ECO-RESEARCH CHAIR
ENVIRONMENTAL LAW & POLICY

When there's a Way, there's a Will

REPORT 1:
Developing Sustainability through the Community Ecosystem Trust

By
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and
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Established in 1995, the Eco-Research Chair of Environmental Law and Policy at the University of Victoria seeks to identify the underlying legal, economic, and social causes of ecological decline, and develop sustainable alternatives to current policies, practices and institutional arrangements. The Chair encourages a trans-disciplinary approach to research, and a strategy of public education, legal and policy interventions. The Chair also provides opportunities for graduate study in the natural, social and health sciences, and in law.

The Eco-Research Chair receives financial support from a variety of sources, including foundations, government agencies, and the University of Victoria. This report was produced with the financial support of the Ministry of Community Development, Cooperatives and Volunteers, Province of British Columbia.

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Faculty of Law & School of Environmental Studies
University of Victoria, Canada

Research support for this project was provided through the International Network of Forests and Communities.

International Network of Forests and Communities

National Library of Canada Cataloguing in Publication Data
M'Gonigle, R. Michael.
Developing sustainability through the Community Ecosystem Trust

(When there's a way, there's a will ; 1)

Includes bibliographical references.
ISBN 1-55058-227-5

1. Community Ecosystem Trust. 2. Sustainable development.
3. Environmental protection. I. Egan, Brian, 1959-
II. Ambus, Lisa, 1975- III. University of Victoria (B.C.).
Eco-Research Chair of Environmental Law and Policy.
IV. Title. V. Series.

HC79.E5M46 2001 333.7 C2001-910934-2

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Cover photo by Bryan Evans
Design and production by Alaris Design

Printed on Recycled Paper; 20% Post-Consumer Fibre

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JULY 2001

ACKNOWLEDGEMENTS

This report represents the efforts of many people. The authors would like to acknowledge the contributions of Stella Spak and Stephen Tyler who contributed text to the Models Report. A large number of people provided comments on early drafts of the report, attended consultation workshops, and helped refine the legislative approach and framework described here. Special thanks to the following people, who served on the project advisory committee (in alphabetical order): Cheri Burda, Robin Clark, Russell Diabo, Doug Gordon, Ross McMillan, Bruce Milne, Richard Overstall, and Richard Schwindt.

Finally, we wish to acknowledge the financial assistance and excellent support provided by the Ministry of Community Development, Cooperatives and Volunteers, including the following Ministry employees: Rupert Downing, Greg Goodwin, Brian Miller, and Mary Anne Fillipone.

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EXECUTIVE SUMMARY

PURPOSE OF THE REPORT

Operating in a continual state of crisis and conflict, renewable resource management in British Columbia is in need of innovative, and comprehensive, rethinking. This report addresses that need, and proposes a unique way to meet it. Implementation of the Community Ecosystem Trust model presented in this report would:

- develop sustainability in a comprehensive manner;
- foster economic innovation;
- enable communities to gain greater control over the management of local renewable resources with accompanying benefits;
- create an accommodation between Aboriginal peoples and non-native communities; and
- reform the regulatory process in a progressive, and potentially powerful, way.

Today, the absence of a path for truly reconciling diverse interests while ensuring the sustainability of land and resources is a critical obstacle to future progress in managing natural resources in British Columbia. The Community Ecosystem Trust represents a comprehensive, yet practical way forward. And when there's a way, there will be a will to make it work.

The community ecosystem trust model is based on a review of existing provincial and federal legislation (see Report 3) and is adapted from years of experience and experimentation in community-based natural resource management from this province and from many countries around the world. A small fraction of these experiences (over 60 examples) is reviewed in Report 2.

HISTORICAL BACKGROUND

Centralization and Unsustainability

The use and management of natural resources has been central to human life and culture for millennia. Over the broad span of human history and across diverse cultures, control over land and resources has swung back and forth between central governments and local peoples. Based on many generations of direct experience, local peoples have developed a deep understanding of local ecosystems and complex systems to manage and govern the use of these resources. With the history of expansion over the past centuries, central governments have extended their control over these same resources.

Over the past few centuries, such control has become increasingly centralized. Everywhere, local (indigenous) and community forms of tenure and management

have been pushed aside in favour of private/corporate and public/bureaucratic systems of control. The one-sided structure that has since come to dominate our relations (whether it be private or public) is not sustainable. Both privatization and central regulation are fraught with problems. Together these problems go a long way to explain the nature of resource crises and conflicts worldwide.

A policy impasse exists. This impasse has led to a burgeoning interest in community-based alternatives. The challenge is universal: how do we undertake the profound changes in human behaviour and institutions necessary to achieve sustainability in the 21st century?

Resource Use in British Columbia

Conflict and controversy around land and resource use is omnipresent in British Columbia. Indicators of the depth of the problems include:

- declining fish populations, reductions in old growth forests, fragmentation of wild landscapes, and increasing pressures on species diversity and habitat;
- growing frustration with existing land planning processes and regulatory systems;
- unresolved questions about the extent of Aboriginal rights and title, and increasing frustration with the treaty process;
- chronic economic instability in resource communities; and
- political failure to develop policies and strategies to resolve the fundamental contradiction between resource intensive economic growth and environmental sustainability.

In this situation, incremental reforms that serve to maintain existing development patterns, with only minor changes at the margins of institutional behaviour and resource exploitation practices, are not enough. Fundamental innovations in institutional arrangements and resource stewardship are needed to truly develop sustainability. The BC Central Coast initiative, with government, First Nations, environmental groups and forest companies seeking common ground, represents a hopeful sign of progress in the province's resource sector. The community ecosystem trust model proposed here can complement such initiatives, serving as an implementing mechanism.

SYSTEM INNOVATION: FOUR OBJECTIVES AND A PROCESS

In order to bring about true sustainability, this report proposes new legislation for British Columbia, *The Community Ecosystem Trust Facilitation Act.* The proposed legislation is designed to fulfill four key objectives, by means of a unique process.

1) **Developing Sustainability** – The legislation will embed the concept of ecosystem sustainability as the foundation for the design of individual Community Ecosystem Trusts, and as the context for developing new institutions of sustainable renewable resource use and management at the community level. The maintenance of ecological integrity (ecosystem composition, structure and function) is a fundamental objective. To achieve

this, new institutions of all kinds (from fisheries co-ops to small businesses to ecosystem managers) must be developed.

2) **Reconciling Crown Sovereignty with Aboriginal Title** – The trust offers an innovative vehicle that reconciles and integrates both Aboriginal title and Crown sovereignty in a new intermediary land status. This joint land designation is a unique, and timely, manifestation of *both* these interests. Without the need to "prove" title on the one hand, or the need to "protect" Crown interests on the other hand, the community ecosystem trust provides the common ground for two, co-existent legal orders. However they are defined, their integrity is preserved.

   Compatible with recent court decisions, the trust embodies the recognition of Aboriginal title, the accommodation of First Nations, and the reconciliation between native and non-native communities. With the retention of Aboriginal title in an ecosystem trust, zero-sum government-to-government negotiations are replaced by the challenge of achieving win-win community-to-community agreements.

3) **Enabling Participatory and Healthy Communities** – The legislation will facilitate the creation of institutions and governance structures that provide a forum for ongoing democratic participation, while it also enhances the flow to the community of the economic and social benefits derived from sustainable resource use and management.

4) **Reforming the Regulatory System** – The legislation will provide a process for the gradual and comprehensive reform of the regulatory system. It will move away from the current model of detailed standard-setting and enforcement by senior governments and towards a performance-based approach enforced by practitioners and the community, working from a shared set of guiding principles. This design will decrease the need for external rules of *management* by building sustainable "best practices" right into *production* processes in trust communities. Through practice, sustainability will become part of the community fabric, thus creating further self-regulating norms at the individual and collective levels.

   Unlike the de-regulation or voluntary enforcement that is frequently proposed, the trust approach maintains a key role for central agencies in developing best practices, setting overarching management objectives and facilitating community and agency transition, and serving as a protective back-up.

A Process: Facilitated Transition

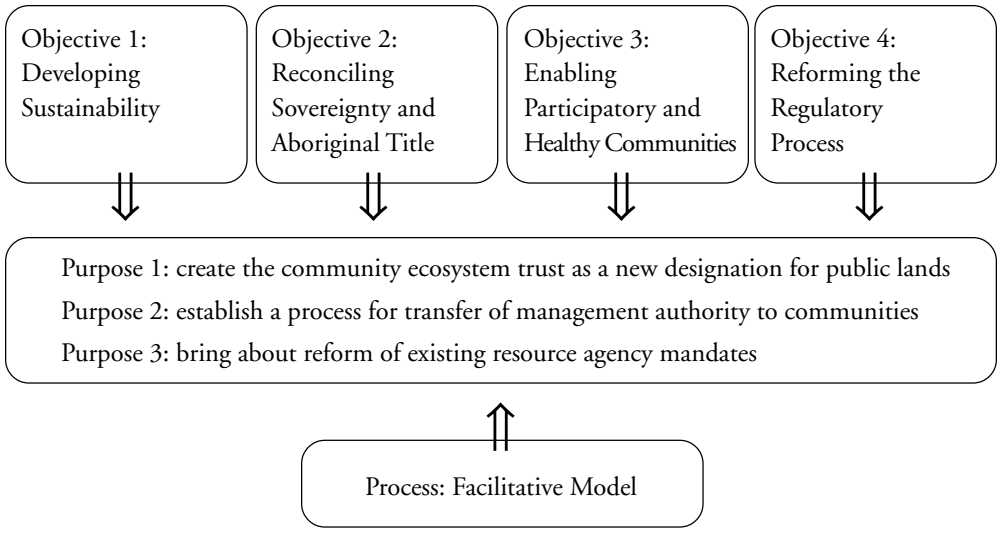
The approach to achieving these objectives will be based on a new facilitative model that builds community support and capacity, while providing new functions and roles for existing government agencies. The legislation sets very specific objectives designed to create profound changes. But the approach is *enabling*. Communities will participate only by self-selection, that is, by "opting in" of their own accord. Government agencies will participate by directing and refining their mandates, not relinquishing them.

The facilitative approach proposed here differs from the "stakeholder consensus" model used in land and resource management planning (LRMP) processes. That model takes existing activities and relationships as largely given, and then seeks a negotiated "consensus" around a limited set of changes. The facilitative approach also differs from the "competitive negotiation" model that is used in the treaty process, and pits First Nations against the Crown. Both these approaches seek to achieve an acceptable, but low, common denominator between competing interests that does not, in most cases, address fundamental goals of ecological and community sustainability. On the ground, in both cases, the end result is typically a fragmented zoning system with existing industrial and regulatory controls remaining in place.

In contrast, the trust approach seeks to achieve a high common denominator. In the short term, it will appeal only to those few communities that are ready to take the plunge, to become "trust initiators." For example, the provincial government's announcement (April 2001) on the Central Coast LRMP contained a Protocol with First Nations that would direct future resource planning in the area. The trust instrument discussed in this report is ideally suited for the implementation of such a Protocol. Though limited in breadth, the focus will be comprehensive. In those communities implementing it, an ecosystem trust would apply to all facets of human use and management of renewable natural resources. By being selective, the facilitation is gradual and iterative, self-amending as it goes.

The process itself will strengthen community. Open, self-directed, participatory and well supported, the goal is to design trusts that can actually succeed, are supported in doing so, and will establish precedents for others to follow. Over time, the results will be far-reaching.

It is essential that the process offer certainty to a participating community that it can create a realizable outcome that will be implemented. This certainty of outcome will instill new incentives for all residents to participate, explore options, and cooperate across sectors. The successful community will experience a vast increase in its authority, and in the opportunities available to it.



Guiding Legislative Action: Objectives, Purposes, and Process

TRUSTS AND SUSTAINABILITY

A trust is created with three parties – a *settlor* who has the property that will go into the trust, a *trustee* who will manage the property on behalf of the *beneficiary*. Central to a trust are the conditions that the settlor attaches to it, so that the trustee must steward the property in the best interests of the beneficiary.

The "public trust doctrine" has long been used (especially in the United States) to protect public lands, such as parks, for long term benefits. Such trusts are results-oriented as the trustee is free to manage the land in any manner, as long as it produces outcomes compatible with the trust purposes. The concept of sustainability itself implies a trust-like duty on citizens to manage for the benefit of future generations.

With the community ecosystem trust, the settlors are those entities with a "title" interest in the ecosystem—the Crown and Aboriginal peoples. The trust addresses basic title interests, not tenures (which are merely property interests that are attached to title). Tenures within a designated trust need not be abolished or replaced. They would, however, be required to conduct their activities according to the trust purposes and rules. The trustees would be a community institution such as a local management authority. The beneficiaries would include the local community, including local First Nations, and the people of the province.

Together, all these aspects of the trust together are the basis for achieving a high "common denominator" that existing processes cannot achieve.

THE COMMUNITY ECOSYSTEM TRUST FACILITATION ACT

Provincial Level Trust Facilitation

Founded on the four objectives and the facilitative process, the *Community Ecosystem Trust Facilitation Act* (*CETFA*) enshrines a **Provincial Ecosystem Trust Charter** (the provincial charter) as the context for the transfer of authority to individual community trusts. In its terms, the provincial charter will give precise effect to the four legislative objectives by translating them into "state of the art" principles for community-based management. These principles would address areas such as ecosystem-based management, participatory decision-making, best practices in resource use, and community economic development.

With its emphasis on a facilitative process, a unique element of the legislation is the role of the Community Ecosystem Trust **Working Group.** The Working Group is the key implementing body for *CETFA*, working with communities and government agencies to facilitate the transition to community-based management. The Working Group would have a structure similar to other boards or commissions established by the province – but would have strong, formally recognized, independence. Cabinet would be the vehicle for implementing individual community trusts, but any individual proposal forwarded by the Working Group would not be rejected except on grounds agreed to by the settlors, and expressly stipulated in the legislation.

The Working Group has two broad areas of activity:

- working with provincial and federal agencies to direct the change in their operations from that of direct regulation to objective setting, and provision of support and expertise to trust communities; and

- working with trust communities on all aspects of the preparation, submission, and implementation of their trust proposals.

The Working Group is not a neutral arbiter. It is the active vehicle for the implementation of *CETFA* through the facilitation process. It seeks to raise the level of the common denominator within communities and their regions, to create workable precedents that can be more broadly applied, and to lay the policy groundwork for innovative agency reforms.

In its tasks, the Working Group is supported by a **Best Practices Secretariat**. Over the past decade, the concepts of "best practices" and benchmarking have emerged as a way for one business or jurisdiction to draw on the innovations of others. The concepts apply in many sectors, from new technologies, to better pricing mechanisms, to innovation-forcing planning processes. Under *CETFA*, best practices would provide new roles for central agencies, guide community trust activities, introduce performance-based self-regulation, and facilitate entrepreneurial innovation.

Community Level Trust Operation

At the local level, the **Community Ecosystem Trust Charter** (community charter) is the key element for implementing the legislation. It allows for the local expression of the larger legislative objectives contained in the provincial charter. Specifically, it describes the role and responsibilities of the trustee for the designated **Community Ecosystem Trust** (community trust). But the specifics of each community trust and charter emerge from, and are driven by, the community itself. This flexible approach means that each community trust is adapted to local ecological, social and economic conditions, but within the overarching provincial framework (as provided by the CETFA).

Designed to foster innovation, individual community trusts will be models, precedents, and incubators for a whole new approach to situating human systems on the land. Through iteration after iteration, this gradual and evolutionary process can be taken up by other communities if and when they are ready to do so.

Overall, *CETFA* has three purposes: (1) to create the Community Ecosystem Trust as a new designation for public lands, and (2) to establish a gradual, flexible, and facilitative process for the transfer of management responsibility over renewable resources to the community, and (3) to bring about gradual and progressive reform of existing resource agency mandates. *CETFA* mandates the creation of a **Community Management Authority** (CMA) as the trustee and governance body of the community trust. This is the legal entity that assumes responsibility for management of the trust, and is accountable for implementing the terms of the trust. At the local level, *CETFA* would generally supersede existing provincial and federal legislative standards and processes where *higher* outcomes can be achieved. (The nature of this regulatory relationship is a complicated one; its resolution will be a major focus of the implementation process.) With expert, technical backup from existing agencies, the Community Management Authority would not become another level of bureaucracy, but a "one-window" entity for licensee plan and permit approvals.

It is important to repeat: *CETFA* is oriented to reforms rooted in *title*. As a result, the transfer of authority to the community level involves transfers concerning existing *Crown management* of the land base. Private tenures are granted pursuant to this

management authority, but they are not abolished or affected except that they must now meet the standards of the trust charter. In this regard, the CMA is a public management body that licenses private (or public) economic producers; it would not itself hold tenures or licenses.

Performance-based Regulation and Enforcement

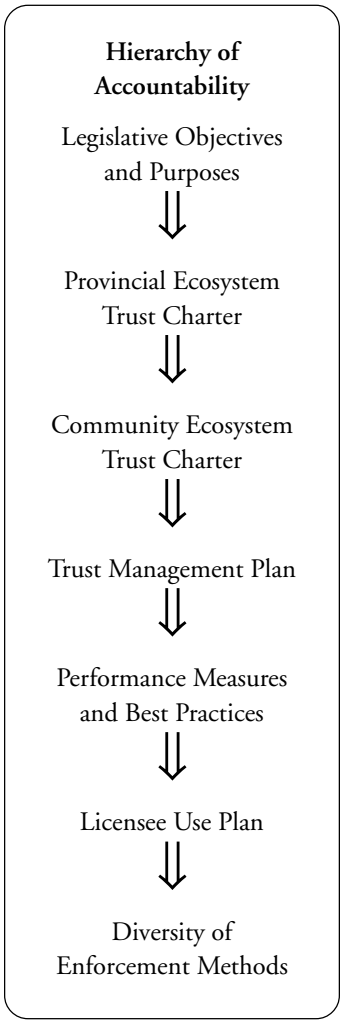
The trust model implies a new approach to regulation that goes beyond the limits of both de-regulation/voluntary compliance, and centralized rule-making. In giving effect to the community trust charter, the community management authority would develop a management plan for the trust area. This would not be a prescriptive, standards-based plan but would:

- shift from standard setting to the establishment of mandatory **performance-based objectives** that all licensees in each sector must meet; and
- mandate the ongoing use of **best practices** in each sector; these practices become the baseline for decision-making ("the rule") except where a potential licensee could demonstrate why a lesser practice is necessary ("the exception").

The effect for an approved licensee and plan will be to reduce regulatory burdens by directly merging management objectives into production practices. Over time, this will instill a new level of industry custom and community self-regulation.

Based on this shift, techniques for compliance and enforcement will also change. A diversity of techniques should be employed, including:

- **graduated licensing** that rewards higher level practitioners with less oversight, and penalizes lower performance with greater oversight or loss of tenure rights;
- **associational self-regulation** wherein user groups monitor their own members within a code of compliance based on the trust objectives, management plan, and performance standards/best practices; and
- **citizen enforcement** at a variety of levels and through a range of mechanisms, including a specialized **tribunal.** In addition to resolving disputes, the tribunal would gradually develop a best practices "jurisprudence" to guide management authorities and licensees. In addition to the original settlors of the trust (the Crown and First Nations), citizens would be empowered to hold trustees accountable to the terms of the trust.



Issues Related to Overall Implementation

The *CETFA* is designed for gradual **evolutionary implementation**. Only a few communities would be chosen in the first instance to be "trust initiators." Their success should lead to other communities opting in, building on prior experience and institutions. This is an iterative process at all levels. For example, when a number of community trusts are successfully in place, a provincial Trust Council could be established to co-ordinate all trusts in the province. It might also take over many of the functions of the Working Group. At that stage it could facilitate the development of the community ecosystem trust as a broad new level of land-based jurisdiction.

Concerns will necessarily exist as to the **economic costs** of the *CETFA*. In fact, there are none for the legislation itself, as the legislation itself changes nothing. Only

when a community "opts in" might costs and benefits be assessed for that individual proposal, and the proposal be designed accordingly. However, with full cost accounting, the overall costs are far lower than generally assumed. A high level of hidden costs exists with today's resource industries (including the depletion of fish stocks, and liquidation of habitat mentioned above). As well, a high level of direct subsidies exists through the resource rent and taxation mechanisms, and generally through inaccurate and inadequate pricing. In addition, regulatory costs should fall, while opportunities for innovative licensees and value-added entrepreneurs should increase.

Another concern exists regarding **compensation** of existing property interests. This is a highly controversial and contentious issue, and must be addressed on a number of levels. What interests are affected? Which of these are compensatory? How is compensation to be calculated? What are the implications for NAFTA? And so on. Again, however, all of these issues are mitigated by the design of the *CETFA* that, on the one hand, is selective and incremental in its implementation while, on the other does not terminate existing tenures. While these issues need to be addressed, they are not insuperable.

Finally, a wide range of broader **policy instruments** should be considered that could further facilitate the community ecosystem trust process. These include "tax-shifting" mechanisms to favour trust-based labour and business, the repeal of many subsidies that are counterproductive, community economic development mechanisms that support investment and business development, and trade policies that assist in market development through, for example, special certification and labeling.

CONCLUSION & RECOMMENDATIONS

In light of the inability of existing regulatory and market mechanisms to develop either economic or ecological sustainability, incremental reforms are not enough. If sustainability is to develop, new institutional and legal arrangements are needed that reduce the inherent conflict between environmental protection and resource use and that facilitate reconciliation between native and non-native interests in this province. At the same time, these arrangements must not create new and burdensome regulatory or administrative obligations on communities and enterprises. The community ecosystem trust represents an innovative and comprehensive vehicle to address concerns about sustainability, community development, and achieve accommodation with First Nations.

Given the pressing need for system innovation in the natural resource sector, the authors of this report recommend:

- **that the Province support the further development of the community ecosystem trust model and its implementation.**

To do this, we recommend that the Province take the following steps:

- **provide funding for the organization of a provincial workshop to further develop the community ecosystem trust model. This workshop should bring together key representatives of relevant groups and agencies to discuss the trust model and help develop a strategy for the implementation and testing of the model.**

- **establish an independent and community-governed foundation to support the development and implementation of the community ecosystem trust model. This foundation should be provided with sufficient funding to carry out its mandate. Key objectives of the foundation are:**
  - **at the outset, to support consultation with key representatives and sectors to promote and refine the model;**
  - **to support the development of a provincial and federal implementation strategy including, where applicable, the creation of enabling legislation (*the Community Ecosystem Trust Facilitation Act*);**
  - **to support development of the Provincial Ecosystem Trust Charter;**
  - **to support implementation of the community ecosystem trust in selected communities; and**
  - **after implementation, to support periodic evaluation of the model and recommend modifications required to ensure its ongoing successful implementation.**

1 INTRODUCTION

1.1 PROJECT RATIONALE

Operating in a continual state of crisis and conflict, renewable resource management in British Columbia is in need of innovative, and comprehensive, rethinking. This report addresses that need, and proposes a unique way to meet it.

Operating in a continual state of crisis and conflict, renewable resource management in British Columbia is in need of innovative, and comprehensive, rethinking. This report addresses that need, and proposes a unique way to meet it.

