LEGISLATING BRITISH COLUMBIA: A HISTORY OF B.C. LAND LAW, 1858–1978

by

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LL.B., University of Victoria, 1994
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A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE DEGREE OF
MASTER OF LAWS

in

THE FACULTY OF GRADUATE STUDIES

THE UNIVERSITY OF BRITISH COLUMBIA

October, 2007

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Abstract

Almost all of British Columbia, 95%, is public land, managed by the B.C. government. This “95/5 split” is unique in the industrialized world. Public land, in its use for forestry, oil and gas, mining, tourism, and agriculture, remains the foundation of the B.C. economy. It has also come to define how the people of British Columbia see themselves as a society. But when did land become so much a part of British Columbia’s identity? How is it that so much of British Columbia remains public? What does the high proportion of public land tell us about the role of the government? Why does land continue to have such an important role in this modern society? And what role does law play in the relationship among society, the economy, land, and government?

With these questions as its starting point, this thesis offers a history of British Columbia through the lens of legislation for the allocation of land. The period covered, 1858-1978, enables the study of the two major periods of transition in land law, and of the continuity between them. Those periods are the establishment of colonial land legislation, from 1858-1871, and the upheaval of those laws, from 1965-1978, ending just before the era of provincial land-use planning. A close study of these two periods, and of the themes apparent in the changes to the legal regime between 1871-1965, allows the thesis to ask questions about the role of law itself: Is law merely a tool of economic and political actors, or does it play an instrumental role of its own in structuring society? This thesis argues that, in the context of B.C. land legislation, law does play such a role, and considers the implications of this conclusion for those, such as environmentalists, seeking to change society.
# Table of Contents

Abstract .................................................................................................................................................. ii
Table of Contents ..................................................................................................................................... iii
Acknowledgements ................................................................................................................................. iv
Chapter 1 - Introduction ......................................................................................................................... 1
Chapter 2 - Colonial Origins of B.C. Land Law ....................................................................................... 11
   Part 1 — Empire and land ....................................................................................................................... 12
      (1) Objectives of colonization ........................................................................................................... 12
      (2) Theories of economy, property, and state ................................................................................... 14
      (3) Colonial land policy for Canada ................................................................................................. 17
   Part 2 — Colonial British Columbia: The Golden Mean(s) to a New Society ..................................... 22
      (1) Land policy, 1858-64: reactive and proactive assertions of authority ....................................... 25
      (2) "Extending the vision: excluding "Aborigines"; including minerals ............................................. 46
   Conclusion ............................................................................................................................................ 57
Chapter 3 - Government of the Economy ............................................................................................... 61
   Part 1 — Developing a Province ........................................................................................................... 63
   Part 2 — From Allocation to Administration ....................................................................................... 82
      (1) From rudimentary classification to (fitful) research and analysis .............................................. 83
      (2) Intervening in land and the economy ......................................................................................... 87
      (3) Developing resources becomes developing economy ................................................................. 92
      (4) Conservation — of resources, not nature — takes root in forest(ry) ........................................... 99
      (5) Provincial park reserves: recreating the vision for land? ......................................................... 111
   Conclusion ............................................................................................................................................ 122
Chapter 4 - Environmentalism & Law, 1965-1978 ................................................................................. 123
   Part 1 — "Environmental Law" ......................................................................................................... 126
      (1) Parks, plans, and pollution: protecting the use of land ............................................................. 126
      (2) Land Act, 1970: updating the allocation statute ........................................................................ 134
      (3) "Environment" enters the lexicon .............................................................................................. 137
      (4) Language of environment, context of development ................................................................. 140
      (5) "orders respecting the environment" ........................................................................................ 146
      (6) Land protection statutes: the belt and reserves approach ......................................................... 151
      (7) Foreshadowing the 1980s: making the Province a forest ......................................................... 158
   Part 2 — From Administration to Management ................................................................................. 163
      (1) Committing to co-ordination .................................................................................................... 164
      (2) The Secretariat: "Junior, youthful" zeal amid the dirt departments ......................................... 174
      (3) A Department of (not for) the Environment ............................................................................. 191
   Part 3 — Environmental activism and land law ................................................................................... 195
      (1) Roots of pressure: conservation and recreation ....................................................................... 196
      (2) Conflict catalyses the pressures for change .............................................................................. 203
   Conclusion ............................................................................................................................................ 211
Chapter 5 - Conclusion: The Role of Law ............................................................................................. 212
Bibliography ............................................................................................................................................ 221
Appendix — Research Ethics Certificate ............................................................................................... 243
Acknowledgements

