: Columbia Basin Fish and Wildlife Compensation Program; Habitat Conservation Trust Fund; Kootenay Wildlife Heritage Fund; BC Conservation Foundation; District of Invermere; Ducks Unlimited Canada; Lake Windemere Rod and Gun Club; Southern Guides Association' Sparwood District Fish and Wildlife Association; East Kootenay Big Game Club; and A Bar Z Ranch.

³⁵ Nature Trust of BC. 2005. *Natural Legacy Newsletter*. Issue #22, Spring. Costs include lands and associated costs. Initial funding for the Hoodoos was derived from a lead contribution from the Columbia Basin Fish & Wildlife Compensation Program and other contributors. While a fundraising program was embarked upon to meet a 2005 timeline, the remaining \$1.8M was recently financed by a contribution from the provincial Habitat Conservation Trust Fund. In view of the early completion of financing arrangements, a \$65 K endowment fund for the Hoodoos has been established.

³⁶ 2003 Annual Report.

³⁷ Nature Trust of British Columbia, Biodiversity in British Columbia. Retrieved on December 10, 2005 at www.naturetrust.bc.ca/biodiversity.php

³⁸ Nature Trust of British Columbia, Biodiversity in British Columbia, Retrieved on December 11, 2005 at www.naturetrust.bc.ca/biodiversity.php

³⁹ British Columbia Conservation Data Centre suggests that 26 Species at Risk may be found on the property. The Centre lists Species at Risk in British Columbia and relies upon two major classification types: 1. red-listed species includes any indigenous species that is extirpated, endangered, or threatened; and 2. blue-listed includes any species considered to be vulnerable and of special concern. The Centre has also listed the vegetative community, "Bluebunch wheatgrass-prairie junegrass" as potential red-listed community.

The *Forest Practices Code of British Columbia Act* contains provisions for "identified wildlife species" which require special consideration. In this case, the rare rubber boa snake may be found in the rock outcrops that occur within and adjacent to the property.

- ⁴⁰ The grassland communities are:
1. Bluebunch wheatgrass-prairie junegrass
 2. Richardson's needlegrass-rough fescue
 3. Pinegrass
 4. Redtop-foxtail barely

⁴¹ For example, see: Michael, J. 2003 Efficient habitat protection with diverse landowners and fragmented landscapes. *Environmental Science and Policy* 6,3: 243-251.

⁴² Management Plan at page i.

⁴³ International Union for the Conservation of Nature. 1994. *Guidelines for Protected Area Management Categories*. Gland: IUCN World Commission on Protected Areas.

⁴⁴ Management Plan at page 27.

⁴⁵ Management Plan at page 26.

⁴⁶ Management Plan at page 27. The principles defining environmental integrity include:

- maintaining biodiversity, including species richness and community diversity, healthy population structures, functioning food chains
- maintaining ecosystem function, including soil, water and ecosystem productivity, nutrient cycling, natural disturbances
- mitigating environmental stressors, including unsustainable patterns of human land and resource use, habitat fragmentation, inputs of pollution.

⁴⁷ Nature Trust of British Columbia, Biodiversity in British Columbia at page 3, Retrieved on December 10, 2005 at www.naturetrust.bc.ca/biodiversity.php

⁴⁸ The Nature Trust defines the corridor concept as: "The corridor concept proposes that refuges connected by corridors will have higher immigration rates than isolated patches of natural habitat. This can offset extinction by promoting gene flow and preventing inbreeding. Corridors composed of naturally occurring or restored strips of land that connect large habitat patches may facilitate the movement of species between patches, and decrease the effects of threats to biodiversity. Habitat patches connected by corridors must always be large enough to maintain populations of species, especially for large-bodied vertebrates.

The effectiveness of wildlife corridors depends on many corridor design parameters, which include habitat type and structural stage, length and width, and level of human activity in and around the corridor. Individual species require different scales of connectivity. Some species are able to disperse in very narrow strips of natural vegetation, such as hedgerows, whereas other species require large habitat patches close together with very short migration distances through unsuitable habitat. Solely retaining or enhancing narrow strips of vegetation between habitat refuges cannot maintain biodiversity; the habitat values of the overall landscape must be retained".

Nature Trust of British Columbia, Biodiversity in British Columbia at page 4, Retrieved on December 10, 2005 at www.naturetrust.bc.ca/biodiversity.php

⁴⁹ Impacts arising from these threats are many and varied and include, soil damage, the spread of noxious weeds, removal of dead standing wildlife trees, disposal of domestic refuse, heavy forage use leading to poor to fair grassland condition undermining habitat for species at risk, uncontrolled cattle use has affected riparian ecosystems which are underrepresented, reduction of community diversity, timber harvesting of spruce forests

⁵⁰ The Nature Trust of British Columbia retains thirteen professional and administrative staff; growth of the organization has generally been cautious and incremental. Its head office is located in Vancouver and three branch offices are located on Vancouver Island, East Kootenay and South Okanagan.

⁵¹ Management Plan at page 24.

⁵² Framework at page 3.

⁵³ As further evidence of legitimacy, The Nature Trust also administers financial and stewardship award programs to researchers to improve understanding about the natural environment and to individuals promoting land stewardship.

⁵⁴ Management Plan at page 57.

⁵⁵ Management Plan at page 7.

⁵⁶ Management Plan.

⁵⁷ Management Plan at page 26.

⁵⁸ Primary documents reviewed for this case study include:

1. Nature Conservancy of Canada. 2002. *Habitat Stewardship Program for Species at Risk 2003-04*. Winnipeg: Nature Conservancy of Canada. (Program).
2. Nature Conservancy of Canada. 2004. *The Ark: A Publication of the Nature Conservancy of Canada. Spring 2004*. Nature Conservancy of Canada, Toronto. (Newsletter).
3. Nature Conservancy of Canada. 2004. *Manitoba Business Plan for 2004-05*. Nature Conservancy of Canada, Winnipeg. (Business Plan).
4. Nature Conservancy of Canada. 2005. *NCC Backgrounder*. Available at www.natureconservancy.ca (Backgrounder).
5. Nature Conservancy of Canada. 2002. *The Campaign for Conservation Saving Canada's Natural Masterpieces: Northern Tall Grass Prairie. November 2002*. (Campaign).
6. Nature Conservancy of Canada. 2004. *Annual Report 2004*. (Report).
7. Nature Conservancy of Canada. n.d. *Strategic Plan 2002-2007*. (Strategic Plan).
8. Nature Conservancy of Canada. n.d. *The Nature Conservancy of Canada. By-Law No. 14*. (Constitution).
9. The Nature Conservancy. 2004. *Report of the Governance Advisory Panel to the Executive Committee and the Board of Governors of The Nature Conservancy, March 19, 2004*. Washington: The Nature Conservancy. (Governance Report).
10. The Nature Conservancy. 2005. *Overview of Reforms at The Nature Conservancy*. (Overview).

⁵⁹ Partner groups with the Nature Conservancy of Canada included: Canadian Wildlife Service, Manitoba Conservation, Manitoba Habitat Heritage Corporation, Manitoba Naturalists Society, Wildlife Habitat Canada, World Wildlife Fund.

⁶⁰ Backgrounder at page 1.

⁶¹ Globe and Mail. 2005. Nature Conservancy of Canada. June 24, Special Supplement.

⁶² Nature Conservancy of Canada – Northern Tall Grass Prairie at www.natureconservancy.ca/HTML/site_MB_NTGP-e.htm retrieved on June 6, 2005.

⁶³ Newsletter at page 5.

⁶⁴ Campaign at page 2.

⁶⁵ Nature Conservancy of Canada. n.d. *The Agassiz Interpretive Trail: Manitoba Tall Grass Prairie Preserve*.

⁶⁶ Nature Conservancy of Canada. 2005, June 24. *Globe and Mail*, Special Supplement.

⁶⁷ Campaign at page 1.

⁶⁸ Environment Canada. 2005. *Species at Risk: Western Prairie Fringed Orchid*.

⁶⁹ Nature Conservancy of Canada. n.d. *Western Prairie Fringed Orchids - Survey for Flowering Stems 1992-2004*.

⁷⁰ Program at page 1.

⁷¹ Business Plan.

⁷² Nature Conservancy of Canada. 2005, June 24. *Globe and Mail*, Special Supplement at page N2.

⁷³ Nature Conservancy of Canada. 2005, June 24. *Globe and Mail*, Special Supplement.

⁷⁴ International Union for the Conservation of Nature. 1994. *Guidelines for Protected Area Management Categories*. Gland: IUCN World Commission on Protected Areas.

⁷⁵ International Union for the Conservation of Nature. 1994. *Guidelines for Protected Area Management Categories*. Gland: IUCN World Commission on Protected Areas.

⁷⁶ Report at page 1.

⁷⁷ Strategic Plan at page 2.

⁷⁸ Strategic Plan at page 1.

⁷⁹ Constitution at page 3.

⁸⁰ Backgrounder at page 1.

⁸¹ Strategic Plan at page 5.

⁸² For example: Sveinson, J. 2003. Restoring Tallgrass Prairie in Southern Manitoba, Canada. MSc Thesis, University of Manitoba, Winnipeg determined that rehabilitation – in this case, use of disturbance, such as fire, application of fertilizers and seeding - in the Tall Grass Prairie Preserve has great potential to restore degraded grasslands. Various rehabilitation techniques had different impacts on grasses and forbs of exotic and native vegetation. For example, it was determined that mowing and fire had less of an effect on rehabilitation, largely due to long-term haying, than herbicide application.

⁸³ Program at page 2.

⁸⁴ For example: Sveinson, J. 2003. Restoring Tallgrass Prairie in Southern Manitoba, Canada. MSc Thesis, University of Manitoba, Winnipeg and submitted studies conducted by the University of Manitoba regarding "Effects of burn-season on high quality tall grass prairie in southern Manitoba". Retrieved at: www.umanitoba.ca/faculties/environment/esc_est/ec_lab/index.php?p=restoration

⁸⁵ Government funding includes: Environment Canada (Habitat Stewardship Program), Manitoba Conservation and the United States Fish and Wildlife Service. In 2003, these organizations had contributed approximately \$250 K to the annual operation of TGPP. Private funding sources include: The Nature Conservancy (US), and other private foundations, such as Cargill. Program at page 8.
Cargill. 2004. *News Release: Cargill Supports Ecosystem Reserve. May 19, 2004.*

⁸⁶ Under the 1997 Manitoba *Conservation Agreements Act*, a conservation agreement is a legal agreement (also referred to as a covenant in other jurisdictions) by which a landowner voluntarily restricts or limits the types and amounts of development that may take place on the land to protect its natural features. While the land owner retains title to the land, current and future land owners are obliged to meet the terms and conditions of the agreement. Each conservation agreement's restrictions are tailored to fit the particular property, the interest of the landowner and

the natural features to be protected. Terms of the agreement are to be specified. Once a conservation agreement is registered on the title to a property, it can only be removed by mutual consent of the parties (i.e. the landowner and NCC) if the conservation values are no longer being met. The agreement can be modified on request, but only if the modification does not degrade the natural features of the property, or is consistent with the original intent for the long-term conservation of the property.