The lands and waters of British Columbia support a remarkable richness and diversity of renewable natural resources, including globally significant forests, fisheries and wildlife populations. For millennia, these resources have sustained aboriginal cultures. Over the past 150 years, they have fueled a rapidly expanding provincial economy. Throughout much of this latter period, these resources have been treated as inexhaustible. As a result, we have exploited these rich resources beyond their sustainable limits. Severely depleted fish stocks, endangered plant and animal species, and fragmented forests are clear indicators of resource degradation. And, further challenges loom on the horizon, as global climate change and economic globalization contribute to growing uncertainty about the future.

Indicators of renewable resource degradation abound in British Columbia:

- declining and disappearing fish populations – over 142 runs of salmon on the British Columbia coast are known to be extinct while 624 others are teetering on the brink of extinction; thousands of other runs have not been studied, so their status is unknown (Slaney *et al.* 1996);
- growing numbers of threatened and endangered species and ecosystems – over 1000 species and plant communities in this province are at risk of extinction, including many old-growth dependent species such as Woodland Caribou, Marbled Murrelets and Tailed Frogs (BC Ministry of Environment 2000); and
- heavy over-cutting of the province's forests – in 1994, the Ministry of Forests recognized that the rate of logging "could not remain at its current level, under existing management regimes, without risking steep reductions in future harvest rates and severe impacts on the environment" (BC Ministry of Forests 1994); there has been no significant reduction in the rate of logging since then.

The degradation of these resources has begun to force economic restructuring amidst community crisis. Throughout the post-WWII period, resource-dependent communities have experienced cyclical economic "booms" and "busts" depending on the vagaries of the markets for raw or semi-processed natural resources. In the late 1980s however, the province's main resource industry, forestry, began to stagnate due to a number of factors. These include flagging international demand for commodity lumber, mill overcapacity, increased competition from lower cost producers, and higher

costs to access increasingly distant old-growth forests. In recent years, the economy has been more bust than boom for forest-dependent communities.

The long history of over-cutting means that the forest industry is experiencing a "falldown" in the volume of wood that can be cut sustainably on provincial lands, with consequent impact on workers and communities. In recent years, layoffs and mill closures in forest-dependent communities have been accompanied by dramatic declines in the fisheries, leaving resource-based communities along the coast of British Columbia in dire straits. Between 1989 and 1997, the volume of wild salmon caught in BC waters fell by almost 50 percent (Statistics Canada 2000).

1.2 THE NEED FOR A NEW APPROACH

Conflict and controversy continue to surround the use and management of renewable natural resources in British Columbia. Declining fish populations, reductions in old growth forests, fragmentation of wild landscapes, increasing pressures on species diversity and habitat are only a few of the renewable resource challenges that remain highly conflictual. Overarching these issues are unresolved questions about the extent of Aboriginal rights and title over these resources and lands. Meanwhile, economic stability and sustainable employment remain elusive goals for resource communities and industries beset by an array of resource and market uncertainties.

Our present approach to managing renewable natural resources in British Columbia is simply not sustainable, in both ecological and economic terms.

Our present approach to managing renewable natural resources in British Columbia is simply not sustainable, in both ecological and economic terms. This lack of sustainability is most clearly demonstrated by the forest sector, long described as the "economic engine" of the province. For the past quarter century the rate of logging on public lands in British Columbia has been far higher than is ecologically sustainable. Despite widespread recognition of this, including by the Ministry of Forests, the rate of logging has been reduced by less than one percent over the past ten years (Ministry of Forests 1994; Marchak *et al.* 1999). The high rate of cut means that the industry continues to support many jobs, but these jobs are continuously under threat, as the recent spate of mill closures (and bailouts) attests.

The focus on the production and export of commodities such as raw logs, pulp, newsprint and dimension lumber has meant that the forest industry in British Columbia has failed to produce the kind of on-going economic benefits and social stability that communities require (Burda *et al.* 1997). The industry generates far fewer jobs per unit volume of wood cut that most other jurisdictions, for example approximately one-third that of the forest sector in the United States. Efforts to develop a vibrant value-added manufacturing sector in British Columbia face numerous obstacles, most notably an outdated tenure system. In 1998, six companies controlled nearly 50 percent of the timber allocated to all licensees and 17 companies had over 80 percent of this allocation, representing nearly 70 percent of the provincial Allowable Annual Cut (Marchak *et al.* 1999). While the forest industry faces cycles of boom and bust, most resource-based communities are in steady decline. The prevailing mood in these communities is uncertainty and fear about the future, and a strong sense that they are not in control of their own destiny.

There is clearly a great demand and interest on the part of resource communities to become more involved in decision-making about resource use and management. For example, in 1998, over 80 communities responded to the Ministry of Forests call

for expressions of interest under their Community Forest Pilot Project. Despite this, existing resource policy and legislation limits the abilities of communities to get involved. It also limits opportunities to develop innovative approaches, a problem identified by both the Forest Resources Commission (1991) and the Forest Policy Review (Wouters 2000).

Sectoral attempts to resolve resource conflicts on a case-by-case basis – from provincial Land and Resource Management Plans (LRMPs) to fish conservation initiatives to treaty talks – have, even with the best of intentions, been only partially successful. The lack of progress in settling the First Nations land question is of critical concern. Fifty First Nations in British Columbia are engaged in the treaty process, representing about 65 percent of the registered Aboriginal population in the province. With treaty talks going very slowly, First Nations communities are growing increasingly frustrated. Many Aboriginal leaders are predicting collapse of the process unless significant progress is made soon. Moreover, the treaty process does not represent a solution for a significant portion of the province's First Nations who reject the process altogether. Alternative approaches to resolving the issue of Aboriginal title to land and resources are needed, although the provincial and federal governments continue to remain committed to the treaty process at this time.

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The LRMP process has achieved mixed results. In some regions, such as in the Muskwa-Kechika, they have produced significant gains in protected areas and innovative approaches to resource management that have the support of a wide cross section of interests, including conservation, industry and First Nations. In other cases, such as on Vancouver Island, they have produced landscape plans that are anathema to important affected interests, including environmentalists. In still other areas (e.g., the Central Coast), this process too is rejected by powerful interests, including First Nations, logging companies and environmental interests, all of whom are engaging in a private, parallel process. In any case, completion of an LRMP process does not necessarily mean peace in the woods – as indicated by ongoing protests and arrests in the Slocan Valley, Elaho Valley, and other areas – and the process does nothing to address First Nations concerns.

Central regulation of resource use – such as the *Forest Practices Code* – has proven costly and divisive, satisfying neither resource industries nor conservation concerns. Environmentalists have argued that the Code has not resulted in significant changes to forestry practices and that, in the face of industry pressure and concerns about economic downturns, the government has relaxed regulations. The industry has called for the introduction of performance-based self-regulation. However, given the industry's continued practice of intensive exploitation and the environmental conflicts it generates, many officials and concerned citizens are leery of such an approach.

Central regulation of resource use – such as the Forest Practices Code – has proven costly and divisive, satisfying neither resource industries nor conservation concerns.

In the face of crashing fish populations, many coastal communities demand a completely different way of managing local and regional fisheries. On the west coast of Vancouver Island, for example, First Nations, commercial fishers, local governments and conservationists have joined forces to form the Regional Aquatic Management Society, and are seeking major changes to current decision-making structures and processes. The final report of the Peckford Inquiry into fisheries management in British Columbia (Peckford 1998) concluded that the number one priority in reviving coastal fisheries is to create a more local, innovative, flexible management regime based specifically and emphatically on the principles of sustainability and biodiversity.

Similarly, in the forestry industry, public commissions have for decades urged government to re-distribute tenures to smaller operators and communities. In 1991, for example, the Forest Resources Commission recommended that government take back 50 percent of timber quotas from existing licensees with manufacturing facilities for reallocation as area-based tenures to First Nations, communities, wood-lot operators and other small businesses. In 1999, the report of the Perry Commission on the MacMillan Bloedel Settlement Agreement acknowledged "widespread hunger for discussion of alternate tenures" (Perry 1999). And, most recently, the final report of the Forest Policy Review recommended the government "promote tenure diversification" and "provide increased opportunities for community-based forest tenures" (Wouters 2000).

Despite the many recommendations by the various commissions and review bodies, the provincial and federal governments have chosen not to reform the renewable resource sector in a structural or systemic fashion.

Despite the many recommendations by the various commissions and review bodies, the provincial and federal governments have chosen not to reform the renewable resource industries in a structural or systemic fashion. Despite the recent establishment of the Community Forest Pilot Project, access to timber on public forest land remains highly concentrated in the corporate sector. Similarly, corporate control of the fishery resource is stronger than ever, and is even reinforced by recent federal initiatives such as the license buyback scheme.

This situation of resource crisis and structural inaction in British Columbia is not unique. On the contrary, it is repeated in varying degrees in every jurisdiction on Earth. These problems are experienced most acutely in areas that depend directly on their natural resources for their economic well-being. But the general challenge is universally shared: How do we undertake the profound changes in human institutions and behaviour that are needed to achieve sustainability?

It is the premise of this report that we must confront the historical failure of the twin processes of industrial exploitation and bureaucratic regulation. In the search for ecological and economic sustainability, a new approach has become of increasing interest – community-based ecosystem management. Developing this third option will undoubtedly be a central feature of this century. Across the globe today, hundreds of small-scale examples highlight the possibility for larger innovation. But, as in British Columbia, such innovations as have occurred are partial in nature, and allowed limited potential. There is, literally, no way out from the confines of the status quo for most communities and jurisdictions.

This report will explore the potential for a unique, integrated new approach. It is the belief of the authors that where this way is provided, the will to make it happen already exists in many places, and will quickly be found to exist in others.

This report will explore the potential for a unique, integrated new approach that offers both procedural and substantive opportunities. It is the belief of the authors that where this way is provided, the will to make it happen already exists in many places, and will quickly be found to exist in others.

1.3 REPORT OBJECTIVES

The purpose of this report is to develop a new land designation (the Community Ecosystem Trust) and a novel process for putting it in place ("facilitated transition"). The approach proposed here will allow a diverse range of innovations to be developed from the community up, but within an overall legislative framework. It will lead to a progressive reorientation of the operations of existing resource agencies. Moreover, by utilizing a legal trust involving Aboriginal as well as Crown interests, this framework will overcome one of the province's most entrenched conflicts.

The findings of this study are contained in three separate reports. This volume is the main report (Report 1 or the "Trust Report"). Report 2 (or the "Models Report") contains a description of a wide range of a models for community-based management of renewable resources, from British Columbia and other jurisdictions. Understanding the successes and limitations of these specific models has allowed us to propose our own general model. Report 3 (the "Legal Report") provides an overview of existing legislation at the provincial and federal levels, providing a foundation for the development of a new legislative framework.

1.4 REPORT STRUCTURE

This report is divided into three main parts. The first part (chapters 1-3) provides background on some of the key concepts that underlie the emergence of community-based natural resource management as a global trend, and links this to the concept of community economic development. In this part, we also review the academic literature on common pool resources and common property regimes. (Chapter 2 contains a "theoretical" background that is a useful, but not necessary, introduction for readers.)

In Part 2 (chapters 3-5), we provide a new characterization of the many crises in British Columbia that confront the fisheries and forests, local communities and First Nations, business and government regulators. We suggest a metaphor, that of a large but fractured house that we live within, but that represents the box in our thinking and actions from which we need to emerge. We then propose an approach that will let us see beyond, and get outside, this box. Beyond the history of incremental reform, we identify the need to create places where *system innovation* can occur. We then introduce our proposed legislative approach that can facilitate both the creation of an integrated new land designation (the community ecosystem trust) and a change in the way resources are managed by central government agencies. The legislation is called The *Community Ecosystem Trust Facilitation Act* (CETFA). We describe four foundational objectives for the legislation, two concrete purposes that give expression to these objectives, and a new process for implementation.

Chapters 6-10 form Part 3 and provide an overview framework for the operation of CETFA. The first of these chapters deals with the provincial government's role in establishing the new ecosystem trust designation, and in facilitating its implementation. Other chapters describe the community-led process for establishing a specific ecosystem trust (including defining the community authority and trust area), the mechanisms for running an ecosystem trust (once established), the relationship to provincial and federal legislation, and the new regulatory approach to standard-setting and enforcement. Finally, we point briefly to an exemplary range of complementary initiatives that might be taken to facilitate the successful transition to a trust-based land management system.

> Throughout this report, cross-references are made to the models described in the Models Report. Small boxes that appear in the margins of this report refer to models that contain lessons relevant to the discussion. For a summary of the model referred to, turn to the description in the Models Report.

Finally, while this series of reports is oriented to a legislative approach, we point to areas where immediate action can be taken. The development of an actual legislative

instrument would involve consultation, especially with First Nations whose constitutionally recognized and protected interests would be directly affected by such an instrument.

1.5 RESEARCH METHODOLOGY

The research methodology for this project involved a combination of approaches, including a thorough review of the literature and consultation with key people working in this field. Assembling the project research team was the first step. Different tasks were assigned to team members based on their particular areas of expertise and experience. Based on the knowledge and experience of team members, the basic structure of a legislative approach and framework was proposed and key objectives were formulated. Given the overall objective of the project and an understanding of the British Columbia context, team members agreed on the following four core objectives of the model: developing sustainability, reconciling Crown sovereignty and Aboriginal title, enabling healthy and participatory communities, and reforming the regulatory system. Team members also agreed on the need for a process-oriented approach, allowing for experimentation, innovation, "learning by doing", and facilitation of the implementation process.

Critical to the development of the model proposed here was a review and analysis of existing and proposed models for community management of renewable resources. Consequently, one of the first tasks was to collect documentation of these models. To do so, we conducted library and internet searches for materials and consulted with a wide range of experts working in this field, including not only those from British Columbia but also from other regions of Canada, from the United States, and from Africa, Asia, Europe, and Latin America.

In consulting with these experts, we explained the nature of the study and asked them to identify models they were familiar with that held particular promise to support community-based approaches to ecosystem management. In particular, we sought examples of legislated approaches designed to give more decision-making power to communities. These experts often pointed us to published and unpublished reports, and to other models or experts as sources of information. Given the limitations of the study, especially in terms of time allocated to the project, we were not able to follow up on all leads; rather, we focused on those that appeared most promising and most relevant to the study objectives.

In examining the models we collected, our intention was to draw out the key lessons for British Columbia. The central question in analyzing existing models was: What lessons does this model hold for formulating and implementing a legislative framework for community management of renewable resources in British Columbia? In following this line of questioning, a number of themes or sub-questions emerged which added complexity to the model. Examples of such questions or themes include the following: How do you define the community? How do you establish boundaries for the community? (e.g., do you rely on ecological boundaries? political boundaries?) What kind of authority is most appropriate to assume responsibility for managing local resources? In creating such an authority, how do you avoid creating another level of bureaucracy? How do you structure the model to maximize opportunities for innovation? What approaches can best ensure sustainability? What kind of model can best facilitate reconciliation between diverse interests?

In addressing these (and many other) questions, the "trust" model emerged as the most promising approach, as it offers a flexible legal vehicle to achieve agreement between the key players or "settlors." Also, while many other models were examined, none were as comprehensive as the trust arrangement. Further research and consultation was undertaken to confirm the suitability of the trust model, leading to the initial formulation of the "Community Ecosystem Trust" concept.

The project Advisory Committee played a key role in developing and testing the model. The Advisory Committee was proposed as a group of experts representing a range of expertise and perspectives that would provide advice and feedback to the project research team. We sought representation from the following areas or interest and expertise: local government, provincial ministries, First Nations, community economic development, conservation sector, forestry, fisheries, agriculture, resource economics, resource and environmental law, and community-based resource management. Two advisory committee workshops were scheduled, one held in mid-December 2000 and one in early January 2001.

The Advisory Committee workshops were extremely valuable in gathering feedback on the material presented and to refining the trust model. After the final workshop, the research team prepared a draft report and circulated this to the Advisory Committee for further comment. Comments on this draft were also sought and received from the Ministry of Community Development, Cooperatives and Volunteers. These comments were incorporated into the final report. An economic analysis of the model, part of the project's original scope, was to be undertaken under a separate timetable and these findings are to be released in a separate report.

2 THEORETICAL BACKGROUND

Some readers may not be familiar with recent discussions on community-based natural resource management. For these readers, this chapter provides a basic introduction and background to the some of the key concepts that underlie it, and particularly to the literature on common property theory. While this literature provides a context for the analysis that follows, the part concludes with a discussion of how our approach extends this field.

NOTE: The theoretical background in this chapter is useful but not essential for understanding the discussion of the proposed model that follows.

2.1 COMMUNITY-BASED NATURAL RESOURCE MANAGEMENT

Throughout most of human history, small communities have been the stewards of renewable natural resources. In contrast, centralized management of natural resources is a relatively modern phenomenon, stemming from nation state formation in Western Europe and spreading internationally through colonialization.

Throughout most of human history, small communities have been the stewards of renewable natural resources. Over the past few decades, numerous studies have described indigenous and traditional forms of resource use, documenting complex systems of management based on intimate knowledge of local ecology. In contrast, centralized management of natural resources is a relatively modern phenomenon, stemming from nation state formation in Western Europe and spreading internationally through colonialization. European colonial powers imposed state forestry regimes throughout Asia, Africa and the Americas. Viewed as a hindrance to economic development, traditional forms of resource management were cast aside, and often dismissed as "primitive." Control over forests, fish and other renewable resources was shifted to, and concentrated in, private trading corporations and state bureaucracies. Ownership of lands and resources was taken from indigenous peoples, where it had been held for centuries (and longer) in communal forms of tenure, and vested in the state.

The centralization of resource management served colonial interests by undermining indigenous authority and giving the colonial government tremendous economic and political power. In this regard, the concept of "sovereignty" had an important instrumental value in de-legitimizing one form of control in favour of another. Colonial governments used their control to extract resources and wealth for export to Europe and, to a lesser extent, to foster national economic development. After independence, this framework of centralized control was inherited by post-colonial governments which continued the pre-colonial patterns of economic use and management. In a few cases (such as Mexico), revolutions resulted in the return of massive areas of land to indigenous peoples and rural communities. In British Columbia, control of the land and resources passed to the government, even though very few First Nations relinquished their Aboriginal rights or title through a treaties.

MODEL
Mexico

The ready availability of seemingly limitless resources to colonial governments produced a process of industrial exploitation that is characterized by large-scale liquidation. This economic force has characterized the Canadian economy from the early days of the fur trade to the recent collapse of the cod stocks off Newfoundland. The renewed interest in community-based natural resource management is a logical response to an intractable problem that has grown to global proportions. Recognizing the high cost and low effectiveness of central forms of natural resource control, and spurred on by international agencies, governments everywhere are (however tentatively) exploring approaches to return management control to community authorities. A wide range of techniques exist (see the Models Report). No single model exists, however, given the global diversity in ecosystems and human cultures. Any comprehensive strategy must, therefore, be flexible and adapted to address specific local conditions (ecological, economic, and cultural).

The ready availability of seemingly limitless resources to colonial governments produced a process of industrial exploitation that is characterized by large-scale liquidation. The renewed interest in community-based natural resource management is a logical response to an intractable problem that has grown to global proportions.

To increase the chance that decisions are appropriate to local conditions, and to improve the incentive to consider long term benefits of sustainable management, those affected by a decision should participate fully in these decisions (Notzke 1994). Burda *et al.* (1997) suggest that:

> People who have lived in an area for a long time have the greatest knowledge of the local ecology, and of the long-term social and environmental impacts of their activities. Centralized management structures lack the flexibility and ability to respond to local conditions, while community-based management enables the people closest to the forest to manage, plan, regulate and enforce the use of the forests in their specific places. This creates feedback mechanisms for adapting quickly to changing conditions; locally established standards and policies are more flexible to these changes. Decisions can be made for the benefit of the community at large, and by those most affected by the decisions.

The meaningful involvement of communities in resource management is widely acknowledged as a key to achieving ecological and economic sustainability. For example, in writing about fisheries management on Canada's east coast Tony Charles of St. Mary's University in Halifax notes that:

> an ignorance of the critical links between fisheries and coastal communities is also detrimental to sustainability. For example, recent research supports a link between successful conservation efforts and co-management involving those living close (geographically) to the fish stocks. The collective stewardship role of coastal communities is a key benefit of community based management circles. For example, there is a tendency in the Department of Fisheries and Oceans to talk about 'communities' as meaning nothing more than sectors of the fishery – the 'community' of gillnet vessels under 45 feet in length, or for that matter the 'community' of offshore fishing companies. This thinking is certainly far from the common sense approach most of us have as in 'fishermen live in coastal communities.' (Loucks *et al.* 1998)

MODEL
Port Lameron Harbour

While community-based fisheries and forest management are perhaps the most familiar concepts to British Columbians, the focus of community management may be on a much wider spectrum of renewable resources such wildlife, water, agriculture, and recreation.

The degree of community control over the decision-making process also varies from case to case, ranging from full control over the process (e.g., where the community has clear title to the land or resources), to shared control with senior governments (e.g., co-management), to joint ventures with private firms. Inherent in these differences is the concern for a set of checks and balances that can control the potential for abuse by whatever level has day-to-day management authority. To date, with so limited community authority, a balance in power between central and local levels has not existed.

The definition of 'community' is a critical aspect of community-based natural resource management. While definitions vary, approaches commonly focus on the community as a spatial unit, as a social structure, and as a set of shared norms (Agrawal 2000; Agrawal & Gibson 1999). Admittedly, this approach rarely analyzes the diversity that exists within a community, or even the conflicting impacts of 'community' in natural resource management. As a result, policies or legislation supportive of community-based management are built on a set of assumptions about what constitutes 'community'. Consequently, the 'community' in community-based management has manifested in different forms around the world, and with differing degrees of success. (See Box 2.1).

BOX 2.1: DEFINING THE COMMUNITY

A clear understanding of the 'community' is critical to the successful design of models for community-based natural resource management. Who gets to participate in decision-making about resource use? Who is excluded? No single definition will hold for all contexts, rather an examination of models from around the world show a variety of approaches. Some examples:

- User Groups – under Nepal's community forestry scheme, the 'community' is defined by the group of people that have traditionally used the resources within the community forest area, who must organize themselves as a Forest User Group (FUG) with a constitution and charter in order to be recognized by the state forestry department;
- Political Boundaries – in many community management schemes, the 'community' is defined by existing political boundaries, usually at the most local level. In India, the Joint Forest Management regime operates at the level of the panchayat (local level government). In Tanzania, a system of compartmentalized villages has become the basis for community based resource management. A more local example: the Village of McBride's Community Forest Pilot is to be governed by a board of directors elected by the community; and
- Ecological Boundaries – some models define the 'community' based on the residents within particular ecological boundaries (sometimes these overlap closely with political boundaries). For example, First Nations communities are often territorially based, with traditional territories linked with ecological boundaries.