They say writing is a lonely act, that you are on your own, with no one to help you. I am happy to report that in my case this was not true. In the preparation of this thesis I spent a good deal of time locked away in my office or in the library researching, writing, and researching some more. But I had help. Most particularly, I thank my supervisor Dr Douglas Harris, who helped me to find my way into my subject, enabled me to work through it more thoughtfully, and generously gave of his time and editorial wisdom in commenting on my final. And I thank Dr Natasha Affolder, who has inspired me with her passion for land law and activism, and who provided me with just the right advice to steer the thesis through the final editing stage. I am grateful to Dr Wesley Pue and Joanne Chung for creating such an inspiring and supportive graduate program at UBC Law School, and to Catherine Dauvergne for her support when events threw me off schedule—and off my bicycle. Speaking of schedule, I should acknowledge my cat, Carmina, whose preferred place to sit probably delayed the completion of this thesis by a considerable period of time, but whose calming influence was worth the delay.

The experts I interviewed have given me a wealth of material to think about and work with in this and future projects. I think them for their generosity, knowledge, and enthusiasm.

For many reasons, my most heartfelt acknowledgement goes to Jennifer Butler, who inspired me to pursue graduate studies, continues to inspire me in ways beyond number, and went so far out of her way to ensure that the writing of this thesis was not a lonely experience that she married me in the middle of it.
Chapter 1 - Introduction

A remarkable feature of the Canadian Province of British Columbia is its unusually high proportion of public land. Only five per cent of British Columbia’s land is privately owned. Most of that land is in the cities and towns, which are themselves concentrated in the southern third, and especially the south-western corner, of the Province. One per cent is federal land, which includes all the Indian Reserves in the Province. Ninety-four per cent belongs to the provincial government. The “95/5 split,” as some call it, is almost unique in the industrialized world. These public lands are the foundation of a provincial economy in which many of the major industries—in both revenue-creation and political capital—are still...

1 In this thesis, I use “B.C.” as an adjective, and interchangeably use “British Columbia” and “Province” as nouns. General references to provinces will be in lower case, as will be the general reference to the colonial or provincial, or federal Canadian government as the “crown.”
2 This figure excludes federal parks. Parks remain provincial land, but the B.C. government transfers management of those lands to Canada under an instrument called a Transfer of Administration and Control.
3 British Columbia. Ministry of Environment, Lands and Parks, British Columbia Land Statistics (Victoria: Ministry of Environment, Lands and Parks, 1996) at 7 [Crown Land Statistics]. This figure includes the 1.9% of the province covered by water. Since the 1980s, the amount of Crown land has remained constant, with the government granting about the same amount as reverts to it, 11,000 hectares each year. Electronic mail message from Jeff Oulton, Business Analyst, Ministry of Agriculture and Lands (23 March 2006).
4 First Nations contest this “belonging.” To legally create British Columbia the colonial government had to displace First Nations from their traditional territories. Due to breakthroughs in the common law on aboriginal title to land, First Nations have legal claims on the ownership of land this thesis refers to as “crown land” or “public land.” Although chapter 2 does touch on the role of law in the displacement of First Nations, its focus is the legal regime the colonists brought, so it does not explore First Nations’ jurisdiction over land.
5 Parts of the western United States also have a significant portion of public land. Nevada has the highest percentage, with 83% federal land, followed by Alaska at 68%. The other two states with more than 60% government land are Utah (65%) and Idaho (62%). United States, Bureau of Land Management, “Table 1-3: Comparison of Federally Owned Land with Total Acreage of States” in Public Land Statistics 1999 (Washington, D.C.: United States, 1999), online: <http://www.blm.gov/natacq/pls99/99pl1-3.pdf>. While these numbers are also high, a smaller portion of those states is usable by industry. Nevada and Utah are dominated by desert, and Alaska’s northern climate makes much of its land unusable. British Columbia’s coastal forests, valleys, and interior plateaus support numerous industries, including forestry, tourism, ranching, agriculture, mining, and oil and gas extraction.
the "resource industries" such as oil and gas, energy, tourism, mining, and agriculture. But
the public lands have come to be the foundation for more than the economy. The mountains,
lakes, valleys, rivers, plateaus, and forests of British Columbia are bound up in the
Province's identity. Descriptions of British Columbia and of its major cities almost
invariably start with the beauty and bounty of its natural environment. And British
Columbians have become fiercely protective of "their" public lands. Land is central to what
British Columbia is as a society. But when did land become so much a part of British
Columbia's identity? How is it that so much of British Columbia remains public? What does
the high proportion of public land tell us about the role of the government in the economic
and social structure of the Province? Why does land continue to have such an important role
in the modern, technological society of British Columbia? And what role does law play in
the relationship among society, the economy, land, and government?