⁸⁷ Donors of land, financial contributors or those engaged in conservation agreements receive a significant reduction in the amount of their federal and provincial tax payable through tax credits resulting from the value of the gift. Donations of ecologically sensitive land, for example, can be applied against 100 per cent of a donor's income. Land contributors also pay less tax on any capital gains that take effect when the land changes hands.

⁸⁸ Constitution at page 7.

⁸⁹ Backgrounder at page 1.

⁹⁰ Strategic Plan at page 2.

⁹¹ National funding sources include: Government at 23.5 per cent; Foundations and Organizations at 45 per cent; Corporations at 3.5 per cent; Individual at 20 per cent; and Other at 8 per cent.

⁹² For example: Broadbent, E. 1999. *Building on strength: Improving governance and accountability in Canada's voluntary sector*. Ottawa: Canada.

⁹³ Nonprofit land bank amasses billions; Charity builds assets on corporate partnerships. 2003, May 4. *The Washington Post*, p. A01.
\$420,000 a year and no-strings fund; Conservancy underreported president's pay and perks of office. 2003, May 4. *The Washington Post*, p.A21.
Landing a big one: Preservation, private development. 2003, May 6. *The Washington Post*, p. A09.
Image is a sensitive issue. 2003, May 4. *The Washington Post*, p.A23.

⁹⁴ Charity's deals to be scrutinized; Senators to send letter to Nature Conservancy. 2003, May 10. *The Washington Post*, p. A02.

⁹⁵ Governance Report. The recommendations made by the advisory panel are instructive and they reference three major areas: board reform; field institutions; and programs, transparency, and accountability. For the area of board reform, recommendations include the establishment of dedicated committees on audit, finance, governance, strategic planning, conservation projects, marketing; prohibition on members receiving tax benefits from land donations; broadening the base of competency beyond environment and conservation; and administrative conduct.

For the area of field institutions, recommendations include: establishment of governance standards; clarification of decision making roles and responsibilities between various administrative structures; enhanced transparency and communications.

For the area of programs, transparency and accountability, recommendations include: independent and certified land appraisals; rigorous monitoring of conservation agreements; prohibition on tax benefits flowing to members from agency transactions; clarification of the "compatible use" policy; establishment of a Compliance Director; and reviews of land purchases for compliance or reputational risk.

⁹⁶ The Nature Conservancy. n.d. *Strengthened Governance: Summary of Actions Taken to Strengthen Governance, Policies and Procedures, June 2003-May 13, 2005*. News Release.

⁹⁷ For example: Carver, J., and Carver, M. 1996. *Basic principles of policy governance*. San Francisco: Josey-Bass.

⁹⁸ Report at page 6.

⁹⁹ Program at page 7 states "Workshops, tours and consultations will be measured by the number conducted. Grazing systems will be evaluated by the number and type developed and how they are monitored. Property acquisitions will be evaluated by the number, size and value. Ecological significance will be verified before securement commences. Landowner contacts will be counted. Burn treatments will be measured by numbers and acres. Grazing treatments will be evaluated based on number of landowners who benefit and recovery and growth of grasslands".

¹⁰⁰ Stewardship Plan at page 2.

¹⁰¹ The lands held by these organizations is estimated to be less than 780 ha.

¹⁰² Under the Federal Ecological Gifts Program, lands advanced as being ecologically sensitive and eligible under the program, must be independently certified by the federal government or a designate. Eligible lands must meet ecosensitivity criteria. These criteria include, among others: maintenance of biodiversity or Canada's environmental heritage; natural buffers around wetlands; and areas identified by a local, provincial, territorial, national or international system as ecologically significant or ecologically important.

¹⁰³ Stuartburn-Piney Agricultural Association. 2005. *Survey: Tall Grass Prairie and Grazing*. Survey was sent to approximately 40 landowners in the adjacent area; the response rate is unknown.

¹⁰⁴ Globe and Mail. 2005. Nature Conservancy of Canada. June 24, Special Supplement.

¹⁰⁵ Report at page 18.

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- ¹⁰⁶ Primary documents reviewed for this case study include:
1. Schleifenbaum, P. 2000. *Resource Management Plan for the Private Property of Haliburton Forest and Wildlife Reserve Ltd. 2000-2004*. Haliburton Forest and Wildlife Reserve. (Management Plan).
 2. SmartWood. 2003. *Forest Management Public Summary for Haliburton Forest and Wildlife Reserve Ltd*. New York: Rainforest Alliance. (Forest Certification).
 3. Forest Stewardship Council. 2004. *National Boreal Standard, Version 3.0*. Canada Working Group. (National Standard).
 4. Ontario Parks. 1998. *Algonquin Provincial Park: Management Plan*. Ontario: Queen's Printer Ontario. (Park Management Plan).
 5. Mrosek, T. 2002. *Development and Testing of a Criteria and Indicators System for Sustainable Forest Management at the Local Level: Case Study at the Haliburton Forest & Wildlife Reserve Ltd*. Canada. Unpublished doctoral dissertation, University of Toronto, Ontario. (Indicators System).
 6. Sandberg, L. and Midgley, C. 2000. Recreation, forestry and environmental management: The Haliburton Forest and Wildlife Reserve, Ontario, Canada. In X. Font and J. Tribe (Eds.), *Forest Tourism and Recreation: Case Studies in Environmental Management* (p.201-215). New York: CABI Publishing. (Case Study).
- ¹⁰⁷ Management Plan.
- ¹⁰⁸ Case Study at page 201.
- ¹⁰⁹ National Standard at page 55.
- ¹¹⁰ Sierra Legal Defence Fund. 2005. *Understanding Canada's Forest Certification Schemes: A Complete Guide to Filing Appeals and Complaints*. Toronto: Sierra Legal Defence Fund.
- ¹¹¹ Forest Certification. The forest has received Certification Code SW-FM/COC-033. Recertification has also been confirmed with SmartWood officials.
- ¹¹² National Standard at page 17.
- ¹¹³ National Standard at page 17.
- ¹¹⁴ Case Study.
- ¹¹⁵ Management Plan at page 27.
- ¹¹⁶ Management Plan at page 26.
- ¹¹⁷ Case Study at page 203.

¹¹⁸ For example:

1. Mrosek, T. 2003. *Evaluation of the Biodiversity of Haliburton Forest & Wildlife Reserve Ltd. Technical Report 1999, Updated 2003*. University of Toronto.
2. Sandberg, L. and Midgley, C. 2000. Recreation, forestry and environmental management: The Haliburton Forest and Wildlife Reserve, Ontario, Canada. In X. Font and J. Tribe (Eds.), *Forest Tourism and Recreation: Case Studies in Environmental Management* (p.201-215). New York: CABI Publishing.
3. Mrosek, T. 2002. Development and Testing of a Criteria and Indicators System for Sustainable Forest Management at the Local Level: Case Study at the Haliburton Forest & Wildlife Reserve Ltd. Canada. Unpublished doctoral dissertation, University of Toronto, Ontario also refers to comprehensive long-term multi-species monitoring studies conducted by Hocking College, School of Natural Resources, Ohio at page 55.
4. University of Toronto, Faculty of Forestry conducts undergraduate and graduate forest conservation research programs at Haliburton Forest at forestry.utoronto.ca

¹¹⁹ Mrosek, T. 2003. *Evaluation of the Biodiversity of Haliburton Forest & Wildlife Reserve Ltd. Technical Report 1999, Updated 2003*. University of Toronto at page 4. In this evaluation, gap analysis assesses the difference between actual species inventory and theoretical.

¹²⁰ Indicators System at page 56. In this case, 'animal' also includes birds, reptiles, amphibians and fish.

¹²¹ The list of species at risk contained in the Management Plan is derived from the Royal Ontario Museum, Species at Risk. The Ontario Ministry of Natural Resources. 2004. *Listing of Species at Risk*. Natural Heritage Information Center, Peterborough, Ontario also contains a listing of species at risk that may be found in the area.

¹²² Management Plan at page 133.

¹²³ Management Plan.

¹²⁴ Smartwood Program. Report Update 2002. *Haliburton Forest and Wildlife Reserve Ltd., Certificate #SW-FM 033*.

¹²⁵ Management Plan at page 4.

¹²⁶ Iacobelli, T., Kavanagh, K. and Rowe, S. 1995. *A protected areas gap analysis methodology. Planning for the conservation of biodiversity*. Toronto: World Wildlife Fund.

¹²⁷ Management Plan at page 125.

¹²⁸ Indicators System at page 51.

¹²⁹ Park Management Plan at page 13.

¹³⁰ National Standard at page 109-110.

¹³¹ Indicator System at page 124.

¹³² Management Plan.

¹³³ Management Plan at page 195; and Public information brochure, "The Wolf Centre: Haliburton Forest and Wildlife Reserve Ltd."

¹³⁴ Case Study at page 211.

¹³⁵ International Union for the Conservation of Nature. 1994. *Guidelines for Protected Area Management Categories*. Gland: IUCN World Commission on Protected Areas.

¹³⁶ Forest Certification and Indicator System.

¹³⁷ Management Plan at page 4.

¹³⁸ Management Plan at page 4.

¹³⁹ Management Plan at page 5.

¹⁴⁰ Indicators System at page 112. Institutions include: The Faculty of Forestry, University of Toronto; Trent University; Hocking College School of Natural Resources; and universities in Germany, the Netherlands and Austria.

A 10 year research project is conducted by Trent University on the Haliburton Highlands to better understand bio-regionalism, the impacts of globalization and to promote local community development in harmony with the natural environment.

Wadland, T., and Gibson, A. 1998. Learning a bioregion: Trent University and the Haliburton Highlands. In L. Sandberg and S. Sorlin (Eds.), *Sustainability, the challenge: People, power and the environment* (p. 177-188). Montreal: Black Rose Books.

¹⁴¹ Management Plan.

¹⁴² Management Plan.

¹⁴³ Park Management Plan at page 12.

¹⁴⁴ Park Management Plan at page 7.

¹⁴⁵ Case Study at page 208.

¹⁴⁶ Management Plan.

¹⁴⁷ Indicators System at page 89 and 93.

¹⁴⁸ Indicators System at page 79.

¹⁴⁹ Ontario. 1998. *Negotiation Bulletin: The Algonquin Land Claims Negotiation. Issue No. 7.* Ontario.

¹⁵⁰ Indicators System.

¹⁵¹ Indicator System at page 70.

¹⁵² Case Study at page 212.

¹⁵³ Indicator System at page 86.

¹⁵⁴ Management Plan.

¹⁵⁵ Indicators System.

¹⁵⁶ Case Study at page 209.

¹⁵⁷ Indicators System at page 98..

¹⁵⁸ Forest Certification.

¹⁵⁹ Indicators System.