While it is important to define the 'community' clearly, flexibility is also needed. For example, the 'community' may be defined by a combination of the factors listed above. An example of this flexible approach is the program developed in the Philippines that recognizes a 'community' as "a group of people who may or may not share common interests, needs, visions, goals and beliefs, occupying a particular territory which extends from the ecosystem geographical, political, administrative, and cultural boundaries and any resources that go with it" (DENR 1995).[1]

1 DENR Administrative Order No. 96-29, Rules and Regulations for the Implementation of Section 12 of Executive Order 263, Community-Based Forest Management Strategy (CBFMS), Article No. 1. Available on line at http://www.bknet.org/laws/dao96-29.html

When speaking of ecosystems or natural resources, a territorial definition of community is most apt – the community is defined in relation to the ecosystem(s) or resources being managed. Thus, the community would includes all those who live in the territory, or adjacent to it. This does not necessarily mean that all residents of the territory participate fully or equally in decision-making. While some models of community-based natural resource management allow for meaningful participation by all residents others restrict decision-making to a particular segment of the population.

BOX 2.2: TRANSFERRING POWER – THE KEY

Rather than token involvement or participation, community-based management must involve a significant transfer of decision-making power from central (national, state, provincial) governments to local authorities. As Fisher (1999) has noted: "meaningful devolution relocates not only administrative functions, but also the power to make decisions and set objectives." Experiences in India, the Philippines, Nepal, and Tanzania create a useful spectrum of analysis for comparing the degree to which power is genuinely transferred to communities (Fisher *et al.* 2000). For example, India's early attempts with implementing community forestry in a Joint Forest Management system consisted of little more than enlisting local workers to participate in a massive tree planting campaign using exotic species for industrial interests. The failure of this approach has led to new policies that give communities a much greater degree of control.

The Philippines has been successful in transferring management authority only as far as shifting the rights and responsibilities from the central government to the various units of local government including the provincial, municipal and *barangay* (the most local level of government) levels. A lack of resources, however, means that the implementation of this approach has made little progress. The largely foreign assisted (and well funded) 'community-based' programs remain centralized in the National Office of the Department of Environment and Natural Resources (Yu 1998).

Nepal is presently regarded as having one of the most progressive programs for community forestry in the world (Britt 1998). Nepal's national forest law mandates that 61 percent (3.5 million hectares) of the nation's forest area be allocated to community-based forestry. The legislation and policy allow for significant local use and a moderate degree of devolution of decision-making (Fisher 1999).

Tanzania has enabled 'Village Forest Reserves' to successfully create and implement local by-laws with visible improvement in the forest as a result. Villages have been designated the 'Manager of the Forest.' The government forester acts as technical advisor, a liaison between central and local government, a watchdog on progress, and as a mediator in dispute resolution among village forest managers (Alden Wily *et al.* 2000). This model of devolution has been effective because community groups have the freedom and authority to make by-laws and enforce local rules applicable to those inside and outside of the community, granting the community both the rights and responsibilities of managing the resources.

2.2 COMMUNITY ECONOMIC DEVELOPMENT

Parallel to the idea of community-based management, the concept of "community economic development" (CED) was developed in opposition to the dominant model of economic development which emphasizes economic growth, consumption, private investment and profit. The negative impacts of this model are well known – the concentration of wealth, escalating resource throughput leading to environmental degradation, and community disintegration. The idea of a new model is to utilize resources to support local people and communities in ways that do not undermine natural systems; rather, to nurture and build both community and ecosystem health. Over the past few decades, the concept of community economic development has gained wide acceptance.

Community economic development is a process by which communities can initiate and generate their own solutions to their common economic problems and thereby build long-term community capacity and foster the integration of economic, social and environmental objectives.

Ross and McRobie (1989) have defined community economic development as "a process by which communities can initiate and generate their own solutions to their common economic problems and thereby build long-term community capacity and foster the integration of economic, social and environmental objectives." The concept is "founded on the belief that problems facing communities – unemployment, poverty, job loss, environmental degradation, economic instability, and loss of community control – need to be addressed in a holistic and participatory way" (CEDC 1998, cited in Gunter and Jodway 1999). The CED model incorporates a number of key principles, including:

- ensuring equitable access to community decision-making processes, resources and the benefits of development;
- fostering the active participation of all members of the community in planning and decision-making, including marginalized citizens;
- building a sense of community by fostering relationships of acceptance, understanding, and mutual respect;
- encouraging cooperation and collaboration between communities and regions (recognizing that many problems can't be addressed in isolation);
- promoting self-reliance and community control by building on local strengths and resources, and decreasing dependency on economic interests from outside the community and region;
- developing an integrated approach to dealing with social, economic, cultural, and ecological issues;
- encouraging processes, structures and initiatives that respect ecological limits;
- seeking to develop forms of work and new economic institutions that are sustaining, regenerating and nurturing of both the community and the earth; and
- encouraging capacity building within the community and the acquisition of relevant skills. (adapted from: Gunter and Jedway 1999)

Many concerns exist, of course, about the potential (and reality) of abuse of power at the local level as well. An awareness of this is critical to the *design* of new policies and programs – but not to the *need* for them. The historical conjunction of the loss of local power (to outsiders) with the decline of resource sustainability *is a cause and effect relationship*. The issue is, therefore, *how* to restore a balance, not *whether* to do so.

2.3 ECOSYSTEM-BASED MANAGEMENT

Ecosystem-based management has the conservation of biological diversity as the cornerstone of natural resource management, and discourages practices that might undermine the resilience of an ecosystem by seriously eroding or removing any of its structures, functions, or processes.

Community-based natural resource management and community economic development focus on meeting the economic, social and cultural aspirations of resource communities. While these concepts usually incorporate a commitment to ecological sustainability, they do not demonstrate how this is to occur, let alone describe a management and planning framework. Ecosystem-based management provides an appropriate approach. This approach goes well beyond "ecosystem management", a concept that is used by central economic and agency interests simply to describe something broader than a single-species approach. It does not explore the linkages between the *character of economic activity* and the *health of the ecosystem*. In contrast, as defined here, ecosystem-based management situates economic and political processes *within* the bounds of maintaining ecological integrity (M'Gonigle 1998).

Ecosystem-based management has its natural scientific roots in conservation biology and landscape ecology. The former sets the conservation of biological diversity as the cornerstone of natural resource management, and discourages practices that might undermine the resilience of an ecosystem by seriously eroding or removing any of its structures, functions, or processes. Ecological services (including climatic regulation, water cycling, soil creation, nutrient recycling and pollination) have long been minimized or ignored in conventional resource management. Landscape ecology draws attention to the manner in which diverse ecosystems cohere across broad spatial and temporal dimensions. It recognizes the importance of heterogeneity, or diversity, to ecosystem integrity and the need for connectivity between ecosystems to allow for the movement of animals, plants, energy and nutrients (Burda *et al.* 1997).

If ecosystem limits and health are to be respected, less extractive forms of production and management must be developed that can occur within ecological constraints.

Similarly, ecosystem-based management has its social scientific roots in political economy, a field which seeks to understand how wealth is generated (the "sources of wealth"), including an analysis of the differing internal dynamics of different systems of economic production and political management. If ecosystem limits and health are to be respected, less extractive forms of production and management must be developed that can occur within ecological constraints. At the most general level, this will entail a reduction in today's dependence on a high throughput of resources (such as energy or timber) out of rural areas, and a commitment to achieving real resource efficiency and local community benefits (M'Gonigle 2000; Song and M'Gonigle 2001). In practice, ecosystem-based management requires:

- explicit goals and objectives to maintain or restore characteristic ecosystem structures, functions and processes;
- a focus on the inter-relationships among ecosystem components, such as air, water, soils plants and animals, as well as on individual species;
- a long-term, holistic view that considers all levels in the biodiversity hierarchy;
- a recognition that ecosystems are generally in a state of natural, dynamic change;
- an adaptive approach, continually incorporating new information that will improve the pursuit of management goals;
- the requirement for good information from research inventory and monitoring, and a commitment to adaptive management; and
- a dependency on cooperation between agencies and organizations involved in management at all scales, because of the interdependence of ecosystem components and functions that cross administrative boundaries. (adapted from: BC Ministry of Environment 1999)

In their submission to the Forest Policy Review, the West Coast Environmental Law Association noted that:

> ecosystem-based management focuses on what to leave in the forest, rather than on what to take. It requires forest planning that prioritizes maintaining forest ecosystem composition, structure, function, integrity, and resilience, as well as maintaining options for future generations. Where there is uncertainty or imperfect information, it requires that the precautionary principle must take precedence. (Clogg 1999a).

MODELS
Clayoquot Sound Scientific Panel, Slocan Valley, Harrop-Proctor, Gitxsan.

However expressed, ecosystem-based management represents the state-of-the-art of natural resource management, and is increasingly accepted as a necessary new direction by resource management scientists, professionals, and agencies. The challenge remains of translating this theoretical understanding into practice on the ground. In British Columbia, the Clayoquot Sound Scientific Panel combined traditional ecological knowledge with cutting edge science to design an unprecedented blueprint for ecosystem-based management. The Scientific Panel's approach rejected the past emphasis on producing high volumes of timber, and substituted an ecosystem approach that establishes the maintenance of ecosystem integrity as the premiere objective, before resource extraction. The Panel recognized that ecosystem-based planning requires a hierarchical planning framework, longer time frames, better information and prioritization of protecting ecosystem integrity (Scientific Panel for Sustainable Forest Practices in Clayoquot Sound 1995). Ecosystem-based planning also involves the designation of reserve zones where no harvesting will occur to protect riparian ecosystems, unstable slopes, sensitive soils, endangered species, late succession forests with interior forest conditions, cultural values, scenic values and recreational resources. The implementation of the Scientific Panel's recommendations in Clayoquot Sound has resulted in dramatic declines in the volume of logging permitted (about 70 percent) in the Sound in order to meet a range of ecological, social and cultural objectives, and this has posed a challenge to create alternative economic futures.

2.4 COMMON POOL RESOURCES AND COMMON PROPERTY REGIMES

The rising interest in community-based management challenges long-held notions of the efficacy of central management. The conventional belief is that local communities have neither the expertise, nor the interest, in long-term sustainable management, and that these qualities reside exclusively in higher level governments and corporate owners. In response to this long-held bias, a growing body of practical and theoretical work is emerging concerning "common-pool resources" and "common-property regimes." This work identifies fundamental principles that underlie successful and long-enduring cases of community-based management of natural resources.

Common pool resources include renewable natural resource systems such as fisheries, forests, grazing areas, groundwater basins, rivers, and lakes.

The term "common-pool resources" broadly refers to "goods where, as with public goods, it is costly or difficult to exclude potential users, but which are subtractable or rival in consumption (and can thus disappear), like private goods" (McKean 1999). In this sense, common pool resources can include not only natural resources like forests and fisheries but also man-made resource systems such as bridges, irrigation canals, and mainframe computers. For our purposes, however, we shall use the term

to refer to renewable natural resource systems such as fisheries, forests, grazing areas, groundwater basins, rivers, and lakes.

Common pool resources have two defining traits. First, it is costly to develop institutions to exclude potential beneficiaries from using them. If non-contributing beneficiaries are not excluded, the resource system becomes an "open-access resource" available to anyone. To govern the use of a common pool resource (particularly describing who may use the resource and who is excluded) therefore requires a complex set of rules and institutional arrangements. The second trait of common pool resources is their subtractability – that is, the resource units harvested by one person are not available to others. In the case of fisheries, for example, the fish caught by one fisher can not be caught by another fisher. This means that, without the appropriate rules and institutions, common-pool resources can be depleted through individual acquisitiveness.

While the term "common-pool resources" refers to the physical qualities of a natural resource, the term "common-property regime" refers to a particular property-rights arrangement by which a group of resource users can control and govern the shared use of the common-pool resources. Common property regimes, where a particular group of people shares the rights to use a particular resource, have for many centuries been the primary management system across the planet and have proven remarkably effective in meeting local economic needs and providing for long-term stewardship of natural resource systems. This is so because this is a proprietary system where the holders of ownership rights have an interest in protecting the value of the resource. McKean (1999) notes that "when the group of individuals and the property rights they share are well defined, common property should be classified as a form of shared private property – a form of ownership that should be of great interest to anyone who believes that private property rights promote long time horizons and responsible stewardship of resources."

Common property regimes, where a particular group of people shares the rights to use a particular resource, have for many centuries been the primary management system across the planet and have proven remarkably effective in meeting local economic needs and providing for long-term stewardship of natural resource systems.

Renewable natural resources are one of the best examples of common pool resources. In the study of common property regimes, natural resource systems such as fisheries and forests are often the focus. As McKean (1999) notes, "natural resource systems on which we depend utterly are, like it or not, common-pool resources." Common property regimes necessarily involve a kind of group ownership of a resource system so that a better understanding of the challenges and opportunities presented by common property regimes will help us understand the prospects for sustaining common pool resources.

2.4.1 Competitive vs. Cooperative Approaches

An extensive literature exists on the challenges posed by management of common pool resources. The departure point for many analysts is the "tragedy of the commons" thesis articulated by Garrett Hardin (1968). Hardin argued that degradation of the resources base is to be expected whenever many individuals use a scarce common resource. To explain this, Hardin used the example of a pasture open to everyone and a population of 'rational' herders (rational in the economic sense of maximizing economic gain for the self). The rational herder, noted Hardin, gains direct and immediate benefits from his animals' use of the pasture and experiences a delayed loss if the pasture is overgrazed by his or other herders' animals. Under this system, asserts

Hardin, each herder is motivated to add more animals to the pasture because of the direct and immediate benefit while any costs in the future are shared between all herders:

> Therein is the tragedy. Each man is locked into a system that compels him to increase his herd without limit – in a world that is limited. Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. (Hardin 1968)

Similarly, Mancur Olson (1965) challenged the idea that individuals with common interests would voluntarily act so as to try to further those interests. The accepted view, put forward in group theory, was that if members of a group had a common interest or objective, and if they would all be better off if that objective was achieved, it logically followed that rational self-interested individuals would act to achieve the objective. In contrast, Olson argued that "unless the number of individuals is quite small, or unless there is coercion or some other special device to make individuals act in their common interest, *rational, self-interested individuals will not act to achieve their common or group interests* (Olson 1965; emphasis in original).

Olson's argument, fully developed in his book *The Logic of Collective Action*, is based on the premise that one who cannot be excluded from obtaining the benefits of a collective good once the good is produced has little incentive to contribute voluntarily to the provision of that good. Central to Olson's and Hardin's arguments is the problem of the 'free-rider' – the person who does not contribute to the creation of provision of a public good (e.g., by working to maintain a pasture or steward a forest) but who cannot be excluded from using the benefits created by others.

Centralized control over natural resources has been widely proposed as a solution to the degradation of common pool resources. Advocates of centralization have argued that local forms of management don't (and can't) work, so there is a need for an external force to intervene, establish clear rules for resource use, and force local resource users to obey these rules.

Analysts have cited the 'tragedy of the commons' and the 'logic of collective action' models to argue that environmental problems cannot be solved through cooperation. Hardin's article was particularly widely read, and used as required reading in many university programs. His thesis about the failure of common property management has been widely adopted as the key cause of the degradation of common natural resources around the globe. These models, with their simple logic, were very influential in policy circles and were used to recommend approaches to the management of common property resources. Solutions to these dilemmas usually focused on one of two policy recommendations: either imposing a centralized form of resource management or privatization of the common resource.

2.4.2 The Ruling Models: Private Markets and Public Rules

Centralized control over natural resources was widely proposed as a solution to degradation of common pool resources. Advocates of centralization argued that cooperative and local forms of management don't (and can't) work, so there is a need for an external force to intervene, establish clear rules for resource use, and force local resource users to obey these rules. Some went so far as to suggest that military governments may be necessary to solve problems related to the management of common pool resources (e.g., Heilbroner 1974). More typically, recommendations focused on the need for external regulation by provincial or federal government agencies, or international authorities in order to protect common resources from uncontrolled exploitation and degradation.

The privatization of common pool resources was also seen as a way to prevent the 'tragedy of the commons' scenario. Welch (1983), for example, proposed privatization

of the commons as the optimal solution for all common pool resource problems. The thinking behind this proposal is simple: private ownership produces the private self-interest that will support sustainable management, while the security of ownership will encourage the re-investment of capital and labour back into the resource system. Because of the security associated with private ownership, owners of the resource feel confident they will reap the full benefit of investments in the resource. This is still the dominant justification driving public policy today. But it is not at all the panacea that it is held out to be, especially for resource systems where multiple values and interests exist (as in fisheries, forests, wildlife).

Advocates of privatization maintain that private ownership of natural resources produces the self-interest that will support sustainable management, while the security of ownership will encourage the re-investment of capital and labour back into the resource system.

Both privatization and centralization, as 'solutions' to the challenges posed by common pool resource management, are fraught with problems and difficulties. The privatization of common pool resources often leads to exclusion of certain segments of the population (i.e., those who lack resources to secure private rights) and the concentration of wealth generated by the benefits from resource use. In many areas privatization is akin to expropriation. This is the case where a long tradition exists of community-based management of common resources. In these situations, long-held restrictions of use, which may have sustained the resource for many generations, are lost and the result may be the creation of an "open access" situation. Nor do private property owners always manage their land in a sustainable manner. In many cases, it may actually be more profitable to convert natural forest to farmland, housing, or monoculture tree plantations. For slow-growing resources, maximizing profit may encourage the liquidation of the resource, with the profits then deployed where the return may be higher. Privatization also assumes the ability of markets to recognize the true value of the environment. But how can markets assess, in dollars and cents, the full contribution of clean air and water? Instead, many non-economic values (such as public health or ecological diversity) are excluded in the pursuit of private profit.

MODELS
Port Lameron Harbour, Barriere Lake Trilateral Agreement

Similarly, the success of centralized management regimes depends on many factors. At a simple level, managers must have accurate information about the state of the resource and an ability to effectively monitor resource users. They must be able to ensure the users are following the rules laid down by the central (state) authority, which may be difficult especially where the users are numerous and highly dispersed or powerful. Experience has shown that central managers often have only poor information about the state of the local resource: this is particularly true for resources such as marine fisheries which are difficult to assess. Indeed, local people often have better information about the state of the resource, although it may be in an oral or tradition-laden form that is not acceptable to the managers. Monitoring and collecting accurate information are expensive undertakings so that, in times of budgetary restraint, they are often under-funded, leading to poor management of the resource. It is also well documented that resource managers are often "captured" by the very industry they are created to regulate. Indeed, public authorities can themselves become so dependent on the resource rents generated by these industries that they are in a conflict of interest situation.

Both privatization and centralization, as 'solutions' to the challenges posed by common pool resource management, are fraught with problems and difficulties. These problems go a long way to explaining the current range and depth of natural resource crises.

These fallacies in both private/market and public/bureaucratic approaches go a long way to explaining the current range and depth of natural resource crises. Privatization and centralization are both 'solutions' imposed by external authorities, often overriding existing forms of common property management on the assumption that individuals and local communities are incapable of organizing themselves and

always need to be managed by external authorities. Over the past few decades, many analysts have challenged this assumption.

MODEL
Switzerland

In her 1990 book *Governing the Commons: the Evolution of Institutions for Collective Action*, Elinor Ostrom described a wide range of successful models of self-organization. These include communal management of mountain forests and pastures in Switzerland and Japan, complex systems for providing and sharing irrigation water in Spain and the Philippines, and the evolution of institutions to manage groundwater basins in the Los Angeles metropolitan area. Many of these forms of common property management have endured for hundreds of years, and have been able to adapt to changing political and economic conditions.

Common property regimes are a way to ensure that communities have the confident expectation of long-term use of the land, thus increasing incentives for long-term planning and sustainability.

John Bruce (1999) notes that common property is "one way to ensure that communities have the confident expectation of long-term use of the land and a strategy to increase incentives for sustainable use by giving them a longer planning horizon." As noted earlier, common property is really a form of group property where access to the resources in question is not open to everyone but limited to a specific group of users who hold the rights in common. Thus, common property regimes are "a way of privatizing the *rights* to goods without dividing the *goods* into pieces: in effect, privatizing rights to the **flow** [of resources] without privatizing or parceling the rights to the **stock** or resource system itself" (McKean 1999; emphasis in original). In other words, communities live off of the interest without liquidating the natural capital of forests, fisheries and other renewable resources.

BOX 2.3: ATTRIBUTES OF SUCCESSFUL COMMON-PROPERTY REGIMES (ADAPTED FROM MCKEAN 1999)

- User groups need the right, or at least no interference with their attempt, to organize.
- The boundaries of the area or resource must be clearly identified.
- The criteria for membership in the group of eligible users of the resource must also be clear.
- Users must have the right to modify their rules over time. Inflexible rules are brittle and fragile.
- Use rules must correspond to what the system can tolerate and should be environmentally conservative to provide a margin for error.
- Use rules must be clear and easily enforceable.
- Infractions of rules must be monitored and punished.
- Distribution of decision-making rights and use rights to co-owners of the commons need not be egalitarian but must be viewed as "fair". In general, rules that award more benefits to those who invest more, and no benefits to those unwilling to invest, seem to have the best chance of winning allegiance of both the rich and poor.
- There need to be rapid and inexpensive methods of resolving minor conflicts.
- Institutions for managing very large systems need to be layered with considerable devolution of authority to small components to give them flexibility and some control over their fate. Nesting different user groups in a pyramidal organization appears to be one way to resolve this contradiction, providing simultaneously for independence and coordination.

BOX 2.4: LESSONS FOR DEVISING SUCCESSFUL COMMON-PROPERTY REGIMES (MCKEAN 1999)

- Socio-cultural support – common property regimes will work better where the community of users is already accustomed to negotiating and cooperating with each other on other problems than where there are numerous existing conflicts and no indication of a willingness to compromise.
- Institutional overlap – Reviving recently weakened institutions, where the habits and techniques of negotiation and compromise are still in evidence, will be easier that trying to invent wholly new institutions among people who have never worked together before.
- Administrative support – Reviving or creating common-property regimes where local and national governments are hostile is almost impossible. There is no point in trying unless local and national elites, or significant portions of them, are sympathetic to the attempt. This kind of support means legal recognition to strengthen the security and enforceability of common property rights.
- Financial support – Apart from limited help with local start-up costs, financial support to local common-property regimes is probably undesirable because it might well undermine cooperation. If any institutional form is being adopted because it is efficient, it should pay for itself (by definition!) and not require subsidy.
- Conflict reduction – Where the size of the productive management units permits a certain degree of segmentation or parceling of the resource, it is probably preferable to create no overlapping commons for different communities rather than to have several communities sharing a huge commons. It is probably best for the communities involved to make this choice rather than to have an outsider insist on splitting the resource system into several separate commons.

2.4.3 A Third Option: Community Practice

While these three models – privatization, centralization, and common property – are often presented in opposition to each other, it is possible and indeed historically necessary, that they work with varying degrees of overlap. Historically, in fact, central regulation arose in response to the growth of private property. As industrial and corporate exploitation increased in extent and intensity, state regulators saw themselves as the stewards and overseers of the resource base to prevent over-exploitation. Often, however, state licensing of exploitation combined with state regulation to prevent over-exploitation has led to the use of legal mechanisms that effectively privatize the resource. One example of this process is the recent interest in granting specific property rights through "individual transferable quotas" (or ITQs) to fishing operators. Another is the proposal to privatize Crown forest tenures in British Columbia. Aware of the limitations of the choice between bureaucratic regulation and corporate privatization, the challenge today is to develop alternative arrangements that can bring both private and public power under social control.