This thesis springs from these expansive questions, but does not attempt
comprehensive answers. Instead, it uses them as a backdrop for an exploration of B.C.
history, from its colonization to the 1970s, through a specific lens: provincial legislation for
allocating land. By choosing to study this history through law, and specifically legislation, I
am seeking to do two things. First, to tell a history that has not been told before, a history
that encompasses all the fields of land law in the Province, over 120 years of the Province's

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5 One measure of the importance of resource industries is the extent to which they dominate political debate in
the Province, which is why I have included agriculture, a relatively low-grossing industry, in this list. Another
measure is the revenue they generate and jobs they create. For the B.C. government's statistics on annual gross
domestic product by industry, see British Columbia, BC Stats, "The BC Economic Accounts", online:
<http://www.bcstats.gov.bc.ca/data/bus_stat/econ_acct.asp>. (Links to GDP figures since 1984 appear at the
bottom of the page, followed by a separate accounting of tourism revenues.) Even in the direct revenue these
accounts measure, the "resource industries" play a significant role. A more complicated calculation is of the
indirect role of the resource industries in the GDP of other sectors, such as financial and manufacturing. As
recently as the 1970s, economists estimated that one half of the provincial economy relied on the forest industry,
even though forestry itself generated a small percentage of the provincial gross domestic product. Estimating the
indirect contribution of resource industries to the provincial economy is, however, a contentious task, and is not
important to this thesis.
history. Second, to study, through this history, the specific role that law played in creating British Columbia, developing its resources and economy, and responding to scarcity and environmental challenges in the 1970s. Many writers have explored the above questions about British Columbia from various perspectives: political, geographical, anthropological, sociological, and economic. These studies have, however, usually focused on specific sectors, most often forestry, shorter time periods, such as the environmentalist era, or specific regions, such as the central and north coast. Few have focused on statutory law. Law tends to be treated as a mere tool of political and economic forces. So at the core of this thesis is the question: Has law played an instrumental role in shaping the economic and social history of British Columbia?

While this more theoretical question underlies my research, the thesis is primarily a work of legal history, and specifically, of statutory law. It is an exploration of a defined portion of British Columbia’s historical record: the establishment of land legislation in the 1860s, the subsequent elaboration and adaptation of the land laws, and then their disruption and transformation in the 1970s.

6 One of the few broader studies of land law in British Columbia is Robert E. Cail, Land, Man, and the Law: The Disposal of Crown Lands in British Columbia, 1871–1913 (Vancouver: University of British Columbia Press, 1974). This indispensable book understates its scope in the title, since it begins in the 1850s, but its nonetheless covers a shorter period of history. Its focus is also somewhat different, since it is a history of the allocation and regulation of land in British Columbia. I am focusing even more closely on the legislation, as I will discuss below.