¹⁶⁰ Indicators System at page 39-42.

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- ¹⁶¹ Indicators System.
- ¹⁶² County of Haliburton. n.d. *Forest Conservation By-Law No. 2955, November 2003*.
- ¹⁶³ Case Study at page 213.
- ¹⁶⁴ SmartWood Certification Annual Addendum to the Public Summary for Haliburton Forest and Wildlife Preserve Ltd., 1998 at section 1.4.
- ¹⁶⁵ SmartWood Certification Annual Addendum to the Public Summary for Haliburton Forest, 2000 at section 1.3.
- ¹⁶⁶ National Standard at page 109.
- ¹⁶⁷ National Standard at page 109.
- ¹⁶⁸ International Union for the Conservation of Nature. 1994. *Guidelines for protected area management categories*. Gland: IUCN World Commission on Protected Areas.
- ¹⁶⁹ Armson, K. Forest Certification. *The Forestry Chronicle* 74,3: 284.
Carbarle, B., Hrubes, R., Elliot, C. and Synnott, T. 1995. Certification accreditation: The need for credible claims. *Journal of Forestry* 93,4: 12-16.
Sierra Legal Defence Fund. 2005. *Understanding Canada's Forest Certification Schemes: A Complete Guide to Filing Appeals and Complaints*. Toronto: Sierra Legal Defence Fund.
- ¹⁷⁰ Government of Ontario, 2000. *Guide to the Managed Forest Tax Incentive Program*. Ministry of Natural Resources, Ontario.
- ¹⁷¹ Government of Ontario, 2000. *Guide to the Managed Forest Tax Incentive Program*. Ministry of Natural Resources, Ontario at page vi.
- ¹⁷² Government of Ontario, 2000. *Guide to the Managed Forest Tax Incentive Program*. Ministry of Natural Resources, Ontario at page 24.
- ¹⁷³ Ontario Ministry of Natural Resources. 2004. *Listing of Species at Risk*. Natural Heritage Information Center, Peterborough, Ontario.
- ¹⁷⁴ Government of Ontario, 2000. *Guide to the Managed Forest Tax Incentive Program*. Ministry of Natural Resources, Ontario.

¹⁷⁵ Retrieved on April 2, 2006 at www.mnr.gov.on.ca/MNR/cltip/

¹⁷⁶ Environics Research Group. 2003. *National survey of rural landowners: Attitudes and behaviors regarding land stewardship*. Prepared for Ontario Ministry of Natural Resources.

¹⁷⁷ Environics Research Group. 2003. *National survey of rural landowners: Attitudes and behaviors regarding land stewardship*. Prepared for Ontario Ministry of Natural Resources.

¹⁷⁸ Government of Ontario. 2004. *EBR Review 2003005 - Managed Forest Tax Incentive Program*. Ministry of Natural Resources and Ministry of Finance, Ontario at page 25.

¹⁷⁹ Primary documents reviewed for this case study include:

1. The Land Conservancy of British Columbia. 1998. *Constitution and Bylaws, November 5, 1998*. (Constitution).
2. The Land Conservancy of British Columbia. *Annual Reports 2004, 2003, 2002*. (Annual Report).
3. TLC. 1998. *South Winchelsea Island, 1999 through 2003, Exotic Plant Species Management Plan, December 21, 1998*. (Plant Management Plan).
4. TLC, n.d. *Management Plan for South Winchelsea Island*. (Management Plan).
5. *Conservation Covenant June 25, 1998 between The Land Conservancy of British Columbia, Nanaimo and Area Land Stewards Society and Trust Fund Board as registered under the BC Land Title Act*. (Conservation Covenant).
6. *Baseline Documentation Report* that accompanies the Conservation Covenant. (Baseline Report).
7. The Land Conservancy of British Columbia. n.d. *South Winchelsea Island Report*. (Report).
8. Island Trust Fund. 2002. *Trust Fund Board Site Inspection Form*. The Land Conservancy of Canada and Nanaimo Area Land Trust. (Inspection Report).
9. The Land Conservancy of British Columbia. 2001. *Financial statements*. (Financial Statements).
10. The Land Conservancy of British Columbia. 1997. *Landmark -The Newsletter of The Land Conservancy of British Columbia, Winter 1997-98*. (Newsletter).
11. Land Trust Alliance of British Columbia, n.d. *Land Trust Standards and Practice*. (Standards).
12. Land Trust Alliance of British Columbia, 2005. *Land Trust Registry*. (Registry).
13. Land Trust Alliance USA. 2004. *Land Trust Standards and Practices, Revised 2004*. Colorado. (Standards and Practices).
14. The Land Conservancy of British Columbia. 2005. *Table for Consideration of Acquisition and Abridged TLC Acquisitions Paper*. (Table and Paper).

¹⁸⁰ Annual Report 2004.

¹⁸¹ Conservation Covenant at page 10.

¹⁸² Newsletter at page 1.

¹⁸³ UNESCO, Man and Biosphere Program also includes Clayoquot Sound. Both reserves in BC contribute towards a world-wide network of over 425 reserves in 95 countries. www.mountarrowsmithbiosphere.ca/summ.

¹⁸⁴ Management Plan at page 5.

¹⁸⁵ Baseline Report at page 1.

¹⁸⁶ Baseline Report at page 2.

¹⁸⁷ Species at risk include plants such as the endangered Geyer's onion and the seaside rein orchid. The BC Conservation Data Centre has identified a number of ecosystems and species at risk for the Southern Vancouver Island and Gulf Islands Region. The Committee on the Status of Endangered Wildlife in Canada recently added the very rare water-plantain buttercup found on nearby East Ballenas Island to the COSEWIC list of endangered species.

¹⁸⁸ Report at page 1.

¹⁸⁹ Management Plan at page 2.

¹⁹⁰ Ballingall Islets Ecological Reserve at 0.2 hectares was established in 1963 to protect nesting colonies of glaucous-winged gulls, double-crested cormorants and pigeon guillemots. The Yale-Garry Oak Ecological Reserve was established in 1998. Retrieved December 6, 2005 at www.gov.bc.ca/bcparks/eco_reserve/ecoresv/ecoresrv.htm

¹⁹¹ *Ecological Reserve* R.S.B.C. 1996, c. 103.

¹⁹² Standards and Practices at page 8.

¹⁹³ Management Plan at page 5.

¹⁹⁴ Annual Report 2004.

¹⁹⁵ Constitution at page i.

¹⁹⁶ Annual Report 2004.

¹⁹⁷ Parks Canada Agency. 2000. *State of Protected Heritage Areas 1999 Report* at page 69-70.

For example, National Parks in Canada that cite “exotic vegetation” as one of the top five stressors, include: Grasslands, Cape Breton, Gwaii Haanas, St. Lawrence Islands, Gros Morne, Kejimikujik, Point Pelee, Prince Albert, Riding Mountain, Wood Buffalo.

¹⁹⁸ Conservation Covenant s. 8.10.

¹⁹⁹ Conservation Covenant at page 8.

²⁰⁰ Constitution at page 16.

²⁰¹ The Land Trust Alliance of British Columbia has recently prepared “Land Trust Standards and Practice” that is modeled on its American counterpart. TLC, however, has not yet passed a resolution adopting these guidelines.

²⁰² Standards and Practices at page 13.

²⁰³ Standards and Practices at page i.

²⁰⁴ Notable comments from the Inspection Report include soil disturbance from broom pulling.

²⁰⁵ Constitution at page 16.

²⁰⁶ Conservation Covenant at page 8.

²⁰⁷ Conservation Covenant at page 8.

²⁰⁸ Conservation Covenant at page 10.

²⁰⁹ Conservation Covenant at page 14.

²¹⁰ Constitution at page 16.

²¹¹ Conservation Covenant at pages 14,16 and 17.

²¹² It is noted that the *BC Agricultural Land Commission Act* (s. 22) provides that “a covenant that prohibits the use of agricultural land for farm purposes has no effect until approved by the commission” and that “the commission may enter into a covenant under the *Land Title Act* with an owner of agricultural land”. In cases where TLC is interested in pursuing land protection and conservation on lands designated in the Agricultural Land Reserve, understandings such as “A

profit à prendre” - essentially a right to enter the land and take some profit of the “soil” - are entered into to protect values and benefits that flow from the land.

²¹³ Table refers to: “Ecological integrity” as the quality of habitat that is provided by the property. For example, properties that are intact and are used regularly by a variety of wildlife and that do not need active restoration or enhancement, receive an A rating. “Endangered Species” as provincially listed Species at Risk. Properties that contain provincially red-listed species receive an A rating.

²¹⁴ Primary documents reviewed for this case study include:

1. Canada, Yukon and Vuntut Gwitchin First Nation. 1993. *Vuntut Gwitchin First Nation Final Agreement*. Chapter 5 – Tenure and Management of Settlement Land, Chapter 6 – Access, Chapter 9 – Settlement Land Amount, Chapter 10 – Special Management Areas and Schedule B; Chapter 16 – Fish and Wildlife and Chapter 26 - Dispute Resolution. Ottawa: Canada. (Final Agreement).
2. Vuntut Gwitchin First Nation, Canada and Yukon. May 1993. *Vuntut Gwitchin Self-Government Agreement*. Ottawa: Canada. (Self-Government Agreement).
3. Vuntut Gwitchin First Nation. *Constitution. Amended August 10, 2003*. (Constitution).
4. Vuntut Gwitchin First Nation. *Fishing Branch Oral History*. Transcripts of interviews of Dick Nukon, VG1999-2-2; Charlie Thomas, VG1999-2-03; and Hannah Netro VG1999-2-04. Yukon: Vuntut Gwitchin First Nation Department of Natural Resources. (Oral History).
5. Department Renewable Resources. 2004. *Ni’iinlii’ Njik (Fishing Branch) Ecological Reserve & Settlement Lands R-5A & S-3A1 Management Plan. As amended 2004*. Whitehorse: Government of Yukon. (Management Plan)
6. Vuntut Gwitchin First Nation, North Yukon Renewable Resources Council, and Yukon Department of Renewable Resources. 2000. *Management Plan: The Fishing Branch Ecological Reserve and Settlement Land R-5A & S-3A1*. Whitehorse: Government of Yukon. (Management Plan 2000)
7. Vuntut Gwitchin Government and Yukon Government. 2004. *Ni’iinlii’ Njik (Fishing Branch) Wilderness Preserve & Habitat Protection Area Management Plan*. Whitehorse: Government of Yukon. (WP & HP Management Plan)
8. Yukon Department of the Environment, Vuntut Gwitchin First Nation, North Yukon Renewable Resources Council, Fisheries and Oceans Canada. 2005. *Risk Management Plan for Ni’iinlii’ Njik (Fishing Branch) Ecological Reserve and Vuntut Gwitchin Settlement Land R-5A & S-3A1*. Whitehorse: Government of Yukon. (Draft Risk Management Plan).
9. Ni’iinlii’ Njik (Fishing Branch) Committee of Managing Agencies (CMA) Terms of Reference. March 15, 2004. (CMA TOR).