Re-balancing the authority of territorial community with the oversight of centralized institutions is the key to achieving economic innovation in the age of ecological limits.

In this context, the ecosystem trust model proposed in this report must be designed to *resituate* both private market activity and state regulation within a local community-based context. Essential to this resituation is the ability of the community to reduce today's high rate of linear extraction (flow) of local resources in favour of a lower, but more productive, utilization that can sustain the diversity and health of natural assets (stock) while generating as much local benefit as possible (M'Gonigle 2000). This entails overcoming the basic contradiction whereby the central state has both supported overexploitation and attempted to regulate its negative consequences. Through the proposed *Community Ecosystem Trust Facilitation Act*, the state will have a mechanism for resolving this contradiction. And it will be able to do so in a gradual, evolutionary fashion. This is the meaning of the term "facilitation" in the name of the proposed Act.

As will be seen throughout the remainder of this report, this approach represents an alternative to the current rush (embodied in the globalization ethos) to weaken governments, disempower communities and civil society, and pursue greater industrial exploitation by devolving state power to private interests. Instead, it will provide a framework whereby community practices can be developed that are sustainable, economically innovative, and self-maintaining. This framework will provide a 21st century process to create novel institutions that can replace what has been lost with the demise of historic common property regimes.

Re-balancing the authority of *territorial community* with the oversight of *centralized institutions* is the key to achieving economic innovation in the age of ecological limits.

3 A NEW APPROACH: SYSTEM INNOVATION

In the quest for true sustainability, one author argues that we confront an "ingenuity gap" (Homer Dixon 2000). This is an apt phrase insofar as it points to possibilities – not yet seized – of doing things differently *and successfully*. To develop this ingenuity, however, we must recognize the basic nature of the challenge set out above: historic patterns of resource intensive and consumptive economic growth, supported by government regulators that are themselves dependent on this growth, inevitably generate more and more environmental problems and conflicts. Evolutionary policies that seek some undefined goal of "sustainable development" have not addressed the fundamental contradiction embedded in this pattern. As a result, they have not achieved, and will not achieve, either economic or environmental sustainability. Unable to see beyond historical patterns of economic growth and consumption, we are caught in a box of our own making. Without a larger vision of collective change, no one group from the array of "stakeholders" can craft solutions that are generally acceptable.

A guiding principle of this report is that future innovation must start by situating economic development and political decision-making within the larger goal of maintaining healthy ecosystems, whether this be at the level of the local community, the province or the nation. Such innovation is possible, but is blocked by institutional rigidities (in both the private and public sectors), by the lack of a comprehensive vision, and by the current political unwillingness and incapacity to undertake the necessary transitions. Short-term interests and power structures block the realization of long-term interests and the emergence of new solutions.

Historic patterns of resource intensive and consumptive economic growth, supported by government regulators that are themselves dependent on this growth, inevitably generate more and more environmental problems and conflicts. Evolutionary policies that seek some undefined goal of "sustainable development" have not addressed the fundamental contradiction embedded in this pattern.

3.1 THE PROBLEM: ONE (BIG) HOUSE DIVIDED

This report describes a new approach to renewable resource management in British Columbia that can bridge this divide between an unsustainable present and a sustainable future. The approach that it takes can best be understood by imagining our present resource use and management "system" in terms of a big, old house. It is a complicated structure resting on a foundation that is embedded in the landscape of natural processes. It is sustained by the wealth (the flow) that these processes generate, and is held together by a complex web of rafters and walls (markets and regulations) that process this wealth.

The whole building, however, dates from an earlier era. Over time, the ground around the house has changed, the landscape that sustains it is being depleted, the foundation is being undermined, and the building itself is losing its structural integrity. Yet discussions and reforms about what to do have taken place within the confines of that same structure. One can almost picture it – on the main floor are powerful industries and organized labour, on the next floor are government regulators, in the attic the noisy public interest groups, and in the basement First Nations. The stairways

Traditional patterns of conversing and thinking about natural resource use and management continue to block creative thinking about, and certainly any discussion of, alternative possibilities.

are in disrepair and treacherous, so that movement or dialogue between these floors is difficult. The doors and windows are jammed shut, so that the ability to move or even see outside of the house is blocked. Traditional patterns of conversing and thinking continue to create a din inside these walls that blocks creative thinking about, and certainly any discussion of, alternative possibilities.

The patchwork of renovations to this house has, to date, not been successful in restoring the integrity of the structure, or changing its relationship to the surrounding landscape. In the forests and waters and air, the losses mount. This has been the failure of the approach of "sustainable development." This report does not attempt to pursue this outworn strategy. Instead, this report offers a way out of this house, by unblocking and opening a small window that a few might choose to use to climb outside. The purpose of this exit is to pursue a new building project, based on *a new way of looking and thinking about the structure(s) in which we all must all live.* In doing so, this paper envisions not incremental reforms to the existing system, but a system shift. Yet it does not seek to tear the existing house down, and build a new one. That cannot be done. Instead, it seeks to build, in one place at a time, new smaller houses on different foundations. When a few of these are in place, we will then have the expertise to undertake the renovations to our older house.

In the old, big house there is no sense of community. Common dialogue cannot be generated amidst the throng of argument. To develop a new, more sustainable, edifice demands a new process that we have not even yet thought about, and a conscious choice to make it work. The end point will be very different from where we live now, but we will get there one small step at a time, learning and changing as we go. This is the approach of "developing sustainability" (M'Gonigle 1989), and it is central to the facilitative discussions that the proposed legislation creates.

Let us extend the metaphor just a bit longer. One of the problems with the existing house is that new buildings have not really been contemplated. Everything that is possible, even thinkable, must exist within established walls. Indeed, creating "precedents" that might indicate that there is possibly a better architecture out there is often seen as threatening, and opposed. Those in the big house are fearful of prying open the doors, knowing that if many tenants leave, the costs for those remaining will become prohibitive. Innovative thinking – let alone innovative construction – has simply not been allowed. To overcome this, a range of tenants – thoughtful entrepreneurs and workers, open and innovative civil servants, visionary activists, strong aboriginal peoples driven to make both change and reconciliation – must move to new ground, and start talking about what is possible on the landscape.

This report draws its analysis and recommendations from a variety of sources, including examination of the best designs ("best practices") and best models of innovation in renewable resource management throughout the world.

MODELS
Nepal, India, Tanzania

3.2 THE SOLUTION: MANY (SMALL) HOUSES UNITED

This report draws its analysis and recommendations from a variety of sources. The authors have consulted widely, looking for the best designs ("best practices") and best models of innovation in renewable resource management throughout the world. Many of these come from countries, often from the South. Because the deterioration of the resource base of these countries has been more dramatic than in British Columbia, and the economic imperatives more pressing, their willingness to experiment has been greater. Often in these countries, as well, the continued existence of community and aboriginal patterns have provided valuable bases for local innovation in land use and

ownership. In the developing world, countries such as Nepal, India, Mexico, and Tanzania are leading innovators in community-based natural resource management (see Report 2).

In looking at the experiences in British Columbia, many interesting experiments and innovations can also be discovered. In the 1970s for example, residents of the Slocan Valley produced a groundbreaking report calling for a more ecologically-sustainable approach to forest management and giving local residents greater control over management decisions (Slocan Valley Community Forest Management Project 1973). Through the 1980s, the increasing conflict over forest resources led to a series of confrontations and escalating demands from environmental groups and First Nations for broad-scale changes to land management. In the 1990s, the pressures of resource depletion boiled over, leading to a flurry of innovation. Unfortunately, from the perspective of the first decade of the 21st century, these innovations are still small and fragmented, and their potential largely undeveloped. Some, such as the Central Region Board in Clayoquot Sound, the Regional Aquatic Management Society on the west coast of Vancouver Island, and the Gitxsan land use model in the northwest of the province, are potential world leaders.

MODELS
Slocan Valley, Central Region Board, RAMS, Gitxsan

The proposed new legislative framework specifies a desired end point – the creation of a comprehensive new ecosystem trust structure for land use and management rooted in community stewardship It is of a strongly transformative and facilitative character in that it will support innovative precedents to take place on the ground, accompanied by changes in the operation of regulatory agencies.

In many Southern countries during this time, the resource base was so abused and degraded that, of necessity, they began to develop more far-reaching experiments in local management than have yet been attempted here. In addition to learning specific lessons from these countries, their experience poses a more general quandary for British Columbians — must we proceed to even deeper levels of environmental erosion in our fish populations, forest ecosystems, biodiversity, and community health before we are willing, and able, to adapt to the inevitable changes?

In proposing a comprehensive new legislative framework, this report borrows from the broad range of experiences in community-based management, but does not duplicate existing or past processes in British Columbia. It does draw elements from many local initiatives that offer many lessons, both positive and negative. The framework, however, is unique in both its substantive and procedural orientations:

- **Substantively**, the proposed legislation is of a *strongly normative* character. By this, we mean that the legislation specifies a desired end point that is seen as the basis for developing sustainability. This end point is the creation of a comprehensive new ecosystem trust structure for land use and management rooted in community stewardship of renewable resources.
- **Procedurally**, the legislation is of a strongly *transformative and facilitative* character. In this regard, it provides an integrated set of mechanisms that will support innovative precedents to take place on the ground. Accompanied by changes in the operation of regulatory agencies, the legislation provides the basis for a far-reaching, yet incremental, process of transition.

The proposed new legislation – the *Community Ecosystem Trust Facilitation Act* (CETFA) – will facilitate the establishment of 'trusts' on public lands and waters, of various sizes, and integrating the whole range of renewable (and, indeed, non-renewable) resources. They will be created from the bottom up, by self-identifying communities that decide that they are ready to enter into agreement with the Province to form the trust. In this way, each trust will be slightly different, designed to address local concerns and fit local conditions (ecological, social, cultural, and economic),

MODELS
Forests in Trust

It is intended that this new level of land designation will provide British Columbia with a world-leading basis for the sort of ecological and economic innovation that will be a key to success in the 21st century.

and proceeding through design and implementation at different paces. In this process, individual community trusts will, in effect, become both incubators for a new approach and for an iterative process of learning and design.

It is intended that this new level of land designation will provide British Columbia with a world-leading basis for the sort of ecological and economic innovation that will be a key to success in the 21st century. With success, this new land jurisdiction will spread naturally. As it does, it will integrate many of the functions of existing jurisdictions (federal, provincial, municipal). In the process it will transform the roles of existing jurisdictions in highly creative ways.

The unique procedural nature of the legislation has important economic implications. Were the legislation to be passed in the form proposed in this report, nothing would change on the ground immediately. Changes would begin to occur only when an individual community came forward with a specific proposal and, only then, in the form of some possible interim measures. In other words, the general short-term *economic implications* of the legislation are very limited. Because ecosystems trusts will be created incrementally, one at a time, there are no financial costs to the legislation. There is thus no basis for undertaking either an economic impact assessment or a benefit/cost analysis of the legislation as a whole. Instead, such assessments should be done on a case by case basis, for each community ecosystem trust proposal. When undertaken, these assessments will need to extend traditional evaluation methodologies insofar as many aspects of the ecosystem trust are beyond the parameters of standard economic considerations (including the significance of non-monetary values, and the potential for innovative business development).

4 LEGISLATIVE PURPOSE, OBJECTIVES AND PROCESS

Commonly, legislation contains a statement of purpose, or will explicitly state the underlying principles to which the legislation aims to give effect. For example, section 4 of the *Ministry of Forests Act*, sets out the purposes of the Ministry, and the Preamble of the *Forest Practices Code of British Columbia Act* describes the principles underlying the *Code*. The statement of legislative purpose that is perhaps the most similar to what we are proposing is found in Section 3 of the *Islands Trust Act* which states:

> The object of the trust is to preserve and protect the trust area and its unique amenities and environment for the benefit of the residents of the trust area and of British Columbia generally, in cooperation with municipalities, regional districts, improvement districts, other persons and organizations and the government of British Columbia.

MODEL
Islands Trust

Similarly, the first section of the proposed CETFA establishes the underlying *purpose and objectives* of the *Act*. In this chapter, we describe the purpose and objectives of this new *Act*.

4.1 PURPOSE OF THE LEGISLATION

> The purposes of the Community Ecosystem Trust Facilitation Act are: 1) to create the community ecosystem trust as a new designation for public lands; 2) to establish a gradual, flexible, and facilitative process for the transfer of jurisdictional and management responsibility over renewable resources to community management authorities, and 3) to bring about gradual and progressive reform of existing resource agency mandates.

The basic thrust of the proposed legislation is enabling only – it enables the devolution of jurisdiction and management responsibilities to local authorities in the form of a community ecosystem trust. In this way, it enables individual communities to gain increased management control over local resources and move out from under the existing structure of centralized management.

The basic thrust of the CETFA is *enabling* only – it enables the devolution of jurisdiction and management responsibilities to local authorities in the form of a community ecosystem trust. It does not mandate that any specific change occur, except where an individual community, ultimately represented by the appropriate community management authority, decides to opt into the process. The legislation specifies a set of broad objectives that must be pursued under the trust agreement but communities enter into the agreement on a voluntary basis.

Thus, the legislation is structured not to mandate but rather to enable individual communities to gain increased management control over local resources and move out from under the existing structure of centralized management. Nevertheless, the *Act* is structured to achieve specific objectives – particularly ecological and economic

sustainability and accommodation with First Nations. And it does mandate these for any community that opts in; it is through the application of that mandate that precedents are created. It then provides the facilitative basis for the achievement of these through a diversity of approaches based on local conditions of ecology, culture and economics.

4.2 OBJECTIVES OF THE LEGISLATION

Giving communities greater control over renewable resources and increased opportunities to benefit from their use and management, represents a significant shift in the way resources are managed in the province. The *Act* specifies the conditions under which this control is shifted, which are laid out in the objectives of the legislation. These objectives constitute the set of prerequisites upon which the transfer of Crown management authority and responsibility depends. Thus, the process of transferring control of resources to communities must take place within the context of the objectives the legislation is trying to serve. The four objectives described below correspond to four important policy goals of the BC Government. They are:

- developing sustainability;
- reconciling Crown sovereignty with Aboriginal title;
- enabling participatory and healthy communities; and
- reforming the regulatory process.

The objectives of the proposed legislation are active, providing the framework to guide the process of turning over management authority to communities.

These are *active objectives* that inform the purpose and functioning of the legislation – in other words, these objectives provide the framework to guide the process of turning over management authority to communities. In this way, the success of the initiatives carried out under the authority of the *Act* (i.e., the various community ecosystems trusts established) will be evaluated according to the extent to which they accomplish the policy goals associated with each of the four objectives. Similarly, all local trust charters, terms and conditions, performance objectives, operational plans, and other documents prepared pursuant to this *Act* or regulations set up under it must be consistent with these objectives. Any monitoring, auditing, or evaluation of operations or governance systems will be with reference to these objectives.

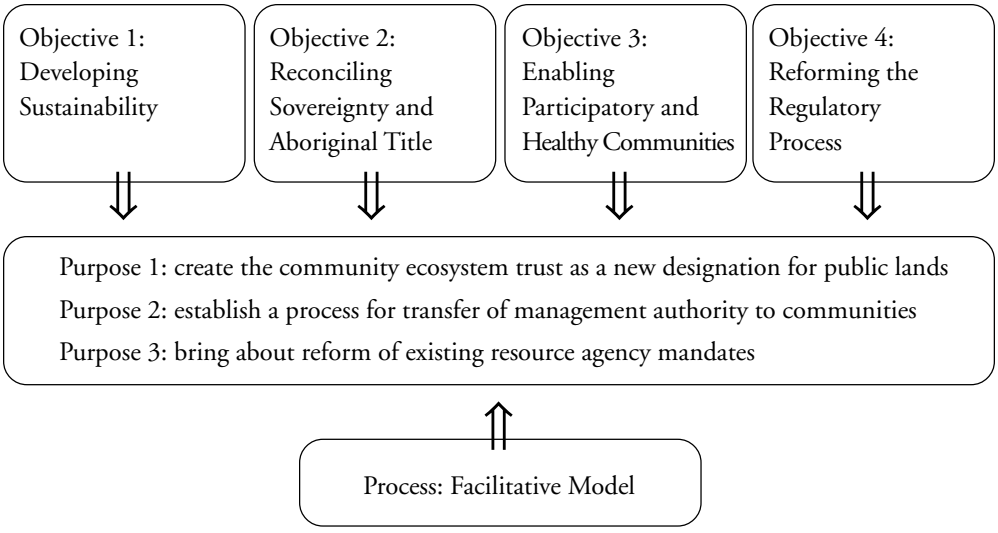

FIGURE 4.1 **Guiding Legislative Action: Objectives, Purposes, and Process**

4.2.1 Objective One: Developing Sustainability

> This legislation will embed the concept of ecosystem sustainability as the foundation for the design of trust systems, and as the context for developing new institutions of renewable resource use and management.

Sustainability can be achieved only with the integration of economic and political institutions and activities, and associated social dependence, into natural ecosystem processes in a manner that can continue without significant erosion of the health and functioning of these ecological processes in perpetuity. Intergenerational equity is central to this integration. Historically, in federal and provincial policy, only the sustainability of human systems has been of any real concern, and even then, only over relatively short time frames such as five to ten years. This "sustainable development" paradigm has been achieved (and continues) through enormous subsidies from nature, such that we have become dependent on an economy that succeeds in social terms only by liquidating natural capital. The growth in scale, and impact, of the global economy has transformed the balance between human benefits and natural costs into an ongoing crisis of immense proportions.

MODEL
Bamfield-Huy-ay-aht Community Forest Pilot, Menominee Trust

Incorporating the sustainability of natural systems into the equation requires a major change in human systems because it necessitates a reduction in those very physical impacts that have hitherto been a major source of human wealth. Overall, developing sustainability means moving from a *liquidation* to a *restoration* economy. This means developing new human institutions that are not inherently expansionist, require less resource "throughput" for self-maintenance, and actually begin to restore past damage. Increasing resource efficiency is a critical objective – getting more human value from less environmental use. A critical mechanism to achieve this is *ecosystem-based planning*.

Developing means that we don't have sustainable systems now, and we need to develop them anew. In contrast, "sustainable development" as a policy goal has never evolved beyond sustaining economic development, albeit with increasingly sophisticated environmental impact mitigation. Under sustainable development thinking, resource-intensive and polluting processes continue to be the fundamental drivers of economic prosperity. Developing sustainability entails an inversion of this thinking. Economic growth ("developing") is to be promoted not for its own sake but with the goal in mind of growing new systems that are inherently sustainable ("sustainability") and that can, over time, displace our dependence on unsustainable practices and institutions.

"Developing sustainability" means that we don't have sustainable systems now, and we need to develop them anew. This entails an inversion of the outdated "sustainable development" approach. Economic growth ("developing") is to be promoted not for its own sake but rather to develop new systems that are inherently sustainable ("sustainability").

As noted above, the processes under the CETFA are such that developing sustainability will be incremental, and evolutionary. With individual trusts, there will be some costs to existing industrial activities and to government revenues. However, there are many dramatic changes in the marketplace already occurring that offer economic incentives for innovative, sustainable resource practices.

Ecosystem-based planning will require citizens and governments to situate economic and political processes and outputs within the larger context of maintaining "ecosystem health and integrity." In technical terms, this means maintaining the structure, composition and function of ecosystems in their characteristic patterns. The purpose of doing so is not to perpetuate static ecosystems. Rather, the purpose is to retain the fundamental ability of ecosystems to self-regulate and perpetuate themselves, and in so doing continue to generate the vast array of direct benefits and ecological services

too which all life on earth is utterly dependant. It is a fallacy to think that we know how to manage ecosystems – but we can at least recognize our profound ignorance by keeping all the parts so that nature can get on with the job herself.

This will require new political and economic processes that can remake historic patterns of industrial, corporate and bureaucratic decision-making that have traditionally overridden ecosystem values. Developing sustainability means developing these new processes, and soon.

4.2.2 Objective Two: Reconciling Crown Sovereignty with Aboriginal Title

> This legislation will create a mechanism for the reconciliation of Crown sovereignty and pre-existing Aboriginal Title. Trusts created under this Act will provide common ground for these two co-existent legal orders, while preserving the integrity of each.

The constitutional conflict between the Crown and First Nations is longstanding and bitter. To date, attempts to resolve this conflict in British Columbia have largely been premised on the Aboriginal renunciation of title over large portions of their traditional territories in exchange for a limited set of powers over a greatly reduced land base. Progress towards resolving the Aboriginal land question has been very slow. While the BC treaty process has engaged the attention of 50 First Nations (representing about 65 percent of the registered Aboriginal population) it faces enormous challenges. It is now 10 years since the Province agreed to negotiate with First Nations, and yet no final agreements have been reached under the BC Treaty Commission process.

Progress towards resolving the Aboriginal land question has been very slow. To date, attempts to resolve this conflict in British Columbia have largely been premised on the Aboriginal renunciation of title over large portions of their traditional territories in exchange for a limited set of powers over a greatly reduced land base.

MODELS
Barriere Lake Trilateral Agreement, Gitxsan, Cortes Initiative, Central Region Board

It should be recognized that the treaty process is a long term effort and that many First Nations do not accept the premise on which it is based. From the perspective of these groups, it embodies the unacceptable concept of "extinguishment" of Aboriginal title. There are other approaches to address First Nations concerns about access to land and resources and to accommodate Crown interests with those of Aboriginal peoples, such as joint jurisdiction and co-management. The CEFTA provides a unique opportunity for refashioning institutions, both economic and political, and achieving accommodation with First Nations in British Columbia. This broad social imperative merges with constitutional protections of aboriginal rights, as elaborated in decisions of the Supreme Court of Canada. These decisions mandate *recognition of Aboriginal title, accommodation with First Nations, and reconciliation between native and non-native communities* as foundational premises of legitimate governance concerning natural resources.

Recent Supreme Court of Canada decisions mandate recognition of Aboriginal title, accommodation with First Nations, and reconciliation between native and non-native communities as foundational premises of legitimate governance concerning natural resources.

Giving expression to both Crown and Aboriginal interests in land and resources is an integral component of the ecosystem trust model presented here. The terminology of "Crown", "sovereignty", "presence", "title" is contentious to many interests given the shades of implication that different terms convey. It is the intention of this report to get beyond this contested terminology to focus on a constructive, and substantive, resolution between native and non-natives based upon mutual recognition (utilizing mutually acceptable language) and a recognition of common goals. In this light, the trust offers an innovative vehicle that rests on, reconciles and integrates both "Aboriginal title" and "Crown sovereignty" in a new *intermediary* land status embodying a newly recognized *authority* for territorially-based communities.

This approach does not require the relinquishment of Aboriginal title; on the contrary, it is an expression of it to the benefit of both native and non-native interests. Neither does it require the abandonment of Crown interests, but is an historically timely expression of these interests as well. Finally, the proposed approach contrasts with existing planning processes for land use designation, in which First Nations' participation has often been inadequate. These processes do not deal substantively with title issues, other than to assert that they proceed "without prejudice" to native land claims.

The approach proposed here does not require the relinquishment of Aboriginal title; on the contrary, it is an expression of it to the benefit of both native and non-native interests. Neither does it require the abandonment of Crown interests, but is an historically timely expression of these interests as well.