7 Rather than giving an exhaustive list of these studies, I will cite one that I have found particularly useful. Jeremy Wilson, Talk and Log: Wilderness Politics in British Columbia, 1965–96 (Vancouver: University of British Columbia Press, 1998) [Wilson, Talk and Log]. Wilson’s study of the politics of forestry and wilderness protection is an exemplary work of political science, but by definition does not explore the questions of law in which I am interested. At some points in this chapter 4 I offer different interpretations from those in his book, I do not mean to suggest I am correcting error. Rather, I am offering another perspective on a subject no one discipline can fully explain. My conclusions differ only in the way that objects seen through a prism look different from alternative angles.
Research method

My intention in researching this thesis was to learn more about the land laws that remain such a site of conflict among government, First Nations, industry, environmentalists, and all those who do not fit into one of these groups, but still feel strongly about the role of land use and law in the British Columbia. The broad scope of this thesis inevitably means that the research produced many questions that open fruitful avenues for future research. Likewise, the narrow lens of legislation means that some of the conclusions I do reach will require further study, testing, and revision. As with any history covering a long period of time, this thesis is meant as an academic “nurse log,” from which many future research projects have already begun to grow.8

I began my research with an initial survey of the secondary literature on land and government in British Columbia, primarily texts by historians, political scientists, sociologists, and activists. My original intention was to concentrate on the land-use conflicts of the last thirty or forty years, and, more specifically, on the tactics of the nascent land reform movement in British Columbia. This research led me to recognize that I could not begin to understand the subject without going back further. Each step into the earlier history of British Columbia only led me further, until I reached British Columbia’s beginning—in the colonial sense—and realized the proper starting place was the legislation itself.

Having completed a partial literature survey, I focused the largest phase of my research on primary sources, the colonial and provincial statutes related to land use. I worked through them to outline the foundations and expansion of the legal regime for selling and

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8 A nurse log is a tree that has fallen in the forest and begun to break down, providing fertile material for new flora and fauna, but particularly new seedlings. From one tree, then, may grow several new trees and shrubs. For example, chapter 3 identifies the seeds of a change in the function of government from an allocator of land to private enterprise toward a more interventionist role as a researcher, subsidizer, and regulator of industry seem to lie in the agricultural statutes the government passed in something of a rush in the 1890s, along with an earlier statute enabling agricultural societies. Further study of the effect of these statutes would, I believe, be fruitful.
licensing the use of land. In choosing the laws to study, I also defined the scope of my thesis to include "land" in a complete sense, including all that we now encompass under the rubric "land and resources": the land and water of the Province, including the minerals, flora, and fauna. This required the study of a large number of statutes that grow increasingly long and complex over the course of the Province's history. To better understand the context of these laws as well as their use in practice, I returned to the secondary literature on various industries, as well as government records, including policy documents, studies, and reports such as those of the four commissions on forestry in British Columbia. In addition to the literature and records, I have referred to the Hansard reports of Legislative debates, for their insights into the legislation created since the 1970s. Finally, to obtain a more direct history of land law, I began an interview project.

The interview project was focused mostly on the history of land laws since the 1970s. I adopted the qualitative method, using the "snowballing" technique of identifying interview subjects—that is, asking each interviewee to suggest others knowledgeable in relevant areas of my research. Most of my 17 interview subjects worked for the B.C. government, many of them starting in the early 1970s. I sought subjects whose experience bridged the period from the 1970s through the 2000s. The primary goal of the interviews was to help me understand the legal and institutional history of this period, to identify details relevant to my focus on law, and to find connections among those details that might not appear in the written record. The interviews also helped me to identify relevant documents, laws, and bills I had not otherwise found, and to understand the role they played in practice.

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9 The Hansard reports are available in print for the period starting in 1972. Due to the recent discovery of audio recordings of debates in the Legislature from 1970 and 1971, the online version of Hansard also includes the years 1970 and 1971. Since I argue that British Columbia passed its first truly "environmental" statute in 1971, the online Hansard has been invaluable. For the main Hansard Website, which allows users to search the full text of the transcripts, and offers indexing by topic and by bill, see online: <http://www.leg.bc.ca/hansard/> Previous sessions, since 1970, are online: <http://www.leg.bc.ca/hansard/8-9.htm>.
As the research progressed, I limited the thesis to the 120 years from 1858-1978. The thesis therefore covers the two major periods of transition in land law: the establishment of colonial land laws, from 1858-1871, when British Columbia became a province, and a period of transformation and upheaval of these laws, from 1965-1978, ending with the new Forest Act, just before the era of provincial land-use planning. By 1978, the definition of “land law” became more complex. Instead of allocating land for certain purposes according to set rules, the government began to “manage” land and write policies to guide bureaucrats in making decisions about land use. At the same time, a series of land-use planning projects began that became interwoven with the environmentalist “wars in the woods” of the 1980s and 1990s. These policies and plans are different in character and operation from legislation, but in practice they are inseparable from the statutory rules for land use. It became evident during my research that the recent history of land law was a separate project, for which this thesis will provide a foundation. Separating the last thirty years into a separate project has meant that I use the interviews sparingly. Nonetheless, they provided me with invaluable insights into the older history of land use and land law, and will inform the history of the modern planning era that I intend to write as a companion to this thesis.