²¹⁵ The protected area is generally referred to as “Ni’iinlii Njik (Fishing Branch) Ecological Reserve & Settlement Land R-5A & S-3A1”. In this case study, priority is given to the Settlement Lands and materials are presented to highlight these lands.

²¹⁶ Final Agreement, s. 4.2.

²¹⁷ Final Agreement, s. 5.5.0

²¹⁸ Final Agreement, s. 5.2.3

²¹⁹ Final Agreement, s. 5.4.1.1

²²⁰ Final Agreement, s. 5.5.0

²²¹ The River also supports limited runs of Chinook and Coho, but the groundwater fed habitat is more conducive to Chum production.

²²² In 1971, Chum salmon escapement was recorded at 300,000; in 2000, the lowest annual escapement was recorded at 5000. Average 5 year escapement levels for Chum salmon (*4 year data only):

1985-1989 40,825

1991-1995 41,235

1996-2000 27,152

*2000-2004 21,104

Fisheries and Oceans, Canada. n.d. *Stock Assessment*. Fisheries Management, Whitehorse, Yukon.

²²³ Management Plan at page 26.

²²⁴ Estimates suggest that the larger ecological region, of which the Settlement Lands and Ecological Reserve form the core, supports 8-11 grizzly bears/100,000 hectares and that there are 44-66 grizzly bears in the larger region.
Yukon Government. July 1997. *Interim Grizzly Bear Management Principles*. Whitehorse: Yukon Government.

²²⁵ "More Notes about the Fishing Branch River located in North Central Yukon" gathered by J. Henzler at Old Crow Yukon, 1997 refers to the diary of Otto Geist, August 19, 1953.

²²⁶ Timpany, P. 1996. *Potential Impacts on Grizzly Bear in the Fishing Branch River Valley*. Whitehorse: Government of Yukon, Dept. of Renewable Resources.

²²⁷ Management Plan at page 6.

²²⁸ It is estimated that the Old Crow aboriginal fishery averaged 5,200 chum salmon annually over 1995-98. The Alaskan harvest of Fishing Branch River chum salmon is estimated to average 18,000 to 30,000 fish annually over 1995-98.
Management Plan at page 26.

²²⁹ Management Plan at page 6.

²³⁰ Management Plan at page 1.

²³¹ Vuntut Gwitchin First Nation. "Fishing Branch Oral History". Transcripts of interviews with Hannah Netro VG1999-2-04 at page 6. Vuntut Gwitchin First Nation Department of Natural Resources, Yukon.

²³² Gotthardt, R. 1998. *Fishing Branch Ecological Reserve and Habitat Protection Area: A Preliminary Overview of Human History and Heritage Values*. Whitehorse: Heritage Branch, Government of Yukon.

²³³ In the late 90s, the Yukon Protected Areas Strategy guided the establishment of a representative system of territorial parks and protected areas for the protection of the Yukon's diverse life and landscapes, recreational use, and appreciation. In 2001, the *Parks and Land Certainty Act* provided the Yukon government with the legal authority to manage lands within established parks, as well as to implement obligations under settlement land claims agreements.

²³⁴ Yukon Government Orders in Council: 2003/32; 2003/48; and 2003/49.

²³⁵ WP & HP Management Plan at page 6. In addition to the Settlement Lands and Ecological Reserve, the area is comprised of a Wilderness Preserve at 540,00 hectares established under the Yukon *Parks and Land Certainty Act* and a Habitat Protection Area at 100,000 hectares established under the Yukon *Wildlife Act*. Surface development (mineral development) is not permitted in the Wilderness Preserve. However, sub-surface development (oil and gas directional and horizontal drilling) can occur after 20 years, subject to discussions between Yukon and Vuntut Gwitchin Governments and applicable legislation, such as environmental assessment. Development is permitted in the Habitat Protection Area, subject to applicable regulations. WP & HP Management Plan at page 13.

²³⁶ Final Agreement, Chapter 10 – Special Management Areas. Vuntut National Park and Old Crow Flats Area are established as a Special Management Area and subject to various provisions as outlined in respective Schedule A and C attached to the Final Agreement. Notably, the key objective of the National Park is "to recognize and protect the traditional and current use of the Park by Vuntut Gwitchin in the development and management of the Park" (s 1.1.2). The Renewable Resources Council governs the development and management of the Park, with final decision-making authority resting with the responsible federal Minister.

Notable provisions pertaining to the Old Crow Flats Area include: maintaining ecological integrity (s. 3.1.1); recognition of the changing values and priorities of Vuntut Gwitchin in contemporary Canadian society (s. 3.1.2); the termination of oil and gas rights (s. 4.1); recognition of lands owned by Vuntut Gwitchin First Nation (s. 3.1.5); and limitations on the issuance of rights and interests in mines and minerals (s. 6.1).

²³⁷ National Round Table on the Environment and Economy. 2005. Conservation of Natural Heritage: Vuntut National Park at page 10. www.trnee-nrtee.gc.ca/eng/programs/Current_Programs/Nature/Natural-Heritage/Documents/Vuntut-Case-Study

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- ²³⁸ Yukon Order in Council 2003/31 establishes the Ecological Reserve; OIC 2003/49 prohibits mining in the Ecological Reserve; and OIC 2003/05 prohibits oil and gas development in the Ecological Reserve.
- ²³⁹ International Union for the Conservation of Nature. 1994. *Guidelines for protected area management categories*. Gland: IUCN World Commission on Protected Areas.
- ²⁴⁰ International Union for the Conservation of Nature. 1994. *Guidelines for protected area management categories*. Gland: IUCN World Commission on Protected Areas.
- ²⁴¹ Traditional Territory of Vuntut Gwitchin First Nation. Map compiled for Vuntut Gwitchin First Nation by Applied Ecosystem Management, Ltd. Whitehorse. October, 2003.
- ²⁴² Final Agreement, Appendix A, Settlement Land Descriptions of Vuntut Gwitchin First Nation, R-5A; Chapter 10 - Special Management Areas; and Schedule B Fishing Branch Ecological Reserve.
- ²⁴³ The "1993 Vuntut Gwitchin First Nation Final Agreement" is the land claims agreement for Vuntut Gwitchin First Nation. It is signed by Canada, Yukon and Vuntut Gwitchin First Nation and incorporates provisions from the "1993 Umbrella Final Agreement". It is given legal effect by the 1994 *Yukon First Nations Land Claims Settlement Act*. The Final Agreement directs that a Management Plan be prepared and the "Ni'iinlii Njik (Fishing Branch) Ecological Reserve & Settlement Land R-5A & S-3A1 Management Plan" was approved in 2000. The "1993 Vuntut Gwitchin First Nation Self-Government Agreement" provides for the development of contemporary and evolving political institutions and decision-making structures, including, for example, Vuntut Gwitchin Constitution and self-government legislation. It is given legal effect by the 1994 *Yukon First Nations Self-Government Act*.
- ²⁴⁴ Final Agreement, s. 5.4.1.1 and s. 5.4.1.2. No "Category B Settlement Lands", that is, surface rights only, were allocated to Vuntut Gwitchin First Nation. Final Agreement, Chapter 9 – Settlement Land Amount, Schedule A.
- ²⁴⁵ Final Agreement, s. 10.3.5
- ²⁴⁶ Final Agreement, Chapter 10 – Special Management Areas, Schedule B Fishing Branch Ecological Reserve, s. 7.1
- ²⁴⁷ Management Plan at page 23.
- ²⁴⁸ Final Agreement, Schedule B, s. 1.4, 4.2 and 6.0.
- ²⁴⁹ Self-Government Agreement at page 5.
- ²⁵⁰ Final Agreement, Appendix A, Settlement Land Descriptions of Vuntut Gwitchin First Nation

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- ²⁵¹ Final Agreement, Schedule B attached to Chapter 10 – Special Management Areas, s. 4.2.
- ²⁵² Management Plan at page 19.
- ²⁵³ Draft Risk Management Plan at page 1.
- ²⁵⁴ Final Agreement, Chapter 16 – Fish and Wildlife, s. 16.6
- ²⁵⁵ Final Agreement, Schedule B Fishing Branch Ecological Reserve, s. 4.4.
- ²⁵⁶ Management Plan, Attachment 3. Representation was heard from the Government of Yukon, Government of Canada, Vuntut Gwitchin First Nation, Vuntut Gwitchin Renewable Resources Council, Alaska Department of Fish & Game, USDA Forest Service, Archaeological Survey of Canada, University of Ottawa, World Wildlife Fund, Canadian Parks and Wilderness Society, Bering Sea Fishermen's Association, Tongass National Forest, Ecosummer/Sila Sojourns, Fireweed Helicopters, as well as numerous individual presentation.
- ²⁵⁷ Public presentations to the Local Planning Team for the Ni'iiinlii' Njik (Fishing Branch) Wilderness Preserve & Habitat Protection Area, excerpts from May 31 to June 29, 1999.
- ²⁵⁸ Final Agreement, Appendix A - Settlement Land Descriptions.
- ²⁵⁹ Final Agreement, s. 10.1.1
- ²⁶⁰ Final Agreement, Chapter 10 – Special Management Areas, s. 10.4.0
- ²⁶¹ Final Agreement, Chapter 16 – Fish and Wildlife s. 16.4.2 provides “Yukon Indian People shall have the right to harvest for Subsistence within their Traditional Territory...all species of Fish and Wildlife for themselves and their families at all seasons of the year and in any numbers on Settlement Land and on Crown Land to which they have right of access”
- ²⁶² Final Agreement, Chapter 10 – Special Management Areas, Schedule A, Vuntut National Park, s. 9 Economic and Employment opportunities provides for, among others, preparation of an impacts and benefits plan, potential business and employment opportunities, economic strategies, 50 per cent of public service employment positions be filled by qualified Vuntut Gwitchin, timely notice of goods and services contracts, right of first refusal for the construction or maintenance of trails or facilities, as well as for new business licenses, if under a quota. Specific provisions provide for: at least 50 percent of the public service employment positions in the Park are to be filled by qualified Vuntut Gwitchin (s.9.3); preemptive option on permitted businesses (s.10); and exclusive opportunity to provide commercial dog-sled trips (s.9.11).