The objective of reconciliation, therefore, implies that where resources are within the traditional territory of First Nations, governance structures **must** recognize and respect Aboriginal rights, through direct First Nations participation. This approach has been clarified by recent Supreme Court decisions – these articulated the hierarchy of priorities for management of the fisheries resource, which would presumably apply to the management of other resources. The overriding priority is conservation, and laws and regulations passed for legitimate conservation purposes apply to Aboriginal people in full force. The second priority is to provide for Aboriginal peoples' traditional use of the resource. Only after these two priorities are met is the resource open to access by other users, such as sport or commercial fishers.

Given these decisions by the Supreme Court, any devolution of power vis-a-vis community-based renewable resource management will have to recognize and respect these Aboriginal rights, probably through direct First Nations participation in management and revenue sharing. The CETFA is developed within this context and with the understanding that traditional Aboriginal models of land and resource management embody many of the fundamental principles of community-based and ecosystem-based management (see Box 4.1). The CETFA will facilitate the development and implementation of innovative forms of co-management and revenue-sharing between native and non-native interests and communities.

Any devolution of power vis-a-vis community-based renewable resource management will have to recognize and respect Aboriginal rights to land and resources.

Supreme Court of Canada decisions in cases dealing with Aboriginal rights and title have recognized at least two principles which link Aboriginal title with ecological sustainability. First, conservation must be the over-riding priority in all resource management decisions (Sparrow and Marshall) and, second, Aboriginal title is subject to an "inherent limit" (Delgamuukw). The Supreme Court also explained that the inherent limit meant that a First Nation could not undertake activities that would sever the special relationship between Aboriginal people and the land. Two examples were given of activities that would violate this principle – paving over a burial ground or strip-mining a hunting area. In effect, the Court was ensuring that all activities on Aboriginal title lands must be sustainable. The ecosystem trust approach, as envisioned, will extend this principle to all lands.

The continuing uncertainty surrounding Aboriginal title has significant strategic importance as well. Provincially, existing land use designations (such as those emanating from the LRMPs) must be seen as tentative arrangements, pending resolution of these larger issues. This has been the federal approach for some time now, as indicated by the designation of national park *reserves* pending resolution of treaties with affected First Nations. In addition, restrictions emanating as a result of international trade agreements should not override these interests insofar as the federal government is legally incapable of concluding international arrangements that exceed its constitutional authority. In this regard, it can be argued that the federal government cannot, through

Aboriginal title embodies a common property regime that reconciles longstanding, historical systems of sustainability with the possibility of achieving such systems in the future. Its continued existence in British Columbia provides perhaps the major foundation for system innovation in the province.

NAFTA, indirectly extinguish Aboriginal title or rights, including the right to self-government because these rights enjoy constitutional protection. In these ways, aboriginal title embodies a common property regime that reconciles longstanding, historical systems of sustainability with the possibility of achieving such systems in the future. When fully understood, its continued existence in British Columbia provides perhaps *the* major foundation for system innovation in the province.

BOX 4.1: IMPLICATIONS OF *DELGAMUUKW V. BRITISH COLUMBIA*

Underlying all renewable resource activities on provincial Crown land in British Columbia is a vexing and unresolved question, namely the extent of Aboriginal title. For more than a century, the federal and provincial governments assumed that Aboriginal title had been extinguished, and allocated Crown land resources accordingly. In 1997, the Supreme Court of Canada, in the *Delgamuukw* case, ruled against the federal and provincial governments, concluding that Aboriginal title exists and has not been extinguished. The full consequences of this landmark decision for resource management in British Columbia are not yet known.

Through this landmark case, the Supreme Court of Canada provided extensive guidance about the legal nature of Aboriginal title including its unique aspects and what is required for First Nations to prove Aboriginal title. First and foremost, Aboriginal title is a right to the land itself, a unique form of property interest and includes the "right to exclusive use and occupation" including the "fruits of the land" (*Delgamuukw*, paras. 117, 138). Land held pursuant to Aboriginal title is communally owned, not individually owned, and can only be sold to the federal government.

In *Delgamuukw*, the Supreme Court also ruled that there is an "inescapable economic aspect" to Aboriginal title. This is relevant to natural resource management in that the government has a duty to ensure that First Nations are given an opportunity to share in the economic benefits (paras. 167-169).

The Supreme Court of Canada's characterization of Aboriginal title is to a large extent based on First Nations' laws of land stewardship. First Nations hold land collectively, and not individually. It is impossible for First Nations to "own" the land, forests, rivers, oceans, lakes and the creatures of all of these domains ("traditional territories"), since each have special spirits and their own persona. First Nations' "ownership" of traditional territories is more accurately described as stewardship, or a hereditary responsibility to manage traditional territories in a manner that will ensure that they will be available for the descendants of the future generations (Boyd and Williams-Davidson 2000).

The Supreme Court of Canada's final words in the Delgamuukw decision bear repeating: "*Ultimately, it is through negotiated settlements, with good faith and give and take on all sides, reinforced by the judgments of this Court, that we will achieve…a basic purpose of s. 35(1) [of the Constitution Act, 1982, Canadian Charter of Rights and Freedoms] – the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown. Let us face it, we are all here to stay*."

4.2.3 Objective Three: Enabling Participatory and Healthy Communities

> The legislation will create fully participatory institutions and governance structures while also providing mechanisms for community economic development that benefits community members and outsiders. This legislation will enhance the flow of economic and social benefits derived from resource management to the local territorial community.

A major flaw with land use planning processes in BC to date is that while they have engaged "stakeholders" in an advisory capacity, they have failed to meet the economic development expectations of participants. A *community-based* approach involves both *community economic development* and *community self-regulation* operating within the requirement of maintaining, and restoring, ecosystem health. The community is the site for the integration, on a new ecological basis, of functions that have hitherto been dispersed in an unsustainable way in non-local corporations and higher level provincial and national governments. The critical element is to give communities the ability and capacity to make new ecologically-based, collective decisions for the sustainable use and management of local and regional resources. This entails a prime focus on the *participatory community* with *local decision-making* based on *strong democracy.* This community-based approach also demands the creation of *a new set of checks and balances* within and between various levels (local, provincial, public and private) that can help these communities work to develop sustainability, and provide assurance to the broader community that sustainability goals are being met.

A community-based approach involves both community economic development and community self-regulation operating within the requirement of maintaining, and restoring, ecosystem health.

MODELS
Community Forest Boards, Mexican *Ejidos*, Tanzania, Nepal

The ecosystem trust is a critical vehicle for achieving the joint objectives of developing sustainability and enabling community. This public land trust offers a comprehensive and integrated new status for land management and regulation, to replace (not duplicate) the operational activities of existing jurisdictions (federal, provincial, and municipal) within a binding set of principles implemented directly at the community level. The beneficiaries of the trust include community-level, provincial, and inter-generational interests, with the community taking responsibility for *comprehensive land management* through the transfer of provincial and federal Crown management roles to local and regional *public* bodies under specified trust conditions. Economic rights to use the lands and resources within the trust area would be held by *either private or public* bodies through arrangements (e.g., tenures) that are at arms-length to the public land management bodies. This institutional separation of public *management* bodies from hands-on *production* is critically important to avoid a conflict-of-interest. Building on the community ecosystem trusts, regional arrangements would be constructed for larger level co-ordination (for example, for highly mobile resources such as fish) or for regional level planning.

Economic rights to use the lands and resources within the Community Ecosystem Trust area would be held by either private or public bodies through arrangements (e.g., tenures) that are at arms-length to the public land management bodies.

4.2.4 Objective Four: Reforming the Regulatory Process

> This legislation will provide a unique process of facilitated transition that addresses both new community roles and the reform of the regulatory system. This entails moving away from the current model of detailed standard-setting and enforcement by higher level governments, and towards an outcomes-based approach enforced at the community level. This approach differs fundamentally from the current model of private de-regulation and voluntary enforcement. The

trust approach maintains an active, but transformed, role for central public agencies as facilitators and objective setters, and for local public authorities in setting and enforcing specific obligations.

A new regulatory approach is critical to developing ecological and community sustainability.

A new regulatory approach is critical to developing sustainability. Parallel to the ecological problems associated with the scale of economic growth are the problems associated with the centralized and bureaucratic model of regulation developed over the past 120 years. This model of central regulation was developed in response to economic growth, trying to manage its complexities including its increasing impacts on the resource base. But it is widely acknowledged to be limited by its own forms of self-interest, and a general lack of flexibility and innovation. Criticisms of this model come from all sides – from everyone's loathing of "red tape," to the entrepreneur's concern about unnecessary obstacles to business growth, to the activist's criticism of the often narrow and self-interested behaviour of specific officials and bureaucracies.

The conventional response to the critique of central regulation is to call for "de-regulation." This is akin, however, to throwing the baby out with the bathwater because it ignores the important role that regulation does play in protecting the public interest from the excesses of the market economy. Although there are undeniable levels of dysfunction to the bureaucracy, there are also levels of function. Markets do need regulating, resources do need protection, people do need their health and welfare protected. The solution will be found, therefore, not in de-regulation but rather in a different model of regulation, one which is inherently more flexible, open to innovation, and responsive to local conditions. As Gunningham *et al.* (1998) note, to posit an either or choice between traditional "command and control" regulation on the one hand and deregulation on the other is to remain in a "spurious and sterile ideological debate." What is really needed, and what the ecosystem trust attempts to create, is a "far more imaginative, flexible and pluralistic approach to environmental regulation" (Gunningham *et al.* 1998).

A fundamental assumption of the current regulatory model for renewable resources is the separation of the values of production from those of management. Production is allocated to private actors that attempt to maximize their economic gains according to the rules of the competitive marketplace. Meanwhile, management is allocated to public agencies that attempt to keep these self-maximizing economic interests within some regulatory boundaries.

A fundamental, but little noticed assumption of the current regulatory model for renewable resources is the *separation of the values of production from those of management*. Production is allocated to private actors that attempt to maximize their economic gains according to the rules of the competitive marketplace. Meanwhile, management is allocated to public agencies that attempt to keep these self-maximizing economic interests within some regulatory boundaries. This is an inherently conflictual situation that leads to sub-optimal outcomes. On the production side, the productivity-driven incentive structure directly encourages overexploitation, through the need for more and more resources. The economic benefits that flow from the overexploitation of resources are largely reaped by private interests (profits, wages) and government (royalties, taxes) while the public, and future generations, bear most of the costs. This is particularly true for resource communities. While institutional separation of managers from producers is needed to avoid conflicts of interest, nevertheless it is imperative to infuse the *values* of good management into the dynamics of the production processes.

There are other problems with this model. For example, while government is responsible for regulating resource use, the agencies in question frequently receive inadequate funds to properly carry out his task. This regulatory model is also beset by a basic conflict-of-interest – in order to achieve its economic goals, the government must encourage the competitive economic success of the very industrial sectors it is also trying to regulate and constrain. This contradiction underlies the failure of the

concept of "sustainable development" as a path to sustainability – more "development" (i.e., economic growth) will not lead us in this direction, and the phrase itself has often been described as an oxymoron for exactly this reason.

In pre-industrial systems, management objectives (such as resource conservation, product quality maintenance, equitable apportionment) were built right into the production technologies and processes. This was certainly the case with First Nations' practices in British Columbia prior to colonization. Such systems are described by techniques of common property management that also existed (and continue to exist) in many local cultures and communities in the industrialized world. The critical point is that the two systems – economic production and political management – are integrated within a common set of values that shape the processes of production to meet, not conflict with, the goal of good management. Unlike today, where producers maximize only for their individual "self-interest", the goal is to reduce inherent (or structural) conflicts with managers who are charged with asserting for collective interest (see Box 4.2).

Reinvigorating the overlap between production and management is at the core of the new regulatory model. By its nature, this model will decrease the need for external rules of management, as sustainable practices and behaviour are built right into the production processes.

Reinvigorating this overlap between production and management is at the core of the new regulatory model. By its nature, this model will decrease the need for external rules of *management*, as sustainable practices and behaviour are built right into the *production* processes. This will allow a shift from detailed regulations to a performance-based approach. Most importantly, by being so re-embedded, the practices will evolve to become part of the community character and fabric, thus creating further self-regulating customs (norms) at the individual and cultural level. The answer to the failures of the bureaucratic model of regulation is thus not privatization to industry within the existing set of economic incentives. That is the failed "voluntary compliance" approach. The path to innovation instead lies through enabling new forms of community-based economic production that themselves embody these rules.

A second important aspect of the model proposed here is that public management bodies will continue to act in very public, but very different, ways. The Province will establish guiding legislative objectives, while maintaining existing regulatory standards as a minimum fallback. The objectives will be translated into a set of trust obligations in the Provincial Ecosystem Trust Charter, a key part of the *Act* (described in chapter 6). Communities will further translate these province-wide obligations into a specific set of local mandates and management plans. As well, they will assume responsibility for monitoring and enforcement of performance in the trust area. Of critical importance, the trust will embed decision making about land and resources within a democratic, community context, accountable to a set of progressive ecological and social principles. This will help mitigate the resource overuse and over-exploitation by interests that are far removed from the consequences of their actions. By internalizing the consequences of decisions within the community (the community both benefits from, and bears the costs of, their decisions), the conflict between exploitation and conservation will inherently decrease.

BOX 4.2: PRODUCTION AND MANAGEMENT IN PRE-CONTACT ABORIGINAL SOCIETIES

…[I]ndividuals might own and control access to dip-net and drying stations, and extended lineages might own and control access to fishing weirs and traps or entire streams. These hierarchies of exclusivity appear to have reflected the level of control necessary to match exploitation with ecosystem characteristics…

Accountability and redistribution were both assured through the potlatch. While chiefs had to show wealth at potlatches, wealth was demonstrated by its redistribution, not its accumulation….Ownership of fishing sites could be lost or gained at potlatches….

[C]ommunal property regimes limited access and ensured the harvester group was responsible for management. Redistribution systems and mechanisms for accountability if leaders were not good stewards of the resource created incentives for community rather than individual wealth.
(From: Walter *et al.* 2000).

4.3 LEGISLATIVE PROCESS: FACILITATING THE TRANSITION

The mechanisms for achieving the purposes of the Act, and through which its purposes will be realized, will be based on a facilitative model that builds community support and capacity for the achievement of the Act's objectives, while providing new functions and roles for existing government agencies.

The legislation embodies a new facilitative approach based on the recognition that the transition to a structure where communities can assume full responsibility for management will take place over an extended period.

The legislation embodies a new *facilitative* approach with the goal of breaking the policy gridlock that presently exists in order to create a new base of community management, to invigorate local and provincial economies on a sustainable basis, and to reform existing resource agencies so as to support this new system. This approach is based on the recognition that the transition to a structure where communities can assume full responsibility for management will take place over an extended period. The intention of the *Act* is not to move immediately or in every place to this new form of resource management.

It must be stressed that the Act facilitates a transfer in Crown statutory authority and management responsibilities, as distinct from the creation of a new form of resource "tenure". The trust process emanates from an expression of these basic title interests; tenures are merely specific property interests that can be granted based on these underlying interests. Tenures within a designated trust would not necessarily be abolished or replaced. They would, however be required to conduct their activities according to the trust purposes and rules.

A facilitative process is proposed that operates on two levels. First, communities will be supported as they lay out their plans, and then begin to take on the responsibilities which heretofore have been the purview of provincial agencies. As they consolidate their activities, they will provide comprehensive, land-based precedents to guide new initiatives in other areas. Second, provincial agencies and personnel will be assisted to adapt to new roles and responsibilities. These will focus less on hands-on regulation, and more on providing expertise and support.

Once a community has initiated discussions for a community ecosystem trust, a new institution, the Community Ecosystem Trust Working Group (hereinafter the "Working Group") engages with it, and with government agencies, to ensure a smooth transition. Overall, this is an *iterative* and *adaptive* process that is *locally-driven*, but is oriented to creating *models* and *precedents* that can be picked up elsewhere. Each community ecosystem trust would operationalize the common legislative objectives, but each would be locally adapted. As is the case with the community forest pilots, communities could differ in specific aspects of decision-making, emphasize different aspects of resource use (e.g., recreation over forestry, or non-timber over timber products), or create different systems for monitoring and evaluation.

Implementation of the legislation is an iterative and adaptive process that is locally-driven, but is oriented to creating models and precedents that can be picked up elsewhere.

The legislation thus allows for the development of a *flexible* and diverse set of institutions. Similarly, the operation of provincial and federal agencies would be recast in a gradual, iterative and evolutionary manner to support these new arrangements. In eschewing a "one size fits all" regulatory approach, the legislation reflects at the social level the diversity that exists at a natural level. At the same time, it will also have to provide for sufficient checks and balances to prevent powerful interests within the community from dominating and/or overriding the other principles articulated in the *Act*.

5 TRUSTS

This chapter provides some background information about trusts and why they are well suited to achieving the core objectives of the Community Ecosystem Trust Facilitation Act.

5.1 TRUSTS AND TERRITORIAL SUSTAINABILITY

In general, a trust is a fiduciary relationship whereby one person or entity (the 'Trustee') receives an asset from another person or entity (the 'Settlor') to hold for the use of benefit of a third person or entity (the 'Beneficiary').

In general, a trust is a fiduciary relationship whereby one person or entity (the 'Trustee') receives an asset from another person or entity (the 'Settlor') to hold for the use of benefit of a third person or entity (the 'Beneficiary'). The legal ownership is vested in the trustee, but the beneficiary has an 'equitable' interest. Trustees remain accountable to the beneficiaries and settlors of the trust. In general, the purpose of a trust as a legal instrument for land or resources is to allow for the *use* of property by those entitled to such use to occur under separately-imposed management conditions and obligations. Central to the trust concept are these obligations that can be attached to that use so that the "trustee" must act in the best interests of the "beneficiary." The trust, in other words, establishes a fiduciary relationship that controls use of the subject property.

For a trust to be legally binding and valid, three certainties must be present: certainty of intent, certainty of subject matter, and certainty of objects. For a trust in land or resources, it must be clear that: the settlor intended to create a trust, the property is clearly defined, and the beneficiaries' interest in the property is also clearly defined. Who (or what purpose) the trust is to benefit must be expressed. The settlor, trustee and beneficiary need not be three separate people or entities.

Evidence suggests that trusts may provide a superior model for the administration of public lands than centralized bureaucratic management models.

Trusts have been used in many contexts to establish a duty of environmental protection. For example, a so-called "public trust doctrine" based in Roman and later in English common law, has been applied in the United States to protect public lands – particularly parks. Over time, U.S. courts came to introduce trust concepts and impose fiduciary obligations on government authorities to manage not only the lands within parks but the neighbouring lands as well for the benefit of the beneficiaries. Evidence suggests that trusts may provide a superior model for the administration of public lands than centralized bureaucratic management models. Souder and Fairfax (1996) note that the distinction between trust land management and centralized land management lies in the specificity of the trust goals. Unlike the very vague "multiple-use" mandate that guides management of United States Forest Service, trust lands are managed to achieve specific goals.

The trust is uniquely suitable for the management of resources on a sustainable basis. A trust is created when the settlor transfers an interest in property to the trust, sets out the conditions of the Trust, and appoints trustees. While trusts must have clear goals to guide trustees, they are free to manage in any manner as long as activities

are of benefit to the trust (consistent with its goals). In this sense, trusts are results-oriented. With trustees always accountable to the beneficiaries, compliance is easier to enforce than it is through administrative or judicial review of centralized agencies. Finally, the perpetual nature of the trust fosters long-term management goals. Trustees must ensure that the body of the trust remains whole in perpetuity, protected from destruction by special interest groups or any other parties that may be more oriented to short-term gain. For these reasons, a properly constituted trust operates as a useful instrument for recreating a contemporary "common property" regime.

While trusts must have clear goals to guide trustees, they are free to manage in any manner as long as activities are of benefit to the trust, and consistent with its goals.

Private trusts are relatively common. But there are also trust models designed to support the management of public resources, although most of these are restricted to distributing the monetary benefits gained from natural resource use. Boxes 5.1 to 5.6 describe some such models. As can be seen from these examples, trusts are highly flexible and have a wide range of uses. Trusts can be used at a variety of scales. For example, in the Yukon Territory and The Northwest Territories, the territorial government is designated as the trustee of the land, with an obligation to protect the environment. The Yukon *Environment Act* states that the Government of the territory is the public trustee, with obligations to preserve the natural environment in accordance with the public trust. The beneficiaries (i.e., the people of the Yukon), therefore have a right to sue the Government for a failure to live up these obligations (Waters 1993). In several African countries, trust-like relationships have been established for the management of public land. In Tanzania, following decolonization, the state claimed all unallocated land as state land, defined the boundaries of village units, and designated all state land within the village area as the communal property of the village, to be managed for the benefit of the community.

Trusts can be applied to restrict use and ensure conservation on very small parcels of land. One way to do this is through conservation covenants which are legal agreements between landowners and a land trust organization. Conditions are registered on the land title, and they remain in effect after the land is sold or transferred. The covenant terms may specify that a non-governmental organization (such as the Nature Trust or The Land Conservancy) is given a legal role in maintaining the covenant. In this way, private land trusts can promote values of broad significance while still allowing for private use and control (Harrington 2001).

BOX 5.1: COLUMBIA BASIN TRUST

The Columbia Basin Trust Act was enacted in 1995 as a means of redressing the injustice done to people affected by the 1964 Columbia River Treaty, who did not receive adequate consultation opportunities prior to the flooding of their communities. Under the Treaty, four hydroelectric dams were built, causing the displacement of 2300 people along the Arrow Lakes, and in the Koocanusa, Duncan, and Kinbasket regions. The Columbia Basin Trust aims to return some downstream benefits to the region and manages an investment and spending program, in which they provide approximately $3.75 million per year to projects and businesses within their funding priority areas. Resources are allocated to environmental, social, and economic development programs, following a management plan that is developed in consultation with community members.

BOX 5.2: ISLANDS TRUST

The Islands Trust is a unique land use planning and regulatory agency that acts for both the residents of the Trust area (the Gulf Islands) and the Province generally, and has a specifically conservation-oriented mandate. While the Trust has a mandate to "preserve and protect" the unique features of the trust area, and is a useful model for conservation-oriented local government, its success has been hampered by a lack of jurisdiction over resource management. There is a need for clarity about the scope of the Trust's mandate, as well as clear, legally enforceable and measurable standards to promote environmental sustainability objectives.

BOX 5.3: GWAII TRUST

The Gwaii Trust Society is an example of a governance structure for a community-based, democratically-accountable, trust arrangement that provides for balanced representation from Aboriginal and non-Aboriginal communities. The Gwaii Trust Society and Gwaii Trust Investment Fund are the result of the designation of Gwaii Haanas National Park Reserve in 1988. The Investment Fund is a locally controlled, interest-generating fund for the purpose of advancing economic diversification and sustainable development on Haida Gwaii/Queen Charlotte Islands. Expenditures on a range of community development programs is in the order of $3 million annually. The board of directors consists of nine members, of which four are appointed by the Council of the Haida Nation, and four are elected representatives of the main electoral communities on Haida Gwaii. The Chair is appointed by the Council of the Haida Nation after consultation with the board of directors.