I have not used two significant and important sources in this project: the provincial archives and the body of case law involving disputes over specific land-use matters. The broad scope of this thesis alone makes thorough archival research impractical in the context of a master’s thesis. Moreover, expanding the research materials to include these sources would have inevitably diminished my analysis of the legislation itself, especially in the periods on which I concentrate in chapters 2 and 4. This thesis is primarily about statutory law. The legislation is the bricks of this thesis; my other sources were the mortar.
Outline of thesis

This introduction has already alluded to the structure and some of the conclusions of the thesis. Chapter 2 starts with the colonial policies that formed the first land laws. The colonists had a vision of the west coast of North America as a waste land. The instrument for converting that waste into a productive asset and a new British society was law, and statutory land law in particular. The explicit goal was not only to establish a source of income for the United Kingdom, but to create a new society, one with a capitalist economy and a class system of landowners and labourers, but with more social mobility than in England. The chapter studies the series of laws passed during the colonial years from 1858 to 1871, considering how they pursue this model for a new society, and how they adapt to the physical and social environment of this far-flung territory. It does so by setting out a detailed record of the laws, and studying the policies underlying them.

Chapter 3 examines the land laws after British Columbia joined the Canadian confederation, but more broadly, considering the trends and themes of the laws more than the details. Part 1 focuses on the government’s development of the colonial land laws and of land bureaucracy, tracing how the model established in the 1860s carried through into the twentieth century. It also hints at how the statutes reinforced this model and the colonial assumptions that underlay it. Part 2 steps back from the details to focus on several themes that emerge from the legislation and from the institutions established by that legislation: departments and bureaus responsible for selling, leasing, and licensing the use of land and the extraction of its minerals, trees, fish, and wildlife. First, there was a shift of the “departments of dirt” from a simple allocative role to one of gathering and disseminating information about land and industry. Second, the laws foreshadowed an interventionist government’s role as a supporter of industry and its regulator. This analysis leads to another
interesting shift of government's role, in the middle of the twentieth century, from an
allocator and supporter of private enterprise, to a developer of land and regulator of
industry. The chapter concludes with two case studies that draw these themes together, and
introduce the interrelated themes of conservation, recreation, and preservation that helped
to establish the conditions for social changes in the 1960s, and the conflicts in the thirteen
years from 1965-1978.

Chapter 4 mirrors chapter 2, giving a close reading of a 13-year period in the history of
the land laws. Part 1 considers the first appearance of a more preservationist strain in the
land laws, and then studies what I have concluded were the first environmental laws in
British Columbia, a pair of statutes from 1971 that first introduced the word "environment"
to land legislation. These and other statutes of the period appeared to transform the
Province's land laws, but part 1 questions the extent of change. Part 2 turns to the
departments responsible for the laws. It identifies the growth of institutional practices,
particularly in the creation of policy, discretionary decision-making authority based on
policy, and the growth of co-ordination and planning as functions of the dirt departments.
The section focuses on the Environment and Land Use Committee, a cabinet committee
created to deal with land disputes, and its Secretariat. Part 3 broadens this analysis,
considering the pressures that led to the changes of the 1970s in the laws, and in the
relationship among government, industry, and the emerging environmental movement.
Most of all, this section considers the role of law in responding to the conflicts and pressure
for change, and the way that activists turned to law in an attempt to reinvent British
Columbia's economy and society.