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- ²⁶³ Management Plan at page 27.
- ²⁶⁴ Management Plan at page 27.
- ²⁶⁵ Vuntut Gwitchin First Nation, Natural Resources Department, 1999.
- ²⁶⁶ Final Agreement, Schedule B, s. 4.6.
- ²⁶⁷ CMA TOR Members to the committee also include: The Yukon Government (Parks, Heritage, Wildlife), North Yukon Renewable Resources Council, and Fisheries and Oceans, Canada.
- ²⁶⁸ CMA TOR at page 4.
- ²⁶⁹ Constitution, Article 1X.
- ²⁷⁰ Final Agreement, Chapter 26 – Dispute Resolution.
- ²⁷¹ Final Agreement, Chapter – Settlement Land Descriptions, Appendix A.
- ²⁷² Management Plan at page 19. It is argued that road development reduces grizzly bear survival by “causing bears to flee which wastes the energy reserves bears must accumulate in the short summer season to survive and reproduce”.
- ²⁷³ Management Plan at page 23.
- ²⁷⁴ Management Plan at page 23.
- ²⁷⁵ WP & HP Management Plan at page 14.
- ²⁷⁶ MacHutchon, G. 1998. *Grizzly Bear Habitat Assessment, Fishing Branch River Region, Yukon*. Whitehorse: Yukon Department of Renewable Resources.
- ²⁷⁷ Management Plan at page 19.
- ²⁷⁸ Yukon Government. July 1997. *Interim Grizzly Bear Management Principles*. Whitehorse: Yukon Government. These guidelines posit that the vulnerability of grizzly bears is due to habitat loss, low reproduction and slow recovery rates. It also argues that large intact natural areas are essential to conserve and maintain viable populations of grizzly bears and that specific habitats, such as salmon spawning areas and berry-rich areas, should be protected.

²⁷⁹ Management Plan at page 16. Management guidelines suggest that access be limited to a maximum of five visitors per day, to a maximum of one week over a 6 week period, resulting in a limit capacity of 210 visitors in the fall period. Wilderness operators will be required to fulfill regulations under relevant legislation.

²⁸⁰ Management Plan, Attachment 5 at page 40. The Management Plan was amended in 2004 to reflect the addition of the Ecological Reserve to Settlement Lands for improved bear viewing opportunities, building location and erosion control.

²⁸¹ Vuntut Development Corporation. March 2005. *Newsletter Corporate Profile*.

The Vuntut Development Corporation was recently established with the mission “as a for-profit economic forces participating in, planning for and facilitating the creation of successful business ventures for Citizens of Vuntut Gwitchin First Nation. The Corporation aims to balance economic development and the natural environment while respecting the traditional lifestyle and culture of Vuntut Gwitchin”.

²⁸² Marshall, S., Rothely, K. and Maraj, R. 2005. *Investigating the Behavioural Effects of Bear Viewing on Activity Patterns of Grizzly Bears along the Fishing Branch River, Yukon Territory*. Simon Fraser University and Yukon Government.

Study proposes to examine the effect of bear viewing programs on grizzly bear behavior and energy consumption. A reference and benchmark baseline will be established in 2005.

Timpany, P. and Christensen, M. 2004. *Fishing Branch River Wildlife Viewing Plan*. This document outlines the strategy and operations for the conduct of bear viewing and the management of risks to clients and to grizzly bears.

²⁸³ Marshall, S., Rothely, K. and Maraj, R. 2005. *Investigating the Behavioural Effects of Bear Viewing on Activity Patterns of Grizzly Bears along the Fishing Branch River, Yukon Territory*. Simon Fraser University and Yukon Government.

²⁸⁴ Final Agreement, Appendix A, R-5A.

²⁸⁵ Constitution at page 2.

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List of Abbreviations

CMA	Committee of Managing Agencies
CLWR	Cathedral Lakes Wilderness Resort
COSEWIC	Committee on the Status of Endangered Wildlife in Canada
FSC	Forest Stewardship Council
HCVF	High Conservation Value Forests
HF	Haliburton Forest
HHP	Hoodoos/Hofert Property
IUCN	International Union for the Conservation of Nature
NCC	Nature Conservancy of Canada
N'NSL	Ni'inlii' Njik (Fishing Branch) Settlement Land
NTBC	Nature Trust of British Columbia
PA	Protected Area
PPA	Private Protected Area
PPAs	Private Protected Areas
RRC	Renewable Resources Council
SARA	Species at Risk Act
SOWT	Strengths, Opportunities, Weaknesses, Threats
SWI	South Winchelsea Island
TGP	Tall Grass Prairie Preserve
TLC	The Land Conservancy
TNC	The Nature Conservancy, US
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
VGFN	Vuntut Gwitchin First Nation
WCPA	World Commission on Protected Areas
WPC	World Parks Congress

Glossary of Legislation

A. Federal Acts

Canada National Parks Act, S.C. 2000, c. 32

Species at Risk Act, S.C. 2002, c. 29

Yukon First Nations Land Claims Settlement Act, S.C. 1994, c. 34

Yukon First Nations Self-Government Act, S.C. 1994, c.35

B. Provincial and Territorial Acts

British Columbia

Agricultural Land Commission Act, R.S.B.C. 2002, c. 36

Ecological Reserve Act, R.S.B.C. 1996, c. 103

Forest Practices Code of British Columbia Act, R.S.B.C. 1996, c. 159

Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165

Islands Trust Act, R.S.B.C. 1996, c. 239

Land Title Act, R.S.B.C. 1996, c. 250

Mineral Tenure Act, R.S.B.C. 1996, c. 292

Park Act, R.S.B.C. 1996, c. 344

Society Act, R.S.B.C. 1993, c. 433

Manitoba

Conservation Agreements Act, S.M. 1997, c. 59

Endangered Species Act, S.M. 1989-90, c. 39

Ontario

Trespass to Property Act, R.S.O. 1990, c. T.21

Nova Scotia

Wilderness Areas Protection Act, S.N.S. 1998, c. 27

Yukon

Lands Act, R.S.Y. 2002, c. 132

Parks and Land Certainty Act, R.S.Y. 2002, c.165

Scientists and Explorers Act, R.S.Y. 2002, c. 200

Wildlife Act, R.S.Y. 2002, c. 229

C. American Acts

Wilderness Act (16 U.S.C. 1131-1136, 78 Stat. 890) -- Public Law 88-577, approved September 3, 1964.

Appendix 1. Survey Letter

Dear (Land Trust Organization/Expert):

I am writing to seek your assistance in identifying "private protected areas" that could serve as candidates for doctoral research on "Governance and Private Protected Areas" that I am undertaking at the University of Victoria, under the supervision of Dr. Philip Dearden. Your expertise and experience with land trusts and private conservation and protection initiatives suggests that you may be able to alert me to candidates that would be worthy of study, with the view of enlarging understanding about this little-known phenomena.

As your organizational mandate attests, commitment to stewardship goals by private entities through dedicated land purchase, conservation agreements and covenants is growing so rapidly in Canada that it would appear that a quiet conservation revolution is underway. However, systemized data banks on spatial extent, ownership patterns, management goals and ecological attributes of private lands, appear to be in various stages of development inhibiting generalized study about the scale and scope of this movement. This is not surprising, given deployment of scarce organizational resources to the more pressing aspects of land stewardship. If you are aware of general data bases that are readily accessible to third parties, I would appreciate being informed.

In the absence of such data bases and as an alternative course, I am seeking your assistance in identifying candidate areas for case study research on "private protected areas". Your colleagues in other stewardship organizations are also being contacted. For your convenience, I have enclosed a summary information form. Confidentiality and protection of third party information is assured. Successful candidates will be subsequently contacted and consulted about their willingness and interest in being part of a doctoral research study.

As you are well aware, such modern day stewards and conservation entrepreneurs have much to offer towards a new definition of property, to the effective performance of protected areas and to the shaping of new governance arrangements. I am excited about the prospects and reforms that private landowners can potentially bring to more traditional approaches that govern land and protected areas.

I look forward to hearing from you. If you would like further clarification or more information on the research proposal, contact information is outlined. In the meantime, I wish you all the best in fulfilling the goals of your organization.

Sincerely,

Linda Hannah

Cc: Dr. P. Dearden, University of Victoria

Appendix 2. Organizations Surveyed

BC Environmental Network
BC Spaces for Nature
BC Wildlife Federation
Canadian Nature Federation
Canadian Parks and Wilderness Society
Central Valley Naturalists
David Suzuki Foundation
Delta Farmland and Wildlife Trust
Ducks Unlimited Canada
Ecotrust Canada
Evergreen
Federation of British Columbia Naturalists
Federation of British Columbia Naturalists Foundation
Galiano Conservancy Association
Georgia Strait Alliance
Gowgaia Institute
Grasslands Conservation Council of BC
Greenpeace Canada
Greenways Land Trust
Habitat Acquisition Trust
Habitat Conservation Trust Fund
IMPACS: The Institute for Media, Policy and Civil Society
Islands Trust Fund
Land Trust Alliance of BC
Langely Environmental Partners Society
Muskwa-Kechika Management Area
Nanaimo Area Land Trust
Nature Conservancy of Canada
Outdoor Recreation Council of BC
Pacific Salmon Foundation
Salt Spring Island Conservancy
Sierra Club of BC Foundation
Sierra Legal Defence Fund
Smart Growth BC
Society for the Protection of Ayum Creek
South Okanagan Similkameen Conservation Program
Southern Interior Forest Extension and Research Partnership
Sunshine Coast Conservation Association
The British Columbia Conservation Federation
The Nature Trust of BC
Tides Canada Foundation
TLC The Land Conservancy of BC
Vancouver Natural History Society
Veins of Life Watershed
West Coast Environmental Law
Whistler Fisheries Stewardship Group
Wildlife Habitat Canada

Appendix 3. Letter of Informed Consent

Dear (Private Authority),

Date

Re: Participation in University of Victoria Research: (Case Study Area)

Thank you for expressing a general interest in academic research on "Governance and Private Protected Areas in Canada: Balancing Private Rights with Public Gain" that I am undertaking for my PhD dissertation at the University of Victoria. I am now writing to seek your approval and informed consent to conduct research regarding the (Case Study Area) and to invite your participation in this research.

The purpose of this research is an enquiry into governance – "how individuals and institutions manage their common affairs" - for private protected areas. Very little is known about these protected areas, particularly in developed countries such as Canada where the public sector has been a traditional focus of study. Your experience with and interest in protected areas, and your participation in this research, will help to enrich and expand scholarly knowledge of this poorly understood phenomena. Your participation will also help to shed light on diverse conservation and protection initiatives that are underway in Canada.

Four to six private protected areas in Canada will be identified for case study research. For the case studies, I would like to examine public documents, conduct field observations and hold discussions and interviews with interested parties.

With regards to discussions and interviews, your participation is voluntary and non-compensatory. I expect that discussions and interviews will take a maximum of 1.5 hours, with most involving a shorter time commitment. In the discussion, I will be exploring general questions and themes about the management of the protected area. For example, I would like to better understand the events that led to the establishment of the area or some of the major challenges that private protected areas are now facing; there may other areas that you would like to draw to my attention. The discussions will not take any longer than 1.5 hours.

No personal information will be collected. Views and opinions that you express will be treated in confidence and will be anonymous. They will be relied upon to better inform the analysis that I conduct and research conclusions that I draw. To clarify, there will be no possibility of linking ideas expressed in the dissertation to particular individuals. Should there be areas of discussion that you do not wish to pursue, please let me know. You have the right to answer only those questions you feel comfortable answering and you can choose whether or not to answer any of the interview questions.