BOX 5.4: CLAYOQUOT BIOSPHERE TRUST

The Clayoquot Biosphere Trust is a non-profit charitable organization, which promotes research, education, and training in support of the Clayoquot Sound UNESCO Biosphere Reserve. The UNESCO Biosphere designation area totals 350,000 hectares, of which 110,000 are parks and Ecological Reserves. This designation, which brings with it the opportunity for initiatives that seek to balance protection of the environment with support of local communities, received support from First Nations, local communities, federal and provincial governments and non-government organizations. The programs and initiatives supported by the Clayoquot Biosphere Trust offer examples and possibilities for alternatives to current land management practices, pointing the way to a more sustainable future. However, the Clayoquot Biosphere Trust has no jurisdiction over land management issues and cannot evaluate or critique management plans of tenure holders.

BOX 5.5: MENOMINEE TRUST

The Menominee Indian Tribe of Wisconsin entered into a Trust and Management agreement with the Secretary of the Interior in 1975. Although the Menominee is a self-governing Aboriginal tribe that owns their reservation lands, the United States retains some degree of management authority over the resources on the reserve land. The Trust agreement gives the Menominee the right to manage its forests (overseen by the federal Forestry Department) according to a management plan based on sustained yield (Huff and Pecore 1995). The Menominee model has been widely praised as a leading example of ecosystem-based community resource management.

BOX 5.6: FOREST TRUST

The Forest Trust is a New Mexico organization founded in 1984. Among their programs is a land acquisition and conservation easements program through which 8,350 acres of forest and rangeland are protected. The Trust also administers 26,000 acres in New Mexico and Colorado, ensuring that the ranchers' lands are cared for properly while continuing to produce income for their owners. The Forest Trust also functions as an advocacy organization that brings the concerns of rural people to the attention of the U.S. Forest Service. They have also participated in developing regional Forest Stewardship Council certification standards

5.2 A NEW LEGAL STRUCTURE FOR COMMUNITY SUSTAINABILITY

The unique character of a trust means that it is well suited to achieving the core objectives of the CETFA while it helps to build a new relationship between Aboriginal peoples, non-native communities, and governments. The concept of sustainability itself implies a moral, if not legal, trustee-like duty on citizens and their governments to manage ecosystems for the benefit of future generations. Rather than focusing on conflicting interests, the trust framework shifts attention to identifying, and acting on, collective interests.

The concept of sustainability itself implies a moral, if not legal, trustee-like duty on citizens and their governments to manage ecosystems for the benefit of future generations. Also, rather than focusing on conflicting interests, the trust framework shifts attention to identifying, and acting on, collective interests.

With a community ecosystem trust, the settlors are those entities with a "title" interest in the ecosystem. This necessarily involves both the Provincial government and First Nations. (As noted above, tenure holders do not have such an underlying title interest in public lands.) Both parties would contribute their respective interests in land to the trust as joint settlors. In recognition of the mutual interest in creating the ecosystem trust, the province would acquiesce in the existence of *some* valid First Nation's interest (whatever that might be, and without the onerous process of proof). Meanwhile, the First Nation would also have to concede a provincial interest in the land. It would be pointless to get bogged down in arguing about who has what "rights" (as the treaty process does), as the point is to create the ecosystem trust as a constructive manifestation of these rights, whatever they may be.

The outcome of the trust agreement is that the "community", as represented by an entity with authority to act on its behalf (the Community Management Authority), becomes the trustee and is charged with managing the ecosystem for the benefit of the

The outcome of the trust agreement is that the community, as represented by an entity with authority to act on its behalf, becomes the trustee and is charged with managing the ecosystem for the benefit of the designated beneficiaries.

designated beneficiaries. The community trust entity would incorporate both Aboriginal and non-native communities. The trustee remains accountable to the beneficiaries and settlors of the trust. The beneficiaries would include the local community (however defined) including the relevant nation, tribe or band that had entitlement under the relevant aboriginal system. The beneficiaries could also include the citizens of British Columbia. The definition of these beneficiaries, and their attendant rights, will be an important element in the legislative design.

This new arrangement would not, however, necessarily abolish, replace or interfere with existing tenures on lands designated as trust areas. All tenures within the designated area would be affected, as they are held through a contractual relationship with one or both of the settlors. They would now be required to conduct their operations according to the new trust rules. This is already the case for tenure holders operating under the management principles for sustainable forestry in Clayoquot Sound, as set out by the Scientific Panel, and agreed to by the licensees.

The trust agreement would only apply to those provincial and federal lands and resources identified in the trust agreement, through agreement between the settlors and the trustees. But the trust could include other lands and resources. For example, if a municipal government decided it wished to include areas of municipal land in the trust, it could do so. And, just as private landowners voluntarily place conservation covenants on their lands, they may wish to include them in the community ecosystem trust.

Under the CETFA, the local community and future generations would become the designated beneficiaries of the trust. In order to ensure that the "rights" of the ecosystem are fully represented, all citizens of the province (who would have a broad interest in the management of lands within the trust area) might be designated as beneficiaries, with the consequent ability to hold the trustees accountable. Both settlors and beneficiaries retain the right to revoke or terminate the trust agreement should the trustees fail to manage in accordance with the local trust agreement. However, as long as activities are of benefit to the trust (consistent with its goals), trustees have considerable flexibility to innovate in their management and governance of lands and resources within the trust territory. In this sense, trusts support a results-oriented approach to environmental management.

Before the settlors transfer their interests in the land and formalize the trust, the conditions of use or obligations must be clearly described. Under the CETFA, the conditions of the community ecosystem trust would involve the creation of a local charter – the Community Ecosystem Trust Charter. The basic conditions set out in the local charter would flow from those set out in a provincial charter. The provincial and local trust charters are described in more detail in the following chapters of this report.

6 THE PROVINCIAL ECOSYSTEM TRUST CHARTER

This chapter outlines the creation of a Provincial Ecosystem Trust Charter, which embodies the objectives and purposes of the legislation at the provincial level, and serves as the context for the creation of a local charter prior to the transfer of authority to the local community. Furthermore, it facilitates the reform of central regulatory agencies. Through this vehicle, an evolutionary change in the nature of renewable resource use and management is made possible.

6.1 CREATING THE PROVINCIAL ECOSYSTEM TRUST CHARTER

The parameters of any Community Ecosystem Trust agreement would be set by an overarching Provincial Ecosystem Trust Charter, which in turn articulates the four core objectives set out in the legislation.

Within the primary legislation of the CETFA, the parameters of any trust instrument would be set by an overarching Provincial Ecosystem Trust Charter (hereinafter called the provincial charter). The provincial charter would expand upon the four objectives set out in the legislation. Following from this, each individual community would then develop its own local charter that is in keeping with the broader provincial charter (see chapter 7).

The process of developing the provincial charter is key to its acceptance by communities and to the successful implementation of the trust model. In this light, the process for developing the provincial charter must be carefully thought out. Given the nature of the legislation, the approach is two-sided. On the one hand, the provincial objectives and purposes are clearly set by the government – from the top, if you will. On the other hand, these objectives are taken up only by those communities that also espouse them, from the bottom up. The goal of consultation is, therefore, not to achieve a broad provincial consensus amongst all resource "stakeholders". This would produce a very low common denominator. On the contrary, the legislation is oriented to facilitating those few initial communities that are, or could soon be, ready to go. These communities are what we call trust "initiators". Their involvement (as well as that of the First Nations settlors) is the route to the highest common denominator.

6.2 COMPONENTS OF THE PROVINCIAL ECOSYSTEM TRUST CHARTER

The provincial charter should be developed to reflect the "state-of-the-art" of our knowledge in community-based management and ecological sustainability. It would include, for example:

Principles for the **management** of renewable resources, such as stipulations that:

- activities will be managed according to ecosystem-based principles;
- there will be the continuous generation and dissemination of ecological and cultural information;
- decisions will seek to integrate scientific/external with traditional/local knowledge; and
- decisions will seek to minimize the chances of serious harm even in the absence of definitive scientific proof (a "precautionary approach").

Principles for **full participation** of the affected community(ies), such as stipulations that:

- decision-making will occur according to an elucidated set of democratic, participatory, principles (openness, transparency);
- traditional forms of Aboriginal governance will have a key place; and
- a community-based management authority will be constructed to give effect to community potential.

Principles for **resource use** including such stipulations as:

- the use of performance measures that are monitorable and enforceable, yet flexible for each operator;
- the incorporation of "best practices" in the pursuit of ecosystem sustainability and community health;
- operation to reduce physical impacts and minimize levels of resource throughput; and
- application of a full-cost accounting approach to resource development and assessments.

Principles for **economic development** including such stipulations as:

- continuous innovation will be encouraged in order to move from high to low impact technologies, and from volume-based resource use to value-based resource use;
- economic development will embody both an ecosystem- and community-based approach, and will seek to optimize local benefits on an equitable basis; and
- a diversity of business institutions (including co-operatives and small businesses) will be fostered.

Through the consultative process, these (and other) components of the provincial charter would be identified and confirmed for inclusion in the legislation. Again, unlike a stakeholder approach, the goal of the process would be to seek a high, not low, denominator that can achieve the synergies needed for innovation in a few initial locations.

6.3 PRECEDENTS AND MODELS

The ecosystem trust system contemplated here is unique. Nevertheless, precedents exist for dramatic shifts in authority through legislation in British Columbia, some just proposed and others in actual operation. One example of a sustainability charter was the Commission on Resources and the Environment's (CORE) proposed Land Use Charter:

> The Charter…articulates the principles needed to achieve environmental, economic and social sustainability, including open and fair decision-making and recognition of Aboriginal rights. These principles are designed to be sufficiently general that they will remain relevant, and continue to be acceptable to all British Columbians, long into the future. (CORE 1994)

The CORE Land Use Charter formed the "philosophical heart" of their proposed Sustainability *Act*. The Fraser Basin Council's Sustainability Charter is another model, designed to guide short- and long-term management of the Fraser Basin. Similarly, the Provincial Ecosystem Trust Charter would be the principled foundation on which trust instruments and institutions created under the CETFA would be established and governed.

MODELS
CORE Land Use Charter, Fraser Basin Council Sustainability Charter

Charter-like instruments have also been created by non-governmental organizations to guide resource management. The Forest Stewardship Council (FSC), an organization created to promote sustainable forest management, uses a market-based approach so that companies can be certified as producing wood from a sustainably managed forest if they adhere to certain standards and principles. The principles and criteria of the FSC guide the development of more detailed performance measures to be implemented at the regional or local level. Another example is the Saanich Statement of Principles on Forests and Communities created in 1998 by members of the International Network of Forests and Communities (see Report 2). This statement provides a charter to which a community forest organization must adhere in its operations for it to become a member.

MODELS
Forest Stewardship Council Standards and Principles, Saanich Statement of Principles on Forests and Communities

A particularly interesting proposal is the "license banking" proposed by Dr. Robert Brown of Simon Fraser University. Under this system, fishing licenses are held in trust in perpetuity for the benefit of coastal communities, to be leased but not sold from the trust. The community banks are created by the collective deposit of licences held today by individuals and corporations, an imaginative scheme for re-embedding existing individual property interests in a form of common property management. His model envisions inter-linked decision-making bodies including a provincial trust umbrella group, regional trusts, and locally constituted boards. Under this scheme, the province is divided into administrative units, to be administered by regional trusts. Regional members form the provincial umbrella group. The regional trust applies to the province-wide trust for a group of fishing licenses that would be leased out to partnering fishers (Brown 2000).

An on-the-ground precedent to many aspects of the ecosystem trust system is the *Local Government Act* (formerly the *Municipal Act*) which long ago created a new system of government under provincial jurisdiction. The CETFA would not be constitutional in a formal, legal sense just as the Local Government Act is not. At the same time, it would have a socially "constitutive" effect by creating a new level of jurisdictional authority for specific purposive outcomes. Given its spatial (i.e., territorial) character, this is similar to the spatial jurisdiction, and array of regulatory functions, conferred on municipal governments. In the process, the CETFA would implement the principle of subsidiarity by transferring power to the lowest level appropriate for the functions assigned to it.

The 1975 *Agricultural Land Commission Act* (ALCA) provides another the precedent of a legislative framework that controls the character of activities that may be undertaken on certain types of land in the province. ALCA governs uses of private agricultural lands through a zonation according to provincially-established criteria. This legislation was both innovative and extremely controversial at the time of its introduction. Yet it has been effective in the long-term because it embodied the principled use of state authority in an historically necessary, transformative way to meet sustainability objectives. The ALCA also created an institution, the Agricultural Land Commission, that has worked well to implement those principles.

6.4 RELATIONSHIP TO EXISTING REGULATORY FRAMEWORK

The intent of the CETFA is to provide a mechanism for communities to develop and implement a higher level of management for ecological sustainability, as needed and specific to the circumstances of the trust area. The CETFA would thus supercede existing legislative standards and processes where *higher* outcomes can be achieved. The existing framework of legislation, regulations and standards would, however, remain in force provincially, and could serve as a minimum "default" standard for all trust areas. The Nisga'a Final Agreement provides an example of this approach. The Nisga'a can enact laws, regulations and standards that exceed provincial and federal minimums.

The intent of the proposed legislation is not to create another level of bureaucracy at the community level, but to streamline and rationalize these systems so that they lead to higher levels of stewardship with less bureaucracy.

In British Columbia, a complex and multi-faceted array of acts and regulations govern the permitting and use of a wide range of natural resources (see Report 3 for an overview of existing provincial legislation and referral processes). The administration and management of these myriad tenures and licensees requires a significant amount of resources from within numerous provincial government agencies. This is a major motive for the drive to deregulate. It will be important to design the trust arrangement to enable higher levels of sustainability and resource stewardship, without overburdening communities, provincial agencies, and the private sector. The intent of the CETFA is not to create another level of bureaucracy at the community level, but to streamline and rationalize these systems so that they lead to higher levels of stewardship with far less bureaucracy.

Creating "one stop shopping" for operational approvals, and shifting to a performance-based approach to regulation, would represent a very significant simplification of the regulatory process at the same time as it offers the prospects of achieving a higher level of management.

To do this, a "one-window" approach should be adopted as much as possible. Resource users would obtain their approvals from a single source (i.e., the trustee as represented by the Community Management Authority) for proposed activities within a trust area, rather than having to deal with multiple resource agencies at various levels of government. Creating "one stop shopping" for operational approvals, and shifting to a performance-based approach to regulation (see below), would represent a very significant simplification of the regulatory process at the same time as it offers the prospects of achieving a higher level of management.

While jurisdictional issues for the federal government related to the kind of trust arrangement described here are less complex than for the province, there are nevertheless a number of important areas of federal legislation that require attention. Given the implications for areas and resources under federal jurisdiction (especially fisheries), complementary legislation would be needed at the federal level. Processes for provincial/federal harmonization are not uncommon, including joint arrangements (such as the Fraser Basin Council) that also seek to harmonize action with municipal and regional governments. (For an overview of relevant federal legislation, see Report 3.)

7 THE WORKING GROUP AND FACILITATION PROCESS

The Working Group is the embodiment of a unique objective of the legislation – the facilitation process.

With an extensive mandate, operating independence and functional certainty, the Working Group would become the powerful instrument for developing sustainability that is so much needed today.

Created by the CETFA, the Community Ecosystem Trust Working Group is the embodiment of a unique objective of the legislation – the facilitation process. The Working Group is a creation of legislation. Nevertheless, the terms of its creation, like those of the provincial charter, will necessarily be agreed upon by the settlors – the Crown and First Nations – in consultation with other interests. Once created, its operating independence will be critical to ensuring that it can truly facilitate system innovation, while avoiding capture by established economic or bureaucratic interests.

The Working Group must have extensive decision-making authority (see Box 7.1). Reference to Cabinet should be minimized. While the Cabinet will be the vehicle for implementing individual community trusts, this process should be as transparent, explicit and non-discretionary as possible. Thus, where the Working Group proposes a trust for implementation, it would not be rejected except on grounds expressly stipulated in the legislation, grounds which reflect the agreement of the settlors. This offers a great opportunity. With an extensive mandate, operating independence and functional certainty, the Working Group would become the powerful instrument for developing sustainability that is so much needed today.

The idea of a body created specifically to facilitate change is not new. Such organizations exist in a number of different contexts, including a number of examples that focus on renewable resource management (Box 7.2). These groups exist at the international level and at the national level in a number of countries. For example, the IUCN has created the *Working Group on Community Involvement in Forest Management* which has as one of its goals to "support long-term transitions in management of the public forest domain toward the decentralization of rights and responsibilities for management to forest-dependent communities and indigenous peoples" (IUCN 1996). Working groups have been created in a number of Asian countries to pursue similar objectives, but on a national scale. The primary objective of these groups is to coordinate research and recommend policy changes needed to facilitate and accelerate the establishment of national community forest management strategies.

MODELS
Asian Community Forest Working Groups, FECOFUN (Nepal), Kuskowing River (Alaska), Barriere lake, Joint Forest Management (India)

BOX 7.1: THE WORKING GROUP – "AT ARM'S LENGTH"

While evidence and experience shows that communities can benefit from external facilitative support at both the regional and national levels, there is concern about the creation of yet another layer of bureaucracy. Therefore, it is important that this Working Group be an independent agency working at "arm's length" from government, while having a broad mandate and support from both the Province of British Columbia and First Nations.

In Nepal, a national federation of Forest User Groups supports the activities of local Forest User Groups (FUGs) and acts as a 'mediator' between government and community groups. Established in 1995, The Federation of Community Forest User Groups, Nepal (FECOFUN - *Samudaik Ban Upabhokta Mahasangh*) is a non-profit, non-governmental organization which complements government initiatives at the ground level by helping to foster self-reliance among user groups by providing extension services locally and actively involving FUGs in decision-making processes. But as an independent non-government organization, FECOFUN lacks the higher level political support.

The Forest Practices Board (FPB) is an agency operating in BC that is a model for the Working Group as far as its independent status. The FPB monitors compliance and enforcement with the Forest Practices Code and its regulations. With its own set of guiding values and principles, the FPB emphasizes its non-partisan approach to "serve the public interest as the independent watchdog for sound forest practices in British Columbia".[2] While the FPB works separately from the Ministry of Forests and reports directly to Cabinet, it has very limited jurisdiction and consequently, their role as an independent watchdog is constrained. For example, its mandate is limited to reviewing and commenting on operational plans but does not include strategic planning or timber supply analysis. Unlike the Working Group proposed here, the FPB does not have an operational, let alone transformative, mandate.

BOX 7.2: EXAMPLES AND LESSONS FROM WORKING GROUPS

The Asian experience with community-based natural resource management (in Vietnam, Laos, Thailand and Cambodia) has shown that the preliminary role of the Working Group is to gather data, and identify research gaps based on discussion with local peoples, field staff, resource administrators and planners (Poffenberger 1999b). While the Asian Working Groups are a relatively new development in the area of community-based management of resources, their experiences to date show that such groups need to be accessible to meet regularly with both state and community. Furthermore, their interactions need to be sustained for at least several years because it takes time to develop the facilitation and information sharing process cooperatively and "organically." Experience has also shown that the Working Group should adopt a best practices approach to research.

In British Columbia, the Scientific Panel for Sustainable Forest Practices in Clayoquot Sound (the Science Panel) is another case where the principle of best practices has been embraced. The Science Panel's recommendations to the Central Region Board (CRB) and their acceptance by the province, represented a breakthrough in the decades long conflict in Clayoquot Sound. As a result, a promising new model of ecosystem-based management on the coast of British Columbia has been introduced. Also noteworthy was the Science Panel's capacity to integrate the breadth of scientific and traditional ecological knowledge of the Panel members.

The Heiltsuk First Nation has made a commitment to best practices, as one of their five main operating principles of the Cultural Landscape Assessment

[2] Forest Practices Board Mission Statement. See http://www.fpb.gov.bc.ca/about_briefguide.htm

(CLA) project. The CLA has established an Internal Working Group that represents a diverse cross-section of the community. An external advisory group of professionals assists in peer review. The Internal Working Group's central role is to provide professional guidance and direction to research, and share information between researchers (Heiltsuk 2000).

7.1 ROLE OF THE WORKING GROUP – AN INDEPENDENT ENTITY

The overall role of the Working Group is to facilitate and support the transfer of jurisdiction and management authority from provincial and federal governments to communities.

The overall role of the Working Group is to *facilitate* and *support* the transfer of jurisdiction and management authority from provincial and federal governments to communities. This facilitative role of the WG addresses the acute need for a flexible learning-process approach when addressing the inherent ecological, political, socio-economic, and cultural diversity found in different communities and landscapes. The functions of the Working Group can be divided into those that are provincial in nature and those that are focused on specific communities. Functions at the provincial level include the following:

- facilitating development of the provincial charter;
- coordinating provincial communications about the community ecosystem trust model and process (e.g., producing and distributing materials and reports, responding to inquiries, providing information about how to apply for a community ecosystem trust, etc.);
- overseeing research, extension, capacity-building and policy development activities required to ensure successful implementation;
- working with officials from relevant agencies to direct the change in the function of these agencies from that of direct regulation to provision of technical support and expertise to communities;
- supporting the development of linkages and exchanges between communities engaged in the community ecosystem trust process, so as to maximize opportunities for collaboration and mutual support;
- overseeing evaluation and monitoring of the various community ecosystem trust agreements in place, to gauge overall progress towards achieving the objectives of the legislation; and
- facilitating the assumption of full management responsibility by the Trust Council as it emerges (below).

The Working Group will also play a critical role in working closely with specific communities that are engaged in the development and/or implementation of a community ecosystem trust agreement. Once a community had submitted a preliminary proposal to establish a community ecosystem trust, the Working Group would respond and engage with the community. At the community level, the Working Group would:

- review and evaluate the preliminary proposal;
- support applicants that pass the preliminary review stage to develop a final proposal, including drafting the community trust charter and the trust management plan;

- resolve conflicts, and develop tools and strategies, for initiating communities;
- review and forward the final proposal; and
- and provide support during implementation of the management plan.

Working Group support for the local community would take many forms. It would offer technical/scientific assistance related to resource management in such areas as mapping, inventory, and research. It would help develop appropriate decision-making and governance structures, for example by facilitating the development of partnerships within the community. It would assist in developing the structure of the management authority, and the creation of a management plan, with accompanying performance objectives. In these tasks, it would draw on the expertise of the Best Practices Secretariat (see below).

It must be stressed that the Working Group is not a neutral arbiter. On the contrary, it is an advocate for the Community Ecosystem Trust, and its facilitator. Its role is to make the process work,

It must be stressed that the Working Group is not a neutral arbiter. On the contrary, it is an advocate for the community trust, and its facilitator. Its role is to make it work and, in so doing, establish a precedent. This a central, and delicate, role. The Working Group will be equipped to resolve conflict, and empowered to find creative ways to ease the transition for all interests. It must be able to raise the level of the "common denominator." The Working Group facilitation would be a long and intensive process, working to create successful initiatives in a small number of communities. The goal is a singular one – to establish working precedents that lay the groundwork for other communities, which enter the process at a later date.

As important as providing support for the community is the Working Group's role with non-local interests. Assessing and mitigating impacts on other communities is critical. So too, is working with existing resource tenure holders and processing industries, to assist their adaptation to the new management regime.