The thesis concludes by returning to the question of whether land law played an
instrumental role in shaping land use in the 1970s and reinforcing the colonial vision that
first formed the land laws. It tests the hypothesis that law plays such a role by connecting the changes that occurred in land law in the 1970s with the subsequent history of environmental conflict in British Columbia, and concludes that the land laws do appear to have had an instrumental role that continues today. The thesis concludes with a brief consideration of what this conclusion means for those who wish to change the relationship between British Columbian society and the environment.

A note on the title

The title of this thesis is *Legislating British Columbia*. A reader might object that these three words overstate the subject, but I have chosen them deliberately. It is my contention that James Douglas and his successors set out to create a society from and on land that the colonial mind viewed as a blank slate. In the 1850s and 1860s, Britain moved law onto the land, to use the Latin origins of the word “legislate”: to “move” (propose) “law”\(^1\) To play on that word further, the colonial authorities set out to build a new society, applying law, *lex*, to the blank *slate* that was British Columbia and Vancouver Island.

Colonial policy viewed the land, water, trees, plants, minerals, wildlife, and insects, not to mention the human inhabitants, of what is now British Columbia as waste land. The land and all its elements had no meaning to the colonists until they were reinvented as productive resources for the construction of a new society. The government recreated land through law—specifically, through legislation. This thesis considers how they did so, and what effect their edifice of law continued to have, one century later, when the Province was attempting to redefine its relationship to land. It is unlikely that a majority, or even a

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\(^1\) The word “legislate” comes to us the fifteenth-century word “legislator,” which meant mover (proposer) of law. The word, unsurprisingly, comprises two Latin words: *legis*, derived from *lex*, meaning “law,” and *lator*, meaning “mover.” Chantrell, Glynnis, ed., *The Oxford Dictionary of Word Histories* (Oxford: Oxford University Press, 2002), s.v. “legislator” [Chantrell, Oxford Word Histories, supra note 10, s.v.].
significant number, of British Columbians still hold this view of land as our own creation, at
least consciously. But it is woven into the social, economic, and political fabric of the society
with the pervasive thread of law.
Chapter 2 - Colonial Origins of B.C. Land Law

There was a time in this fair land when the railroad did not run:
when the wild, majestic mountains stood alone against the sun.
Long before the white man, and long before the wheel:
when the green, dark forest was too silent to be real.\(^{11}\)

Land law, and, to foreshadow a term that appears in chapter 4, land management did not arrive in British Columbia with the fur traders. Nor did they first appear in 1849, when England granted Vancouver Island to the Hudson's Bay Company as a proprietary colony, with the condition that the company settle the island. Land law and management go back centuries before, in the practices of the First Nations who inhabited the land now called British Columbia.

Indeed, one can argue that the systems of rules the First Nations used for managing land use were more formal and sophisticated than those of the colonial and then provincial government of British Columbia, at least until the 1970s. The First Nations' practices included what today we call land stewardship: studying the responses of the natural world to human use; taking inventory of the lands and their bounty of flora and fauna; taking the

capacity of the land into account when deciding how to use it, how to live on it. Some today argue persuasively that British Columbia is still far behind the pre-contact First Nations in this approach to land management, and should attempt to incorporate native land systems through co-management arrangements.

I will not take up that complex debate. Rather, I identify this backdrop of native land management as the state—so to speak—that existed before British Columbia’s first intensive transition in land law: from native to colonial. The focus of this chapter is therefore on the arrival of the settler society’s land policies, how they became law, and how the law and those policies responded to the land they were meant to transform. The story of these policies starts with changes in English colonial policy before the settlement of British Columbia.