If you are comfortable, I would like to audio-record discussions and interviews to make it easier for me to conduct my research. This information will be treated in confidence and will be destroyed at the conclusion of my research.

Your participation in this research is completely voluntary. If you decide to participate, you may withdraw at any time without any explanation. If you do withdraw from the study you can choose whether or not you would like any data you have provided to be included in the study.

To ensure anonymity for this research, there will be no "Acknowledgements" to research participants in the final report.

I would be pleased to distribute and discuss draft research findings with you. Any final observations and conclusions that will be made in the dissertation will be my own. Information and data collected for this research will not be used for commercial purposes. During the course of the research, information will be stored on a password protected computer file. Audio information will be immediately transcribed to written form on a password protected computer file and the original audio form will be destroyed. Paper and hard copies of information will be stored in a secure storage area accessible only by me. It is anticipated that information will be securely stored for approximately one year. At the conclusion of the research, all interview and discussion data, electronically recorded and transcribed will be destroyed.

As you may be aware, approved dissertations are publicly accessible. The final report and approved dissertation will be stored at the University of Victoria library, where it is publicly accessible and available to those with borrowing privileges. Depending on the interest expressed, the final report may also be found in other academic, government, non-government, corporate and private institutions in Canada and international bodies and agencies. Research participants, should they be interested, will receive a copy of the final report. Public presentations of the research results may be made in the future.

Should you have any questions, please feel free to consult me or to contact my thesis supervisor Dr. Philip Dearden, Dept. of Geography, University of Victoria (250)721-7335. Should you wish to verify the ethical approval of this study, or to raise any concerns that you may have, please contact the Associate Vice-President Research at (250) 472-4545 or ovprhe@uvic.ca

If you are comfortable with the parameters of this research, please indicate your approval and informed consent by signing below two copies of this letter, one of which is for you to keep. Please FAX a signed letter to the number outlined below. Your signature below indicates that you understand the above conditions of participation in this study and that you have had the opportunity to have your questions answered by the researcher.

In closing, I appreciate your interest in this research. I look forward to discussing matters with you.

Thank you.

Linda Hannah
PhD Candidate
Department of Geography
University of Victoria
FAX (250) 388-4456

Signature

Date

Appendix 4. Discussion Framework for Research Participants

BACKGROUND CONTEXT

1. What distinguishes this private authority/organization from others? What is the central mission? What are the goals and objectives to which it subscribes? Is this captured in any documentation?
2. What are the main roles and responsibilities of the authority and its management approach? What is the investment in capacity building?
3. What is the key motivation and underlying driver for the authority? Why not leave protected area management to the state?
4. What are the significant values that the authority seeks to represent?
5. What are the main challenges, critical decisions and opportunities?

PROTECTED AREA VALUES

1. Did the establishment of the private area evolve under easy or difficult conditions? Were there competitive private interests?
2. Were interests in support or in opposition to its establishment?
3. Many terms are used to address natural areas of land, such as "protected area". Is this "term" appropriate for this area? Is the IUCN system used? Is there a tailored classification framework for the lands under private authority?
4. How can the area be characterized? As a reserve, wildlife management area, conservation area, ecotourism resort?
5. What are the salient features of this area?
6. What is the key weakness and limitation? For ex., informal instruments, open access, lack of funding, uncertain future?
7. What kinds of activities are conducted in this protected area? What activities are not permitted? What makes these activities incompatible?
8. How could the carrying capacity or "limits" for this area be expressed?
9. What are the critical decisions that are needed for this area and the future outlook?

GOVERNANCE

Direction

1. Is there an organizational framework – vision statement, planning framework, implementation program - where protected area values are represented and relations can be conducted? What administrative instruments are used: management plans, lease agreements, conservation covenants?

2. What is the short and long-term direction for the private area? How are competing objectives, such as short term revenue generation and long term environmental protection, reconciled? Funds are limited, how are priorities for conservation determined?
3. How are risks taken into account and how are risks managed?
4. What kinds of partnerships and collaborative relations have been entered into?
5. How is leadership exercised?

Legitimacy

1. What is the participation and engagement of interests and do they have trust in and show political acceptability and consent to the private area? How are collaborative partners selected?
2. What formal/informal participatory instruments are used to seek views?
3. Is support for the private area strong or unstable? How are complainants addressed? Is there any precedent for change in authority for the private area?
4. What is the relationship between the private authority and those outside the private area boundary? What is the relationship with the state, other administrative/authoritative bodies/adjacent to the area?

Fairness

1. How does the private authority accommodate past grievances or current conflict?
2. What, if any, are sensitive matters for this private area? Are third party mediators used to resolve disputes and conflicts?
3. Is it equitable in the sharing of benefits and burdens that flow from the area? Are benefits re-invested? Is local and traditional knowledge relied upon?

Accountability

1. Where does final decision-making authority lie? What are the various decision-making structures and processes that are employed?
2. To whom is the authority accountable – to the global community, future generations, nature, members, those who have directly contributed or are involved in the ongoing management of the area?
3. What guides decision-making? On what basis are decisions made?
4. Are there enforcement problems? How are these resolved?
5. What are the 'checks and balances' to ensure accountability? What structures are used - advisory committee, management committee, Boards of Directors? What procedures are used - access to information; formal agreements that outline roles and responsibilities of the respective parties? Is there use of independent third parties, internal audits, self-regulation?

Performance

1. Have standards of performance been defined for the private area? What is the expectation of achievement?

2. What is the importance of monitoring and evaluation programs? Is the program implemented?
3. What is the capability of the private authority?
4. To the extent that performance can be readily measured, is the authority making progress towards conservation and protection outcomes? Has it strengthened relations and social trust or sustained ecological integrity?

PRIVATE/PUBLIC ISSUE

1. Are there conflicts between environmental (protection) and economic (revenue-generation) goals?
2. Is there tension between public and private interests?

 Appendix 5. The Governance Pattern in the Case Studies of Private Protected Areas

DIRECTION

Visible framework

- CLWR No management plans are prepared respecting the wilderness lodge. A 10-year, renewable lease agreement (1996) between the land owner (the University of British Columbia) and land manager is the formal instrument that governs the area. A Management Plan prepared in 1989 governs the surrounding Cathedral Provincial Park and references the PPA. The current land manager was the previous land owner.
- HHP A 5-year comprehensive Management Plan was prepared in 2004. Operational plans are under development. A 99-year lease between the Nature Trust of BC and Government of British Columbia is in preparation. NTBC holds fee simple title.
- TGP A national 5-year Strategic Plan (2002), a regional yearly Business Plan (2004) and a local two-year Habitat Stewardship Plan (2002) govern the area. NCC holds fee simple title.
- HF A 5-year comprehensive Management Plan (2000) and commitments pursuant to a Sustainable Forestry Certificate (2003) govern the area. An adjacent Park Management Plan does not reference the PPA. A provincial policy provides incentives to practice sustainable management. The corporate owner holds fee simple title.
- SWI A 5-year Management Plan (n.d.) and Exotic Plant Species Management Plan (1998) have been prepared. A Conservation Covenant (1998) and Constitution (1998) also govern the area. TLC holds fee simple title.
- N'NSL A Land Settlement Agreement (1993), a Management Plan (amended in 2004), a Regional Management Plan (2004), a Risk Management Plan (2005), a Constitution (2003) and pending legislation govern the area. The Settlement Lands are held in fee simple ownership by the Vuntut Gwitchin.

Coherent direction

- CLWR Concepts include a combined tourism and conservation approach. Lease agreement outlines "promotion of understanding of the more intellectual aspects of ecological and environmental concern". PPA is situated inside a provincial park.
- HHP Concepts that frame the Management Plan include: ecological integrity, ecological corridors and biodiversity. A conservation philosophy – goal oriented, adaptive, precautionary, diverse forms of knowledge - is promoted. The mission is "dedicated to conserving BC's natural legacy, in part, through management of the biodiversity values on the Hoodoo/Hofert property". PPA is situated adjacent to other PAs and a bioregional network is planned.

Appendix 5 (continued)

- TGP Concepts include the preservation, management and enhancement of ecologically significant land and to advance areas of exceptional aesthetic and educational value in Canada for the benefit of future generations and nature. The power of private action is used to leverage conservation. The mission is to protect and manage habitat for species at risk and to engage surrounding private land owners in a shared conservation and stewardship approach. PPA is situated adjacent to other PAs and a transboundary, international preserve is planned.
- HF Concepts include sustainable resource use and conservation. The mission is “to protect ecosystems, ecosystem functions and biological diversity in all its facets”. The PPA is dedicated to the public via the provision of educational opportunities respecting natural resources. The PPA is situated adjacent to a provincial park.
- SWI Concepts include biodiversity protection, ecological integrity and restoration. The primary objective is to manage SWI as a site of ecological importance and biodiversity, unaffected by human development and to encourage opportunities for scientific research and environmental education. The PPA is situated in an UNESCO Biosphere Reserve.
- N'NSL Concepts include ecosystem management, traditional use, biological diversity, protection and ecological integrity. The mission is to manage the First Nation Settlement Land, which is adjacent to a Yukon Territory Ecological Reserve, as “an ecological unit”.

Risk management

- CLWR Permit assessments are conducted on the transportation road and inspections from 2003 indicate full compliance.
- HHP At time of purchase, assessment studies are conducted to determine risks from surrounding land development. The main task is “reversing the impacts of previous human activities and preventing future impacts”. SWOT analysis is conducted at management stage.
- TGP At the time of purchase, assessment studies are conducted to determine ecological significance and management costs. Risks are identified at management stage and strategies are developed.
- HF Risks – acid rain and climate change - are anticipated; contingency plans are outlined and an adaptive approach is taken.
- SWI At the time of purchase, assessment of risk and benefit studies are conducted respecting natural and cultural heritage values, benefits to BC and difficulty of protection. SWOT analysis is undertaken at the management stage to provide a basis for long term strategies.
- N'NSL A comprehensive Risk Management Plan respecting commercial operations is a requirement under the Management Plan. Approval for implementation is required from 5 different authorities, including VGFN.

Collaborative management

- CLWR A lease agreement and permits has formalized relations between private and public authorities; relations otherwise are generally informal. The general public does not shape

Appendix 5 (continued)

the PPA, but is involved in forming the Park Management Plan. The park management plan states that the “comforts, convenience and security offered by Cathedral Lakes plays a major complementary role in attracting and providing for recreation use in the Park”.

- HHP Representatives from NGO community, funding partners, local municipalities and public interest groups engaged to establish the PPA. Technical process engaged public and private interests to identify threats and a management strategy for the PPA. Volunteers are to serve as environmental guardians.
- TGP Joint research projects are entered into with universities and government. Volunteers participate in stewardship programs. Active engagement is sought with surrounding landowners. Relations are established with surrounding NGO in the larger preserve.
- HF Joint research projects with universities and administrative bodies are frequently entered into. Relations with independent assessment bodies are struck. Formal relations with the provincial park agency are not established.
- SWI Volunteers are encouraged to assist in exotic plant control. University research has yet to occur in the PPA.
- N'NSL Three major authorities have an equity partnership in the joint management area – Vuntut Gwitchin First Nation, Yukon Territory and Canada. International and national NGOs were actively involved in establishment. Universities are conducting geo-hydrological and grizzly bear research in the management area. Commercial interests have conducted reconnaissance studies. Administrative working groups oversee fisheries management.