And, of course, there is its work with government agencies on the task of bureaucratic re-invention. The shift in agency functions discussed above involves a gradual and evolutionary change, but it is still a very big one over time. Although not widely appreciated today, this shift offers promise for governments and agencies alike – monetary savings, reduced conflict, increased effectiveness, and new relevant expertise and innovation.

For these promises to be fulfilled, however, will require a substantial political commitment to the careful design, and operation, of the Working Group.

7.2 STRUCTURE OF THE WORKING GROUP

7.2.1 The Board: System Innovators

The Working Group would be run by a board of directors appointed by the settlors, and act as the "keeper" of the provincial charter.

Internally, the structure of the Working Group is not complex, or unusual. It would be run by a board of directors appointed by the settlors. This board would be the "keeper" of the provincial charter, and would give iterative feedback on updating the charter as required. Such changes would occur by the decision of the settlors. Participation on the board should be sought from a number of organized sectors (e.g., municipal government, First Nations, senior government, non-governmental organizations) but not as representatives of these sectors. As this is a body that seeks to foster innovation, the board should be composed of individual innovators with demonstrated experience in problem solving in a range of sectors.

Over time, the work of the board would be increasingly linked to the development of a provincial Trust Council, a body composed largely of representatives from operating

community trust management authorities. As this Council grows in size and experience, it would progressively direct the Working Group in managing the on-going development of the trust system.

7.2.2 Best Practices Secretariat

The Best Practices Secretariat would provide technical support to the Working Group and support the reform of the operations of existing line agencies.

While the Working Group board members will play primarily a leadership role with a focus on policy and legislation, there will also be a complement of staff to coordinate and execute the activities of the Working Group as a whole. In this legislation, a Best Practices Secretariat would be established to function both as a technical support for Working Group activities, and as the lead proponent in the reform of the operations of existing line agencies.

Over the past decade, the concept of "best practices" has emerged as a way for one business or jurisdiction to draw on the successes of another. This concept applies in many sectors of economic, environmental and technological innovation – from the control of toxic effluents, to demand management in energy use, to new financing mechanisms to encourage community development. The best practices concept is especially important in the design of new, and innovative, regulatory mechanisms. Traditionally, regulatory agencies work with specific standards that applicants must meet or exceed in their activities in order to be granted a permit. Possession of such an operating permit often then acts as a protection, or contractual shield, for the operator.

The "best practices" approach changes the regulatory approach in a number of ways:

- A prime function of the regulatory agency is to track the "state of the art" in all aspects (technology, processing, institutional design for use and management, techniques for environmental protection, product design, etc) of the activity being regulated;
- The basis for permitting is not the meeting of a specific standard so much as the adoption of the "best practice" available, or potentially available, to meet the specified objective(s);
- The burden of proof in demonstrating why an identified best practice *cannot* be adopted is on the applicant, otherwise the best practice is to be followed; and
- The overall goal of regulation is not to meet a specific standard or design, but to promote, and continuously to improve upon, a high level of performance (i.e., performance-based regulation).

MODELS
Scientific Panel for Sustainable Forest Practices in Clayoquot Sound

7.3 THE FACILITATION PROCESS

While the Working Group facilitative process draws on aspects of existing land use planning in British Columbia, it is unique. It is a value-driven, goals-oriented process for accomplishing the concrete objectives of the legislation, but in an evolutionary and incremental fashion. In particular, the Working Group should be distinguished from the Treaty and the Land and Resource Management Planning (LRMP) processes. This section describes how the Working Group facilitation process will operate, and how it differs from the LRMP and treaty processes.

There is concern that the LRMP process has the effect of legitimizing and entrenching existing land use practices and management regimes, while simultaneously foreclosing options for future innovation.

7.3.1 The LRMP Process

The shared decision-making (consensus) model is used in the LRMP process as a way to provide an opportunity for "stakeholders" to have a say in how existing rights and duties with respect to land in their region or sub region will be exercised, and to participate in the selection of protected areas. Concern exists, however, that this process has the *de facto* effect of legitimizing and entrenching existing land use practices and management regimes, while simultaneously foreclosing options for future innovation. Under this model, existing power relationships are accepted as a given, and the resulting consensus is defined as an outcome that all negotiators can "live with." As a result, low common denominators (i.e., sub-optimal outcomes) are often achieved. The end result of the LRMP process is typically a zoning system within existing corporate, industrial, and agency parameters.

In contrast to the LRMP model, the primary function of the Working Group facilitation process is to give concrete effect to a set of well-defined objectives in a locally appropriate manner, while encouraging innovation and allowing for adaptation as the model is applied. Procedurally, this is not a "consensus" process that takes existing power relations as given. On the contrary, it seeks to shift existing power relationships in the pursuit of a larger collective objective. Substantively, the Working Group is oriented to facilitating basic economic and regulatory reforms, but in an incremental fashion.

As a provincial level, the Working Group facilitation process calls forth the most basic aspect of our social character – our role as citizens. At all stages, a deep and well-informed public discussion is needed. This is a pre-requisite to success. In its local implementation, the role of the Working Group is also not to facilitate a "stakeholder" process involving negotiation between conflicting and competing interests. Instead, its function is to help a community work together towards a plan of their own creation, within the trust objectives and process parameters of the enabling legislation.

It is important to understand how the Working Group facilitation process itself will work to build community. This process is designed to provide certainty that a participating community can create a realizable outcome, one that will greatly increase its authority and opportunity.

It is important to understand how the *process itself* will work to build community. Under the CETFA, the Working Group facilitation process is designed to provide certainty that a participating community can create a realizable outcome, one that will greatly increase its authority and opportunity. This certainty will instill a new set of incentives to participate, explore options, and cooperate across sectors. If a shared vision can be achieved, the outcome will be a legally enforceable land designation and management plan that community members will have a direct role in implementing and enforcing.

The facilitation process will also promote reconciliation between aboriginal and non-aboriginal communities, because the trust system is premised on shared entitlement to land and resources. In contrast, LRMP processes do not address or resolve rights and title concerns, and are widely perceived by First Nations as prejudicial because land use designations are entrenched prior to the resolution of outstanding Aboriginal title and rights questions. In this regard, the Working Group facilitative process should be distinguished from the treaty process, in which the provincial and federal governments are attempting to resolve questions about the extent of Aboriginal title. As with the development of land use plans, one of the governments' primary objectives in participating in the BC treaty process is to bring certainty to the status of Crown land. For their part, First Nations participating in the treaty process are seeking social, economic and environmental justice through the recognition of their legal interests in land, resources and self-government.

7.3.2 The BC Treaty Process

Many BC First Nations are refusing to participate in the BC treaty process because of concerns about the process and the negotiating positions of the provincial and federal governments. A major concern is that under the land selection model implicit in the treaty process, First Nations will end up owning a small fraction of their traditional territory while provincial title over the majority of the traditional territory is disencumbered of the Aboriginal title. At present, the provincial government's policy is that for all completed treaties, the amount of land to be owned by First Nations will not exceed 5 percent of the provincial land base. This position is purportedly proportionate to the current First Nations population in BC (as a percentage of the total population of the province), but is not proportionate to the amount of land currently used by First Nations, or used in 1846 (the date of the Crown's assertion of sovereignty to British Columbia). When one considers that the traditional territories of First Nations cover close to 100 percent of the province, the extent of the problem becomes obvious. Some First Nations would prefer co-management of their entire traditional territory rather than outright ownership of a small percentage of their traditional territory. In contrast to the treaty process, the trust model allows for such an approach – and to everyone's benefit.

At the same time, with regard to the treaty process, the Working Group facilitation process is parallel to and not prejudicial to on-going treaty negotiations. However, many basic differences underlie the facilitation process:

- In developing the trust legislation, the process would be between two trust settlors, the Crown and First Nations;
- At the level of individual trust proposals, no community ecosystem trust process would be concluded without local First Nation support. There, First Nations would work with non-natives in the local region on a cooperative "shared community" basis, not on a separate "government-to-government" basis;
- The anticipated outcome – the community ecosystem trust – would not require First Nations to negotiate recognition of their title over a small fraction of their traditional territory. Instead, it would accommodate the right and responsibility that many First Nations may feel to manage their entire traditional territory in a sustainable fashion;
- Whereas land selection would limit the ability of First Nations communities to be involved on a day to day basis in the management in the whole of their traditional territories, the outcome of the community ecosystem trust facilitation process will be a management plan for the entire trust area that is compatible with the values of all residents. The outcome under the ecosystem trust process will be based upon co-management, revenue sharing and sustainability; and
- The negotiation process would be facilitative of local management with an orientation to win-win solutions for First Nations, non-native residents, and provincial agencies, rather than the competitive, zero-sum approach of treaty negotiations.

The Community Ecosystem Trust would not require First Nations to negotiate recognition of their title over a small fraction of their traditional territory. Instead, it would accommodate the right and responsibility that many First Nations may feel to manage their entire traditional territory in a sustainable fashion.

Overall, this Part of the legislation achieves a key substantive and a key procedural objective that opens up a new vista on governance in the 21st century. Substantively, the CETFA establishes a new level of land designation that can, over time, fundamentally re-situate human systems in the landscape. Procedurally, it institutes a

process through the Working Group that both facilitates and informs the creation and evolution of this re-situation process. Drawing on continuing consideration of emerging global "best practices," while reviewing experiences on the ground, the process itself is the embodiment of "adaptive management." This will provide cutting edge public policy direction at all jurisdictional levels.

7.3.3 The Character of the Process

The *process should be participatory, open, self-directed, and well-supported*. It is truly participatory in the sense that communities will themselves determine the terms of their involvement, promoting commitment and a more trusting relationship with government. It is an open process because it will create political space to allow participants to come up with solutions that exceed existing standards and targets. Because the community is empowered to make ongoing, day to day operational planning and management decisions, as well as to enforce the standards it sets for the management of the land within its jurisdiction, those involved in the process will have much more of an incentive to work collaboratively on a workable plan.

The nature of the outcome that is being pursued is clear in advance, the establishment of a community ecosystem trust. As a result, the objective of the process is to mobilize broad community involvement in being imaginative, and hard-headed, about what shapes this option might take, what it would take to make it work, and whether it is ultimately a good idea. The benefits of being visionary, having representativeness and ensuring critical thinking and skepticism, are all naturally built in for citizens that participate. Overcoming the entrenched opposition of existing institutions that are operating in an unsustainable manner is the challenge.

The process is a way in which government-supported community democracy will be put to the test as a new way to foster innovation in the pursuit of sustainability, a challenge that has so far eluded British Columbia and most of the world. The role of the Working Group is central here in mediating conflicts both internally and externally. Under the guidance of the Working Group, the involvement of innovation-oriented higher level civil servants (especially in provincial agencies, but in the federal government in many cases) is also critical.

An *open process* for the development of the trust proposal within the community is critical. In the initial stages, this will tend to be a conflictual process. Quickly, however, as the model becomes more familiar and the low real costs and high potential benefits become clear, the degree of conflict will drop dramatically. Nevertheless, given the degree of entrenched differences that now prevail as a result of historic market and policy failures, a pre-existing community consensus should not be expected in the proposal, and should not be a criterion. Indeed, one of the primary functions of the Working Group is to help build that consensus through the process.

The process should be directed to designing a community trust that can actually succeed. For this reason, the initial focus should be on working with a few communities that are ready, and able, to be the early initiators.

The process should be directed to designing a community trust *that can actually succeed*. For this reason, the initial focus should be on working with a few communities that are ready, and able, to be the early initiators. The breadth of the challenge with even a few communities is large. Take, for example, the need for information on resources and ecosystem functions. Undertaking this analysis, and devising the institutional basis for continuing this function on an ongoing basis, is only one task of the Working Group. Again, however, other aspects of the process will help to make this workable. For example, many millions of dollars are presently being spent by First

Nations in attempts to "prove" their Aboriginal title. Through the Working Group facilitation process, this would not be necessary, so that these monies could be redirected to much more productive activities. Meanwhile, the technique of applying the knowledge of best practices from other jurisdictions and examples will be central to an efficient process that can also overcome institutional resistance.

7.3.4 First Nations Participation in the Trust

First Nations participation is a fundamental prerequisite to developing the Community Ecosystem Trust.

First Nations participation is a fundamental prerequisite to developing the community ecosystem trust, except in extraordinary circumstances (e.g., the trust area lies outside any traditional territory or there is no affected First Nation). Because treaties were never negotiated for the vast majority of the province, First Nations have an unextinguished legal interest in most of the land and waters of British Columbia. In addition, Aboriginal rights were entrenched in s. 35 of Canada's Constitution in 1982, giving First Nations unprecedented legal strength in asserting and defending their rights. No trust arrangement will be possible unless the First Nations on whose traditional territory the proposed ecosystem trust would exist agree to contribute their interest in the land to the trusts.

The Working Group's role in liaising with First Nations governments as potential settlors is thus very important. One role of the Working Group is to carry out the Crown's fiduciary responsibility to Aboriginal persons by ensuring an appropriate level of Aboriginal participation, recognition of Aboriginal rights, and the translation of those rights into a trust structure that fulfils the priority constitutional status of First Nations. Recognized aboriginal priorities (as for example expressed in the *Sparrow* decision, second only to conservation priorities) are fully compatible with the trust objectives of ecosystem-based sustainability and community equity.

The trust model represents as big a challenge to First Nations as to non-native residents, a challenge that can be met only through a reformed process of discussion and change.

For many reasons, the trust model represents as big a challenge to First Nations as to non-native residents. The challenge can be met only through a reformed process of discussion and change. With the retention of Aboriginal title in an ecosystem trust designation, the justification for the exclusive government-to-government negotiation process that has produced such a standoff is vastly diminished. The discussion between settlors is, in fact, the opposite of that between negotiators in the treaty process insofar as the settlers are being called upon to use their separate entitlements as a basis for creating a joint arrangement that will increase the mutual common denominator. As importantly, individual First Nations will themselves need to reach accommodation with local non-native interests in a balanced way that can achieve a solid community-based reconciliation as a basis for the trust structure implemented community-to-community. This process can get us past another historical morass and obstacle to sustainability.

7.4 THE TRUST COUNCIL

As individual community trusts are created, a provincial Trust Council would be created composed of representatives from each Community Management Authority. Over time, the Trust Council would assume a coordinating and policy development role. Ultimately, it might replace the board of directors of the Working Group.

7.5 REVOCATION OF THE TRUST

The settlors of the trust (that is, First Nations who hold traditional title to the area, and the provincial government) will retain the right to revoke a specific community ecosystem trust in the event that an appropriate evaluation process shows that the local trust charter and/or the Provincial Ecosystem Trust Charter are not being complied with. This should occur where there is clear evidence that the purposes of the legislation are not being fulfilled, and cannot be. Prior to any revocation, remediation of the failure should be attempted, and only if that fails should the trust be revoked.

Revocation of the trust should not be an easy process. Generally speaking, revocation should be as difficult as establishment, and should occur only where the settlers jointly agree that the Trust is fundamentally unable to address the settlors common goals. In addition, it may be desirable to make revocation of a specific trust contingent on the agreement of the relevant community (the beneficiaries) according to a pre-determined process.

8 THE COMMUNITY ECOSYSTEM TRUST

8.1 COMPONENTS OF THE COMMUNITY ECOSYSTEM TRUST CHARTER

Overall, the thrust of the legislation is to create precedents that can act as incubators for broader system innovation. Historically, centralized systems of industrial production and bureaucratic management have been concerned with exploiting, or regulating, only a subset of resources (such as timber, fisheries). In this situation, it is not surprising that "integrated resource management" has been ineffective in producing sustainability. Managing resources on a smaller scale will allow for the potential of integrated resource management to be fully realized. In this regard, the ideal communities to enter into the process in the initial stages will not be those which have the greatest problems, but those with the greatest likelihood of success.

Overall, the thrust of the legislation is to create precedents that can act as incubators for broader system innovation. In this regard, the ideal communities to enter into the process in the initial stages will not be those which have the greatest problems, but those with the greatest likelihood of success.

The vehicle for this integration will be the Community Management Authority (CMA), the jurisdiction of which will be *territorially based,* and the activities of which will be guided by the Community Ecosystem Trust Charter (hereinafter community charter or local charter). Each local trust charter would describe the terms according to which the settlors give their interests and responsibilities over to the trustees (i.e., the Community Management Authority), the specific objectives of the trust, matters related to the governance structure of the trust, revenue-sharing between parties to the trust, approaches to monitoring and enforcement of these standards, and so on. While the provincial charter would set high standards for management, the local community may wish to establish higher performance obligations for their trust area. The extent to which the Community Management Authority will take over various management responsibilities from the provincial or federal government might also be specified in the local charter.

From the passage of the legislation to the point at which a specific community ecosystem trust proposal is implemented, nothing happens on the ground (apart from some temporary protective measures when a community comes forward). When a community trust proposal is implemented, it will be so on a local basis, and will have minimal disruptive effects to the province as a whole. It is only the success of local precedents that could lead to larger changes – but only then if the new trusts actually work, and are therefore worth emulating.

The process of developing the local charter will involve broad consultation within the community and with settlors of the trust (e.g., First Nations, provincial and federal governments), and will be assisted by the Working Group. Once the local charter (and a preliminary management plan) is developed, it is submitted to the Working Group which ensures that the local trust charter complies with the provincial charter. Once the local charter has been implemented in law, the management plan would be

developed in detail. The management plan translates the principles and objectives described in the local trust charter into concrete operational plans for activities on the ground. The management plan would be developed with assistance from the Working Group and other appropriate agencies. Although it would begin in the early planning phases, it would not be approved until the local charter was in place. At that stage, the implementation phase begins.

Under the CETFA, each community's trust charter and the management approach developed under it would become locally enforceable. This is the means through which the provincial government would transfer their management authority to the Community Management Authority (CMA). The granting of such powers to local management authorities is not unique. The following examples illustrate how in British Columbia, communities have been enabled to create and enforce local rules for managing natural resources:

- Nisga'a Agreement – Under the terms of the Nisga'a Final Agreement, provincial and federal environmental laws and regulations become minimum standards. In a number of areas including forestry, wildlife, environmental assessment and fisheries, the Nisga'a have the ability to enact laws, regulations and standards that exceed the provincial and federal minimums. This creates the opportunity for innovative, locally appropriate and enhanced environmental protection.
- Central Region Board – The Clayoquot Sound Central Region Board (CRB) is the principal mechanism through which the recommendations of the Clayoquot Sound Scientific Panel are implemented and monitored. While the CRB does not "make the rules" per se, all plans for resource use activities occurring within Clayoquot Sound are subject to CRB scrutiny. Also, while the CRB technically functions as an advisory committee, if line ministries do not accept recommendations of the Board with respect to plans or applications, the matter may be referred to Cabinet. The CRB, therefore carries significant *de facto* authority over the approval of plans and applications in Clayoquot Sound.
- Islands Trust – Under British Columbia's *Islands Trust Act,* the Islands Trust Council is charged with establishing general policies, while Local Trust committees are empowered to make bylaws which adhere to the general policies. It is, however, unlikely that a Trust bylaw would take precedence over a provincial law dealing with management of a particular resource. This limitation constrains the legislated mandate to preserve and protect lands and resources on the Islands.

In other jurisdictions, there are similar models. For example, under Nepal's community forestry scheme the Forest User Group (FUG) acts as the local management authority and this role is formalized through the creation of a Charter, which is registered in the district Forest Office. The FUG has the right to enforce rules made under their Charter and operational plan. However, these rules and the manner in which they are enforced must be in keeping with national laws. In 1995, Maine's Zone Management Law gave new regional Lobster Policy Management Councils the authority to make decisions and rules within their zone regarding a limited number of issues (for example, the number of traps per license). And, in Tanzania, while the government forester acts as a watchdog, Village authorities are the designated managers of the local forest. The Village authority is a legal entity charged with management of

the resources. This means that local decisions are protected from being overturned by higher levels of authority.

8.2 THE COMMUNITY MANAGEMENT AUTHORITY

The Community Management Authority (CMA) is the vehicle for management authority to be transferred to the community. Again, it is important to recognize that the CMA is a *public management* body, and not a tenure holder involved in *private economic production*. Its management role is that of the trustee who is responsible for maintaining, for stewarding, the trust. This entails many roles, including licensing (where it would be a single window regulatory approval agency) and monitoring (where it would review licensee performance). Unlike some municipalities in BC today (notably Mission and Revelstoke, which hold Tree Farm Licenses), it would not directly hold private resource tenures.

As the trustee, the make-up of the CMA is important. Meaningful participation of First Nations representatives is critical, as is representation from local (democratically elected, and general purpose) governments. While the legislation should allow for flexibility in the structure of the CMA (a mixture of appointed and elected officials), it is important that a broad representation of affected sectors (e.g., local government, First Nations, labour, conservation, etc.) is included, and that the authority overall meets the legislative objectives of enabling participatory communities, as specified by the provincial charter.

One model is the Central Region Board of Clayoquot Sound (CRB) that has ten Directors – five members are appointed by the Province (but come from local community and other interests) and five come First Nations in the Clayoquot Sound region. The CRB also has representatives from the provincial government and First Nations serving as co-chairs. Similarly, the Gwaii Trust was also able to work out a system of sharing authority between Natives and non-Natives in a democratic fashion that is respectful of aboriginal traditions. In this model, the management council has equal representation from native and non-native communities.

The Community Management Authority is the vehicle for transferring management authority to be to the community. It is important to recognize that the CMA is a public management body, and not a tenure holder involved in private economic production. Its management role is that of the trustee responsible for maintaining, for stewarding, the trust.

MODELS
Central Region Board, Gwaii Trust, Barriere Lake, Community Forest Boards

8.3 CRITERIA FOR SELECTION OF THE TRUST INITIATORS

As discussed above, the underlying thrust of the CEFTA is the creation of models or precedents that can be built upon over time. Thus it is important to choose the "right" communities as the initial sites for ecosystem trusts. We call these "trust initiators." What communities, for example, might best articulate and develop innovative forms of sustainable resource use and management that create local employment and economic benefits for the local community? What communities might best be able to repair the historic fracture between native and non-native residents? Where might it be possible to redraw the jurisdictional boundaries in a way that will allow the new community trust to fit constructively into a landscape that is presently overridden with many conflicting lines of jurisdiction?

With these challenges in mind, trust initiators should:

- *have broad community support*. While it is not be possible to achieve unanimous support, broad support amongst a range of sectors is important. Of course, the participation of local First Nations is imperative, as is that of formal public

bodies (especially local governments). It is not often likely that existing tenure holders will be supportive, a fact that can be offset with the involvement of other key sectors such as small businesses, workers, and conservation interests.