Effective leadership

- CLWR The area has been under effective and consistent management for 15 years. The current manager held tenure to the area until 1996. Demonstrated commitment to a stewardship ethic; opportunities for more lucrative development have been foregone. Potential for transferring a renewable lease agreement as a family legacy exists.
- HHP The Nature Trust of BC provided leadership and negotiation expertise to purchase the PPA in 2003. Multi-agency management and technical advisory groups oversee implementation of the PPA. Management responsibilities are borne by the provincial government in an effort to maintain biodiversity values in perpetuity.
- TGP The Nature Conservancy of Canada retains the largest NGO presence in the region, with 500 ha in 1989 increasing to over 6,000 ha in 2005. A multi-agency planning team oversees the PPA for the benefit of future generations and nature.
- HF The current ownership and management has implemented a new resource sustainability direction that is different from the previous management emphasis on timber harvesting to the exclusion of other values. Future directions include a greater emphasis on outdoor recreational activities. Leadership invests in a learning environment and building professional teams. Outreach to the community is conducted. There is a desire to pass along a family legacy.

Appendix 5 (continued)

- SWI The first purchase by the Land Conservancy was of SWI at 10.4 ha in 1998. The organization now administers over 96,000 ha. Management staffs are offered regular exchange programs with international NGOs.
- N'NSL A Committee of Managing Agencies oversees management and operations for the area. The Renewable Resources Council serves in an advisory capacity. The VGFN Council and Assembly, including an Elders Council, provide policy direction.

LEGITIMACY

Expression of protected area values

- CLWR Environmental education, recreation, aesthetics, nature-based tourism
- HHP Ecological diversity of unique and under-represented habitats (grasslands and wetlands) and species at risk, ecological connectivity and protected area network, geological significance, aesthetic and recreational values.
- TGP Ecological diversity of globally imperiled species and internationally significant Tall Grassland habitat ecosystem, environmental education, contributes to an international transboundary protected area
- HF Ecological diversity, sustainable resource management, environmental research, outdoor education and ecotourism, recreation
- SWI Ecological diversity of rare ecosystem, Gary Oak/Arbutus, in the Coastal Douglas Fir biogeoclimatic zone, ecological benchmark, environmental education & research, archipelago recognized as a UNESCO Biosphere Reserve.
- N'NSL Ecological diversity and significant populations of grizzly bear and salmon, traditional, cultural and spiritual significance to the Vuntut Gwitchin, environmental monitoring, archaeological and geological significance, recreation and education, protection core surrounded by habitat management areas.

Transparent rules of engagement

- CLWR Processes with government agencies and interested citizens are informal. Formal public processes exist through the development of park management plans. The park master plan for Cathedral Provincial Park was developed in 1989.
- HHP Representatives of interest groups are invited to participate in multi-agency planning teams respecting the PPA. No general public participation forums exist; general information is distributed to the interested public.
- TGP Representatives of interest groups are invited to participate in multi-agency planning teams respecting the PPA. No general public participation forums exist; general information is distributed to public.

Appendix 5 (continued)

- HF General open house information sessions are held; public views and opinions are considered in management strategies; information is distributed to general public.
- SWI Members of TLC are invited to provide views and opinions on management strategies; general public can similarly express opinion and have done so on occasion; no formal public participation programs exist.
- N'NSL Formal public participation forum was held to gather views and opinions on the N'NSL. Extensive commentary was provided and considered in the decision to establish the N'NSL.

Trust and reciprocity

- CLWR The University of British Columbia, has entered into a renewable lease agreement with the land manager. Minor management issues are required to be addressed in the implementation of the agreement. No public concerns have been formally expressed.
- HHP Support from 10 different interest groups – from provincial to local – was orchestrated to raise funds and establish the PPA. The Nature Trust acted in a leadership and coordinating capacity. An agreement with the provincial government is under development. Concerns about the direction that protection interests are taking are being raised by surrounding land owners.
- TGP The NCC has solicited funding from government and private foundations, as well as from over 300 individual donors to purchase and steward the TGP. Grazing agreements are entered with selected landowners. While no opposition to the TGP was expressed at time of purchase, criticism from surrounding landowners is now being leveled at the authority.
- HF The PPA receives general support from the surrounding community and the contribution of HF to civic infrastructure development is acknowledged; some criticism has been expressed by conventional harvesters that new sustainability methods will impinge on financial returns, surrounding private landowners have, however, expressed preference for the current approach that is being taken. Contractual agreements are entered into with logging interests.
- SWI A covenant has been entered into with two other interested parties to advance the mission of the PPA. Criticism from an individual was initially registered with the NGO that the protection objectives could not be fulfilled; it was subsequently mollified.
- N'NSL The PPA was established after a long and intense land negotiation process and is recognized in legislation governing land settlement. Interest groups and individuals also expressed support for establishment of the area. There is no current criticism concerning the area.

Trustee relationship

- CLWR Stewardship values suggest that the area is being managed for the rights of non-owners, largely visiting clientele, in addition to the rights of the land manager and the land owner. Given that the current owner is a recognized public institution, it is assumed that the area is also managed on behalf of a larger public.

Appendix 5 (continued)

- HHP The role of the NTBC is to maintain biodiversity values in perpetuity. While there is no explicit expression that this is being done on behalf of the public interest or the global community, it is assumed and can be inferred from existence of the 99-year lease.
- TGP The lands are managed according to national policy – to preserve, manage and enhance ecologically significant land and to advance areas of exceptional aesthetic and educational value in Canada for the benefit of future generations and nature.
- HF The lands are managed by the current landowner on behalf of future generations and nature, as well as visiting clientele. No formal declaration, however, prevents departure from this intent by future land owners.
- SWI A fiduciary obligation to nature is demonstrated – the SWI has been declared inalienable by the Board of Directors and, as required by TLC Constitution, cannot be sold. The lands are held in trust for the benefit of British Columbians and the area is to be managed to ensure protection in perpetuity on behalf of the public.
- N'NSL As required by the VGFN Constitution, the Settlement Lands cannot be sold. The lands are held in trust for VGFN citizens. As required by the Final Agreement, the area is to be maintained for the benefit of Yukon residents and all Canadians.

FAIRNESS

Just, impartial and ethical

- CLWR General public access is controlled through a fee for service and through a closed gate. The public has access to the provincial park at other open entry points where a fee for service is not charged.. The interests of the land manager and the land owner are central to management; there is no evidence of partial, unjust or unethical approaches.
- HHP General public access is allowed and managed through non-interventionist means and open gated access . Although there were other expressions of interest in land purchase, the authority purchased the land from a willing seller under typical market arrangements. It currently strives to consider the interests of other parties in the general environs.
- TGP General public access is allowed and managed through non-interventionist means and open access that is bounded. The authority first purchased lands considered to be of low agricultural productivity; subsequent land purchases are considered by the agricultural community to contain higher agricultural value. There is no evidence of partial, unjust or unethical approaches.
- HF General public access is controlled through a fee for service and closed gate access. The interests of the land owner are central to management; there is no evidence of partial, unjust or unethical approaches.
- SWI General public access is allowed and managed through non-interventionist means and access controls. The authority purchased the land from a willing seller; there is no evidence of partial, unjust or unethical approaches.

Appendix 5 (continued)

N'NSL Limited public access is allowed and managed through regulatory means. Public consensus that justice is a central feature in the settlement of land claims. The genesis of the N'NSL arose out of a land claim settlement agreement.

Manages conflict and sensitive issues

CLWR Attention is paid by the land manager to operational management matters and issues. The transportation road has potential to be a source of conflict and sensitivity.

HHP Formal conflict resolution procedures, including the role of mediators, does not form a part of the governance regime for the PPA. Negative comments, however, have been expressed as shifts in the traditional land management regime occur in the HHP.

TGP In the case of disputes respecting conservation covenants, objections may be filed with the Ontario Conservation Agreement Board for resolution. Legal remedies may also be sought by the authorities. As no covenants are registered in the TGP, this mechanism is not available. Individual disputes have occurred between the authority and grazing lease holders in the TGP and the wider agricultural community has expressed serious concern about the extent of land protection efforts and the infringement on traditional agricultural activity. Negotiators and mediators are not currently contemplated to intervene and reliance upon local advisory planning teams is pursued.

HF Attention is currently paid by the land owner to the management of conflicts between motorized and non-motorized recreational users. The numbers of snowmobiles have been reduced dramatically.

SWI No major conflicts between users are occurring. The management of exotic plants is a threat requiring vigilant attention by the authority.

N'NSL Although conflict was present in the area previously, no major conflicts are currently occurring. There is potential for conflict respecting grizzly bear viewing if an appropriate balance between human use and bear behavior is not sought.

Equitable

CLWR Economic benefits are reinvested in the PPA for infrastructure and other goods and services.

HHP While not a formal requirement of the PPA, economic benefits from selective harvesting are reinvested in the PPA to restore damaged habitat. Revenue generation activities must be complementary to the objectives for the area. First Nation archaeological sites exist in the larger environs, but have not been determined in the PPA. Representatives from the Ktunaxa Kinbasket First Nation are members of the Management Steering Committee.

TGP The authority has elected to forego financial incentives available to conservation agencies in order to flow revenue to the local municipality for provision of services. First Nations are believed to have accessed the area in historical times. Currently, First Nations are not represented on the Management Committee, but have been previously.

HF Land claim negotiations include portions of the PPA; private lands, however, will not be included in any settlement agreement. First Nations are not engaged in shaping the direction of the PPA or in accessing resources found within the PPA.

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- SWI Under the terms of the Conservation Covenant, minor revenue generation from accommodation rental is to be reinvested in the PPA or to cover other land costs. Workshops on traditional ecological knowledge are offered. First Nations Land Trust Program is being established and a First Nation Liaison officer is being appointed to strengthen the organizations equity goals.
- N'NSL Potential benefits flowing from commercial operations are not required to be reinvested in the PPA. VGFN retain the right to fish, harvest and trap for sustenance and traditional ceremonial purposes. However, the VGFN have voluntarily elected to forego hunting and fishing and it is expected that this will be a regulation under VGFN legislation. It is anticipated that non-VG citizens seeking access to hunt or fish on Settlement Lands will need to obtain written permission from the VGFN.