- *identify a clear and workable trust area.* Is the area appropriate and logical for the community to assume management over? Given the focus on ecosystem-based management, definition of the trust area should be based on natural (ecological) boundaries, such as watersheds, islands, or regional ecosystems. Given the focus on First Nations involvement, the use of traditional territory boundaries may also be appropriate. While greater size is obviously desirable for many purposes, there may be some trade-offs (especially in the early stage) between initial territorial size and feasibility of implementation. A contentious issue will be the meshing of the trust area with zonations created by prior processes, such as by LRMPs or CORE Regional Land Use Plans. Ideally, the implementation plan would draw on the work done to date but with the goal of working to a higher level of local innovation.
- *integrate within the regional landbase.* The relationship between the trust and excluded communities and regional resources (such as migratory fish stocks or wildlife) is a complicating factor. The proponent will need to minimize the degree to which the activities in the proposed trust area might infringe on the interests of adjacent communities. Indeed, the ideal would be to develop regional opportunities for mutual support and collaboration.
- *provide a basic strategy for implementation.* A viable strategy to support community economic development is needed, for example, through the local processing of resources, and the building of community capacity.

Some communities are more prepared, and have a greater capacity, for undertaking the role of trust initiators than others. Those communities that are already working out some of these issues would naturally be considered most closely. Potential models include the joint effort between the Klahoose First Nation and the non-native community on Cortes Island, the Islands Community Stability Initiative on Haida Gwaii, the ecosystem-based plans from the Slocan Valley as well as for the Gitxsan First Nations, and some of the Community Forest Pilot Projects. These criteria have the benefit of addressing communities that, under the present regime, are generating high conflicts over the desire for innovation and transition. It will tend to favour areas where local expertise is already developing around this issue. And it will reduce the attention to areas where, for whatever reasons, the current use and management regime is seen to work better.

MODELS
Cortes Island, Slocan Valley, Haida Gwaai, Gitxsan, Harrop Proctor

8.4 SELF-REGULATION: PERFORMANCE-BASED BEST PRACTICES

The replacement of standards by mandatory performance objectives is carried out by mandating the use of "best practices".

The trust regulatory model implies a new approach to standard setting that has three basic components. First, existing standards could operate as a "default" system that imply a minimum level of performance for the new performance-based objectives. Second, however, performance objectives will provide the basic regulatory instrument. They are set out, at a general level, in the Provincial Ecosystem Trust Charter, translated into specific local charters, and then articulated in specific local detail through the management plan. Third, the replacement of standards by mandatory performance

objectives is carried out by mandating the use of "best practices" to achieve the performance objectives. These practices become the baseline for decision-making (the rule), except where the reluctant user can demonstrate why a lesser practice is necessary, and only for long as is necessary (the exception).

To be useful locally, this new model must be relatively simple. Initially, the local Trust regulatory process will draw heavily in the initial stages on the contributions of the Best Practices Secretariat of the Working Group. Two primary regulatory objectives would guide this work: (1) establishing specific performance objectives/best practices for every resource user group, and (2) doing so in conjunction with those user groups so that they become self-regulating and self-enforcing over time (see next section). This is the essence of how regulatory burdens will be reduced over time, in conjunction with on-going innovation and high levels of performance. The underlying regulatory objective is to move from enforcement according to designed central regulations, to enforcement according to working local custom.

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At the central level, the Working Group would work with provincial and federal agencies to shift their mandates and functions to their new roles of (1) facilitating community regulation, including the relevant economic and technological transitions of the user groups, and (2) providing a monitoring and enforcement backstop where needed. In other words, the bureaucratic objective involves reducing the detailed, hands-on, process of regulation *by any level of government* (but especially higher levels of government), while facilitating the shift to *community-based practice*. The shift is made easier through changes in economic production processes (with the incorporation of best practices) that minimize the inherent conflict that so commonly exists between industrial production and ecological management. In order to minimize the regulatory burden at the community level, the burden of proof in demonstrating why an identified best practice cannot be adopted would be on the applicant/licensee.

8.5 SELF-REGULATION: USER/ COMMUNITY ENFORCEMENT

The success in setting performance-based objectives and requiring the utilization of best practices rests, in turn, on how activities are monitored and compliance enforced. Again, this takes place through a diverse set of procedures, the overall effect of which is to encourage the internalization of self-regulation within the production process and the producer institutions themselves.

Specific approaches would need to be developed for user groups, the affected public, and the trustees. Advocacy processes, and penalties (as below) would be secondary to a set of dispute resolution processes, that would be heavily utilized especially in the initial stages as one form of *industrial* exploitation is resolved into an ecosystem-based usage. The proposals below are intended to be indicative only of some new forms of regulation *designed* around encouraging effective self-management and a diversity of enforcement capabilities.

Consideration should be given to establishing graduated licensing systems based on past practice combined with associational self-regulation, following a commonly-agreed code of compliance.

For resource user groups, consideration should be given to establishing *graduated licensing systems* wherein operators with higher level designations (based on past practice) would be subject to decreasing levels of regulatory oversight. The higher the license, the lower would be the level of planning and paperwork. However, failures to achieve agreed performance objectives would be penalized, including through a reduction in the level of license. This sort of system could be combined with a*ssociational self-*

MODELS
Port Lameron Harbour, Joint Forest Management (India), Forest User Groups (Nepal)

regulation wherein industry associations or user groups monitor their own members within a code of compliance developed by their members, and incorporated into licensing agreements under the Management Authority.

The affected public, and trustees, should also be accorded enforcement capabilities. Here again, innovative design is desired. For example, individual prosecutions might be initiated by private citizens who could then be entitled to a proportion of any fines assessed, a form of market-based, and privatized, regulation. This would encourage the development of private enforcement that could supplement self-regulation. Citizen authority would also extend to seeking a review of management decisions. As well, the CMA and its trustees would have extensive monitoring and enforcement authority.

The trustees are NOT responsible for hands-on management of trust lands and resources, but rather for stewardship of the trust. Both citizens and trustees might have recourse to a specialized, administrative tribunal mandated to fulfill the purposes of the legislation and designed to develop an on-going "best practices jurisprudence".

Their role here would NOT be as hands-on managers (which would occur through the resource user groups), but as stewards of the trust. Both citizens and trustees might have recourse to a specialized, administrative tribunal that was mandated to fulfill the purposes of the legislation through the implementation of the management principles. It would be designed to develop an on-going "best practices jurisprudence" that would provide greater certainty and guidance to future users and resource activities. Recourse to the court system, and enforcement by the settlors (Crown and First Nations) would be circumscribed to function largely as a subsequent process where the licensees, industry associations, citizens and trustees are not successful.

FIGURE 8.1 **Hierarchy of Accountability**

9 IMPLEMENTATION

This chapter addresses a number of important implementation issues, such as those related to the economic impact of the model, how it would affect existing tenure holders, and what sort of policy measures could be introduced to support the creation of community ecosystem trusts.

9.1 ASSESSING THE ECONOMIC COSTS AND BENEFITS

In the quest to develop sustainability, institutional resistance is a major impediment. So too is overcoming the direct and immediate economic difficulties caused by reducing one's dependence on unsustainable practices. As noted, the proposed legislation will reduce these economic obstacles by focusing on a limited number of communities and ecosystems where experimentation and refinement can take place, without widespread disruptive effects. This experience will allow on-going assessment of the trust process, while it spawns innovative policy tools to continuously adapt that process. In this light, it is not possible to assess the "economic impact" of the proposed legislation since tangible impacts would only occur with the implementation of individual trusts.

In the short term, developing sustainability would entail a drop in the level of resource extraction and an increase in the costs of operation. However, the benefits of the implementation of new ecosystem-based resource practices would be felt quickly. Given the performance-based approach, regulatory costs for innovative operators would fall dramatically. Entrepreneurial activities would increase in this "de-regulated" environment where space is also being made available for new, non-industrial businesses. With increased resource costs, the drive to add value would increase dramatically in these trust areas, especially where larger policy changes facilitated access to these resources by new businesses. As the Harvard economist, Michael Porter, reported to the federal government in his much noted study on Canadian productivity (1991), restrictive regulatory regimes can encourage productivity gains by forcing industry to *anticipate* changes that are on the horizon, and thus be ahead of less responsive competitors. This lesson applies directly to this legislation.

Correcting unsustainable resource practices requires us to "get the prices right." The failure to do this characterizes the recent histories of BC fisheries and forestry. But it is also a common problem with virtually all natural resources as a result of an embedded pattern of focusing only on the supply side (i.e., getting more resources cheaply) rather than on managing demand (i.e., getting more benefits from fewer resources). It is reflected in everything from urban transportation systems (based on cheap gas) and architecture (based on cheap electricity), to forestry (based on low cost clearcutting), fisheries (based on non-selective gear) and agriculture (with its reliance on cheap fertilizer and pesticide inputs). Where communities have neither private nor common property rights in the resource base, the incentive to get full value for resource extraction and to implement long-term planning do not exist.

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Correcting unsustainable resource practices requires us to "get the prices right." Where communities have neither private nor common property rights in the resource base, the incentive to get full value for resource extraction and to implement long-term planning do not exist.

Under the trust regime, the system of incentives and prices would change radically. To develop sustainability, the underlying mechanism for the determination of resource prices would be to utilize market forces to require the internalization of the full costs of production, particularly through certification schemes that differentiate between products according to how they are produced. In addition, under a trust arrangement, resource charges would increase with the intensity of exploitation and the negative impacts associated with intensive exploitation practices. The introduction of differential charges would increase the costs of industrial practices in comparison with less intensive, selective practices. Because the ecosystem approach is already internalizing costs that the industrial practitioner externalizes, the differential would tend to level the playing field.

The distribution of resource revenues would also change under an ecosystem trust to ensure that a significant proportion was retained by the community; these revenues would go to cover the costs of public management and for reinvestment in the land.

The distribution of resource revenues would also change under an ecosystem trust to ensure that a significant proportion was retained by the community. These revenues, whatever they might be, would go to cover the costs of public management, and for reinvestment in the land. The community could negotiate with the provincial government for a higher level of retention in exchange for taking over agreed functions from Victoria. In this regard, where the costs of planning, management and enforcement for central governments drop, the savings should be passed on to the community for local use.

Today, conventional wisdom asserts that the provincial economy could not sustain the sort of shift being envisioned here, certainly not on a province-wide basis. The ecosystem trust proposal addresses this concern through its experimental, adaptive, and gradualist design. By beginning with a few trust initiators, the benefits of reducing impacts while encouraging higher value production and community diversification can be assessed. There is no time to waste in beginning this experimentation.

With the availability of cheap resources declining worldwide, those that adapt early will be better positioned to respond to emerging historical pressures. There is much to learn. For example, as practitioners of community-based economic development have long demonstrated, wealth can be enhanced by increasing the multiplier effect through simple mechanisms that keep money re-circulating at the local level. Economic diversification through multiple uses of the resource base and the creation of many small business supports this process. On the one hand, the creation of the ecosystem trust should reduce the "perverse subsidies" that erode the resource base (see Sizer 2000); on the other hand, it should increase the development of other wealth-producing institutions that maintain it. This is the only basis on which ecologically-based economic innovation can occur.

9.2 EXISTING PROPERTY INTERESTS AND COMPENSATION

Concern for the impact on existing property interests—and the attendant implications for compensation—is everywhere the major impediment to the progressive reform of land tenure systems.

Concern for the impact on existing property interests (and the attendant implications for compensation) is everywhere the major impediment to the progressive reform of land tenure systems. This is so whether one is addressing family agricultural holdings in the Philippines or corporate Tree Farm Licences in British Columbia. In the United States where property rights are recognized in the constitution, the doctrine of "regulatory takings" attaches obligations of compensation where public regulatory changes have a serious negative impact on private property values. This is also a concern under the North American Free Trade Agreement (NAFTA) where an obligation of compensation attaches to some regulatory changes that negatively affect the property

interests of American and Mexican corporations.

In this situation, the pecuniary perspective of self-interested property owners is easily understood. From the community perspective, however, a public ability to restrict private activities is required to respond to changing economic circumstances, and to give effect to emerging social values and necessities. A need for flexibility is evident, for example, where a municipality wants to create new zoning restrictions to control urban sprawl, or where an environmental agency wants to reduce pollution from industrial activities. As well, it might be noted that the ability of public bodies to tax *increases* in land values that result from regulatory relaxation is rarely discussed.

In the implementation of the *CETFA*, this question of private property rights and compensation will need to be addressed. In the Canadian context, it is certainly possible to restrict existing property interests without conferring a right of compensation (there is no "takings" rule or constitutional protection for property interests in Canada), but consideration must be given both to NAFTA for foreign corporations, and to the political effect of a widespread impact on corporate holdings. This situation can be addressed in a number of ways.

The design of the proposed legislation mitigates impacts on existing rights, and would not require the replacement of existing tenures. It would, however, allow communities to establish a higher level of performance for tenure holders.

First, the design of the proposed legislation mitigates impacts on existing rights. Indeed, passage of the legislation has no impact; this would occur only with the establishment of an individual ecosystem trust. In this regard, a comparison of potential impacts may be a consideration in making choices for initial trusts. Second, however, even the establishment of individual trusts would not require the replacement of existing tenures but, as with the Forest Practices Code, simply a higher level of performance. This performance would be imposed, on a non-discriminatory basis, on all tenures for all resources uses within the ecosystem trust boundaries. Moreover, because the trust designation is open to all communities, Crown lands and waters in the province, no area is being treated specially.

Third, unlike expropriation of land ownership, imposing a higher standard on contractual rights (such as licensees with fish and timber quotas) might be justified within the terms of the contract and the legislative scheme under which the contract was concluded. This is especially so where the changes both reflect emerging scientific understandings of what measures are necessary to achieve environmental sustainability and are within the normal management powers of the relevant public authorities. The recently articulated judicial requirement for the Crown to meet the priority needs of First Nations (which could affect exploitation levels) should also factor significantly in assessing the new standards being imposed on outstanding contractual agreements.

Finally, where compensation is to be paid, the level of compensation is subject to negotiation, and any monies paid might be raised through surcharges on continuing industrial resource uses outside the trust area. In fact, where this is done through higher fishing license fees or a differential stumpage system, it will be to begin to equalize costs between trust users (who are "internalizing" environmental costs through their operations) and non-trust industrial users (who are not doing so, but are continuing to externalize these costs). Leveling the playing field in this manner is good public policy from both an environmental and an economic perspective.

The issue of compensation for resource tenure holders in British Columbia has been examined by a number of commissions and independent studies. Box 9.1 describes some of the findings and recommendations from these investigations.

BOX 9.1: RECOMMENDATIONS FOR COMPENSATION OF RESOURCE TENURE HOLDERS

A number of reports have made recommendations regarding compensation of resource tenure holders in British Columbia. These include the following:

- The 1976 Royal Commission on forestry recommended that the provincial government amend legislation to allow government to take back 10 percent of annual logging quota from licensees every five years, without paying compensation. This was judged necessary to " preserve the Crown's flexibility to reallocate timber and redefine rights over time, to meet changing industrial needs and public priorities" (Pearse 1976).
- In 1992, Dr. Richard Schwindt's *Report of the Commission of Inquiry into Compensation for the Taking of Resource Interests* echoed the recommendation of the 1976 Royal Commission, calling on government to make licences subject to a non-compensable 10 percent reduction every five years (Schwindt 1992).
- In 1999, the Perry Report on the *MacMillan Bloedel Parks Settlement Agreement* recommended that the Province develop a clear and transparent policy "in order to determine the amount of compensation payable in any particular resource tenure changes. This would be of benefit both to resource holders and to members of the public in evaluating changes in tenure arising from park creation or from settlement of Treaties with First Nations" (Perry 1999).

Building on Schwindt's report, Greg McDade's *Report on Compensation Issues Concerning Protected Areas* (1993) suggested that a provincial compensation policy should reflect the following principles:

- There should be no compensation for the value of standing timber on Crown land. It is clear, by law, that trees belong to the Crown until they are harvested;
- Compensation should be granted only for vested rights. In general, only approved Cutting Permits give a vested right to harvest specific timber;
- Where a right to compensation is established, any damage to public resources caused by the tenure holder shall be evaluated and deducted from the compensation amount;
- Compensation policy should not take into account any portion of the Allowable Annual Cut that exceeds the Long Term Harvest Level for a given area; and
- Compensation for investments and assets should be limited to the term of the existing tenure (i.e., do not assume replacement of existing tenures).

9.3 RELATED POLICY INITIATIVES

It is beyond the scope of this report to address measures external to the proposed legislative framework. Nevertheless, a variety of such possible measures do provide the larger strategic context for the proposed legislation. At one end of the spectrum, it is desirable to establish a variety of mitigation schemes for both communities and workers negatively affected by the creation of a trust. At the other end of the policy spectrum, it is also desirable to establish a variety of instruments that will facilitate the success of those communities, workers, and industries that are engaged with activities within the ecosystem trust boundaries. Such instruments include:

- "tax-shifting" mechanisms that can provide favourable tax conditions for trust lands, workers, industries and activities;
- economic development mechanisms (such as loan funds) to facilitate innovative business development; and
- an international "eco-certification" strategy whereby trust products are certified at the highest level possible in order to develop a unique niche market (the market potential of each proposed trust being assessed in light of this potential).

An extensive review of such initiatives is needed as a complement to the consideration this proposal.

9.4 GETTING FROM HERE TO THERE: OPPORTUNITIES FOR ACCOMMODATING CHANGE

During the 1990s, British Columbians have witnessed an unprecedented number of major land use and resource management policy initiatives, including the treaty process, the CORE regional planning process, the Protected Areas Strategy, the Old Growth Strategy, the Timber Supply Review, and LRMPs. For the reasons pointed out elsewhere in this report these processes have generally led to incremental improvements in land and resources stewardship but have failed to address the root causes of unsustainability that continue to plague most rural communities. Nonetheless, the lessons learned and the capacity developed within government and civil society to tackle complex issues through multi-stakeholder group processes is an impressive legacy of these processes, one that exists in few other jurisdictions in the world.

The legacy of expertise and experience found in individuals and institutions throughout the province is a strong foundation on which to build the next phase of sustainability through mechanisms such as the community ecosystem trust. Many of the same individuals and organizations that have dedicated years of their lives to participating in CORE regional planning processes, land and resource management planning processes, treaty processes, and other initiatives are the logical leaders needed to make community ecosystem trusts a reality. Indeed, the concept of the community ecosystem trust is a logical extension of the groundwork that has been done to date by many people and organizations.

The "process veterans" of the province have learned how to work together to resolve differences and to find the common good. They have learned many of the technical planning tools of land and resource management and the interpersonal skills necessary to make complex group processes work. But they have also learned the limitations of what they have been able to achieve in the way of ecological and community sustainability. And they know that they have fallen short of their goals because of the constraints imposed on them by the limited vision and scope of these processes.

The key opportunity that lies ahead is to reinvigorate and channel the energy, skills and commitment of key individuals and groups towards new models of governance and stewardship that are not limited at the outset by a "constrained maximization" paradigm of land and resource management and a fixed view of how to resolve key issues such as Aboriginal rights and title. If government loosens the reins and allows communities and stakeholders to experiment with what is possible outside of the box of the existing regulatory, policy and industrial paradigm, innovative solutions will emerge. The community ecosystem trust model embodies this philosophy. It sets out

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the parameters of a process that will enable the most progressive communities – those that have learned the most and gone the furthest in past processes – to go one step further towards true sustainability in a collaborative and supportive way. Their learning and experimentation will provide a path for others to follow.

A practical example of the opportunity for positive change is through the LRMP processes. Expanding the scope of these processes to address opportunities for First Nations interim measures agreements – as has been done on the Central Coast through an important protocol agreement– provides a reason for First Nations to engage rather than shun these processes. The full engagement of First Nations in these processes will be a positive step forward, resulting in a new dialogue where first peoples' enormously rich understanding of the land and how to sustain it (as well as their cultural foundation embodying many of the principles of sustainability) is brought forward. There is much that the rest of BC society could learn by listening carefully to what First Nations have to say about how to sustain land and communities, but this dialogue and relationship building is not occurring at the community level in BC because First Nations see no opportunity through processes such as LRMPs to address their fundamental issues of resolving Aboriginal rights and title. If land stewardship and interim measures agreements were both being addressed through community-based land use planning, there would be much more room for a rich dialogue to occur and for innovative solutions to be found at the community level.

Expanding the scope of the LRMP process to address opportunities for First Nations interim measures agreements provides a reason for First Nations to engage rather than shun these processes.

A second example of how LRMPs could be used as a stepping stone to sustainability and the community trust ideal is to further expand the scope of these processes to address fundamental issues such as the allowable annual cut (AAC) determination and other harvest regulation, which is currently determined through the Timber Supply Review Process. These important decisions of resource extraction levels are largely determined within government bureaucracies, rather than in a community-based forum where the impacts are felt most acutely. For example, the remarkable level of community consensus achieved through the Islands Community Stability Initiative (ICSI) in Haida Gwaii between the Haida and non-native communities on the islands stemmed from the realization of how dramatically overcut the Islands' forests were as revealed in the first Timber Supply Review. For the first time, a broad cross section of the community recognized the difficult circumstances facing them all as a result of past harvesting activities and the imperative for them to have more say in how these decisions are made. The community ecosystem trust concept is the logical step in providing a mechanism for finding solutions to difficult resource allocation decisions facing many rural communities.

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The recent agreements between First Nations, progressive forest companies, environmental groups, local communities and government on the Central Coast of British Columbia shows the potential for a breakthrough when the parameters of land planning are opened up and people are free to explore truly innovative solutions to long-standing ecological and community challenges. Through the protocol agreement, a new avenue now exists (at least on the BC coast) for significant innovation. Indeed, the Central Coast provides a ready testing ground for the community ecosystem trust model. There are also several other places in the province where the model could be tested, where communities are already working well together and are looking for innovative solutions. In addressing the question of First Nations title, interim measures agreements may be particularly helpful tools in testing the trust arrangement. We are

convinced that where a "way" is provided, the willingness to engage the process and find solutions will quickly be found. The community ecosystem trust represents such a "way" forward.

10 CONCLUSION & RECOMMENDATIONS

In light of the inability of existing regulatory and market mechanisms to develop either economic or ecological sustainability, incremental reforms are not enough. If sustainability is to develop, new institutional and legal arrangements are needed that reduce the inherent conflict between environmental protection and resource use and that facilitate reconciliation between native and non-native interests in this province. At the same time, these arrangements must not create new and burdensome regulatory or administrative obligations on communities and enterprises. The community ecosystem trust represents an innovative and comprehensive vehicle to address concerns about sustainability, community development, and achieve accommodation with First Nations.

Given the pressing need for system innovation in the natural resource sector, the authors of this report recommend:

- **that the Province support the further development of the community ecosystem trust model and its implementation.**

  To do this, we recommend that the Province take the following steps:

- **provide funding for the organization of a provincial workshop to further develop the community ecosystem trust model. This workshop should bring together key representatives of relevant groups and agencies to discuss the trust model and help develop a strategy for the implementation and testing of the model.**
- **establish an independent and community-governed foundation to support the development and implementation of the community ecosystem trust model. This foundation should be provided with sufficient funding to carry out its mandate. Key objectives of the foundation are:**
  - **at the outset, to support consultation with key representatives and sectors to promote and refine the model;**
  - **to support the development of a provincial and federal implementation strategy including, where applicable, the creation of enabling legislation (*the Community Ecosystem Trust Facilitation Act*);**
  - **to support development of the Provincial Ecosystem Trust Charter;**
  - **to support implementation of the community ecosystem trust in selected communities; and**
  - **after implementation, to support periodic evaluation of the model and recommend modifications required to ensure its ongoing successful implementation.**

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