PERFORMANCE

Standards and expectations

- CLWR General standards are not defined, except for those incorporated in permits. Expectations of management performance (roles and responsibilities) are outlined in the lease agreement. Limited baseline and reference points have been established in the provincial park.
- HHP The authority is committed to result-based performance management. It commits that management actions will be measured in terms of conservation outcomes and not the completion of management tasks. It also commits that the focus of monitoring is to determine if management actions are accomplishing what they intended to accomplish. Measurable outcomes have yet to be defined, but enabling goals have been set – for example, to ensure that the general long-term trend of grassland condition is toward good to excellent.
- TGP The authority commits to organizational measures of success, for example, to complete stewardship plans. The authority is also reviewing the Land Trust Standards and Guidelines for relevance and application and is developing its own internal stewardship standards that will provide a reference point for appropriate levels of service. A standards framework for the TGP has been set. This framework consists of objectives (to secure and protect ecologically sensitive lands for species at risk), anticipated results (acquisition of 3-6 properties by means of purchase, donation or conservation agreement) and indicators (number of landowner contacts).
- HF A comprehensive indicator system has been proposed; it awaits formal adoption and incorporation into the HF management system. Standards of performance respecting forest stewardship and sustainability have been set. Qualitative objectives have been set by the landowner and provide a foundation for setting measurable targets.
- SWI A variety of standards exist. The authority subscribes to the Land Trust Standards and Guidelines prepared by the US Land Trust Alliance and the TLC Constitution calls for regular monitoring of these standards by the Board of Directors; an internal audit is currently underway to determine compliance. Standards pertaining to SWI are also implicit, rather than explicit, in the Baseline Documentation Report and are to serve as a necessary complement to the Conservation Covenant. The Conservation Covenant,

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itself, also outlines compliance standards: for example, no trail construction, provision of access, and prohibition of tree removal and absence of contamination.

N'NSL The authority is committed to performance management over the long term; the plan governing the area commits that monitoring is an essential part of assessing and evaluating whether the management principles are being effectively implemented. Management principles have been carefully defined and form the framework for monitoring. Although areas of interest have been declared – such as grizzly bear numbers, salmon populations and ecosystem disturbance – performance measures have not been defined. The Risk Management Plan for grizzly bear viewing also calls for the collection of baseline behavioral data and the auditing of commercial wildlife viewing operations by a qualified and independent inspector.

Monitors, evaluates and reports

- CLWR The authority does not conduct monitoring or evaluation programs. Monitoring studies, now outdated, have been conducted in the surrounding park environment.
- HHP A comprehensive monitoring strategy has been outlined consisting of three components: measurable outcomes; cause and effect models; and monitoring and evaluation systems. The strategy is awaiting implementation.
- TGP The authority regularly reports on the number of hectares of land held in fee simple title, scope of donations and numbers of supporters. Stewardship and monitoring program commands 14 per cent of the operating budget for TGP and is significantly below that estimated to be adequate. A TGP monitoring and evaluation report is in preparation.
- HF There is active investment in performance monitoring at three levels: the site level to determine impacts arising from harvesting; at the transect level to determine medium to long term trends; and at the eco-site level to establish base line data and benchmarks. Evaluation information is incorporated into forest harvesting strategies and strategic management plans.
- SWI The covenant holders are permitted to inspect SWI and monitor compliance with the conservation covenant.
- N'NSL A comprehensive monitoring plan has yet to be implemented. University researchers are establishing reference baselines respecting grizzly bear behavior.

Ability and capacity

- CLWR The current land owner is assumed to have capacity to conduct environmental monitoring programs.
- HHP A small complement of management and field operations (3 full time staff) oversees the TGP.
- TGP Management and field operations (5 full time staff complemented by seasonal workers) oversee the TGP. Science-based decisions and development (i.e. land purchase) assume a significant role in the TGP. The demanding soil environment of the TGP

Appendix 5 (continued)

commands a higher than average stewardship budget of 40 per cent as compared to 20 per cent of the total budget allocation.

- HF Self-monitoring is complemented by studies undertaken by collaborative parties. Professional staff oversees forest management. The rapid generation of data at various temporal and spatial scales presents challenges for management.
- SWI The area is located in the largest region for which TLC has responsibility; SWI is overseen by 13 professional staff. A Senior Warden manages the area directly. Volunteers are regularly employed to undertake informal monitoring programs.
- N'NSL The VG government has established a Department of Natural Resources staffed by 7 professionals to oversee the N'NSL.

Progress and improvement towards purposefulness of governance

- CLWR Change and progress cannot be determined; parameters have not been selected.
- HHP Results-based performance is of particular significance to the authority; reporting on outcomes serves to communicate to outside investors the success of its conservation efforts and acts to build further investor confidence. Performance reports, however, have not yet been prepared.
- TGP Progress toward the goal of conservation and stewardship is not well-communicated; there is a focus on administrative outputs, rather than on conservation outcomes.
- HF An evaluation of sustainable forest management revealed a positive sustainability assessment score of 90 per cent. Sustainability forest certification has also been awarded to HF by an independent institution, the Forest Stewardship Council. Regularized reporting on performance would add considerably to this solid foundation.
- SWI Recent reports respecting the conservation covenant indicate full compliance. Progress towards the larger goal of ecosystem protection remains uncertain. Potential exists to report on goals and objectives for SWI: for example, preservation of biological diversity, restoration of plant communities and commitments to sustainable management.
- N'NSL The general absence of baseline, trend and reference information makes it difficult to determine if the principles for N'NSL are being fulfilled and if progress towards management of the ecological unit is being made.

ACCOUNTABILITY

Clear authority

- CLWR The land manager retains responsibility and authority for operational implementation and the land owner holds fee simple land tenure and retains authority for policy and management direction; roles and responsibilities are outlined in a 10-year, renewable lease agreement. Should the lease collapse, the future plans for the area are uncertain. It is assumed that the Province or the public institution would manage the area in sympathy with the provincial park.

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- HHP Fee simple land tenure is held by the authority. Constitutional provisions remain undetermined. It is assumed that the provincial government would assume ownership responsibilities should the organization dissolve.
- TGP Fee simple land tenure is held by the authority. Should the organization dissolve, the Constitution provides that property shall be distributed to sympathetic organizations that can carry on similar work: therefore, in perpetuity protection is assured.
- HF Fee simple land tenure is held by the authority. No provisions bind future land owners to a similar conservation and sustainable management direction.
- SWI Fee simple land tenure is held by the authority. TLC Constitution declares the SWI as inalienable and lands cannot be sold. In perpetuity protection is assured by the covenant.
- N'NSL Fee simple land tenure is held by the authority. VGFN Constitution prohibits Settlement Lands from being sold and in perpetuity protection is assured by the Final Agreement.

Broad accountability

- CLWR The land manager is directly accountable to employees, to clientele and to the land owner for provision of responsibilities contained in the lease agreement. The land owner is directly accountable to the public institution for the terms and conditions of the lease agreement and to the land manager for the provision of certainty, should terms and conditions of the lease agreement not be fulfilled. The provincial government retains authority for the award of a permit governing the transportation road and is accountable to the public for safety and environmental considerations; this road is the essential link to the operation of the wilderness resort.
- HHP Through a 99-year lease (under development) under the BC *Land Title Act*, the authority is directly accountable to the provincial government and to the NTBC Board of Directors. The authority is also indirectly accountable to the broader public through its broader stated purpose to preserve BC's natural legacy.
- TGP The authority is directly accountable to the Board of Directors and indirectly to the larger public. In this latter capacity, lands are protected on behalf of future generations, as well as for the intrinsic value of nature and biological diversity.
- HF The authority is directly accountable to its shareholders, to employees and clientele. Defined accountabilities also lie to the larger public through compliance with bylaws that restrict tree harvesting and through tax privileges.
- SWI The authority is directly accountable to TLC Board of Directors and the covenant holders. Lands are held in trust on behalf of British Columbians.
- N'NSL The authority is directly accountable to its General Assembly and Council. The Final Agreement, to which the VGFN are signatory, indicates that Special Management Areas are to be retained on behalf of Yukon residents and all Canadians.

Appendix 5 (continued)

Rigorous decision-making

- CLWR Substantive Issues are to be brought to the land owner for resolution. Operational matters remain the purview of the land manager. The provincial government awards the permit for the transportation road.
- HHP Fifteen appointed directors retain responsibility for land purchase and decisions are based on advice from land conservation scientists. Management committees, with professional staff, are struck to oversee the area.
- TGP There is a formal separation between technical (How to?) and policy (Whether to?) decisions. Established Scientific Advisory Committee recommends acquisitions and management direction to the Board of Directors. The national board retains the authority to purchase land and the regional board retains a delegated advisory capacity. Over 100 representatives from scientific and business community serve on the Board of Directors. All policy and science representatives are appointed to staggered terms and are not elected. Management committees, with professional staff, are struck to oversee the area.
- HF The landowner retains the authority for policy and management direction. Advice is provided by professional staff.
- SWI The TLC Board of Directors retains the authority for purchase of lands and for declaring lands inalienable. Professional technical staff provides advice on risks and benefits.
- N'NSL Policy direction is held by the VGFN Council and delivery occurs through a Committee of Managing Agencies.

Reliable monitoring and enforcement

- CLWR Provincial government conducts compliance assessments with permits. No permits have been denied. The parties to the lease agreement retain the option for renewal, should terms and conditions not be fulfilled.
- HHP Enforcement of grazing agreements has resulted in a temporary suspension. It is anticipated that enforcement of appropriate recreational activity may become an issue as a balance between protection and use is sought. Informal monitoring is conducted respecting quality of grassland habitat. Volunteer community stewardship monitors are anticipated to fulfill an oversight monitoring capacity for the area; they will not have enforcement capacity.
- TGP The area is monitored by professional organizational staff. Detailed habitat stewardship plans guide attention to priority areas. Grazing lease agreements are reviewed regularly and adjustments are made.
- HF Penalties and sanctions, available under the *Trespass Act*, are rarely used by the landowner. Monitoring is conducted in relation to conservation objectives.
- SWI A warden oversees general enforcement for the area. No enforcement issues currently exist.
- N'NSL Monitoring of bear behavior is being undertaken by universities; the federal government monitors fish populations at an established weir. No enforcement issues currently exist.

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Independent checks and balances

- CLWR In the event of irreconcilable disputes between the land owner and manager, access to the *Commercial Arbitration Act* is provided. The potential for disputes is high; there are three parties with different goals and objectives, thus creating potential for conflict.
- HHP The Management Plan governing the area calls for independent conservation audits at least once every five years; audits have not been undertaken to date. It remains uncertain how disputes between the authority and the provincial government are to be resolved.
- TGP Third parties are not engaged. University researchers are called upon to advise on rotational grazing systems.
- HF The authority has retained a recognized and independent agency to evaluate forest stewardship. It was the first private forest in Canada to do so.
- SWI The holders to the conservation covenant oversee compliance with conditions to the covenant and provide assessment reports. Disputes are to be resolved among the parties and, if not, parties may appoint a mediator.
- N'NSL The Committee of Managing Agencies comprised of VGFN, Yukon Territorial Government and Canada serves in a self-regulating capacity. In the event of disputes, parties have access to the Surface Rights Board to resolve matters between surface rights holders and access rights.