Part 1 — Empire and land

(1) Objectives of colonization

By the time Great Britain created the colony of British Columbia, in 1858, the British empire was pursuing a new imperative: the settlement of its growing population. Settlement had become a goal of the British empire less than 30 years earlier. Until the nineteenth century, imperialism had four interconnected goals: increasing the wealth of the imperial

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12 This thesis does not examine these systems. The Nuu-chah-nulth nations on the west coast of Vancouver Island had a comprehensive system of land governance, called “huhalthi” (my transcription), which in current jargon we might describe as a holistic system for living on and using land. Other First Nations had similar systems. For an ethnography of the Gitxsan peoples and their relationship with the land, including some indications of their land system, see Richard Daly, Our Box Was Full: An Ethnography for the Delgamuukw Plaintiffs (Vancouver: University of British Columbia Press, 2005), c. 7.

country through commerce;\textsuperscript{14} securing strategic military outposts to protect trade and commerce;\textsuperscript{15} fostering, in a Machiavellian sense, domestic unity through the home populace’s focus on empire;\textsuperscript{16} and pursuing metaphysical ideas of civilizing savage peoples and lands.\textsuperscript{17}

Colonization, in the sense of the settlement of people from the mother country, was not among the original objectives of imperialism.\textsuperscript{18} Even when England began to settle the new world in 1607, the purpose was to effect sovereignty over the new lands for traditional imperialist goals, rather than to pursue settlement as a goal in itself.\textsuperscript{19} Although the English colonies in North America grew rapidly, the English government did not have a specific plan for their settlement and growth, or even for the use of land in the colony. That situation

\textsuperscript{14} Wealth overlaps with political and military power, of course. Commerce included the creation of trade routes, the extraction of raw materials (e.g. furs) from the colonies, and, latterly, trade with the colonies. By the last quarter of the eighteenth century, the British colonies were England’s chief market, taking a third of the country’s exports. Arnold Toynbee, \textit{Lectures on the Industrial Revolution of the Eighteenth Century in England: Popular Addresses, Notes, and Other Fragments} (Toronto: Longmans, Green, 1927) at 34 [Industrial Revolution Lectures].


\textsuperscript{16} Anthony Pagden, \textit{Peoples and Empires: A Short History of European Migration, Exploration, and Conquest, from Greece to the Present} (Toronto: Random House, 2003) at 136 cites Machiavelli’s observation that Rome imploded in domestic conflict once it stopped expanding. He offers an anecdote about the power of empire as a uniting force at 30, a notion that is still attached to international conflict and domestic politics today.

\textsuperscript{17} I will discuss the Lockean influence on this thinking below. For a good summary of Europe’s moral justifications of imperialism and colonization, see Peter H. Russell, \textit{Recognizing Aboriginal Title: The Mabo Case and Indigenous Resistance to English-Settler Colonialism} (Toronto: University of Toronto Press, 2005) at 30-51, especially at 33-38.

\textsuperscript{18} Roger Scruton, \textit{A Dictionary of Political Thought}, 2nd ed. (London: Macmillan Press, 1996), s.v. “colonization.” See also R.J. Johnston, et al., \textit{The Dictionary of Human Geography} (Malden, Me.: Blackwell, 2000), s.v. “colonialism” [Dictionary of Human Geography]. Historian H.L. Wesselring points out that colonization is an even older term than imperialism and colonialism, but its original meaning was separate from the application of imperial power; it originally referred to a more desultory form of migration and settlement. H.L. Wesselring, \textit{Imperialism and Colonialism: Essays on the History of European Expansion} (Westport, Conn.: Greenwood Press, 1997) at x [H.L. Wesselring, Imperialism and Colonialism].

\textsuperscript{19} Barbara Arneil, \textit{John Locke and America: The Defence of English Colonialism} (Oxford: Clarendon Press, 1996) at 70 [John Locke and America].
lasted until the middle of the nineteenth century, when new ideas of political economy and
disarray in eastern Canada reshaped the thinking in England’s Colonial Office.20

(2) Theories of economy, property, and state

European imperialism and colonialism contained a complex set of philosophies
justifying the taking of lands and subjugation of peoples.21 The advent of the science of
political economy at the turn of the nineteenth century, particularly in England, provided
theoretical impetus for a proactive policy of colonization. Although the impetus arose from
their theories, the prominent British political economists did not themselves advocate
emigration and settlement. Adam Smith provided the English government with a rationale
for international trade, but not for its empire, which he believed to be unnecessary.22 The
foundation for British policy on colonization came from Thomas Malthus, David Ricardo,
and James Mill, who to varying degrees shared Smith’s opinion of imperialism, but
disagreed on the potential for unlimited economic growth.23 Malthus famously posited that
population growth would outstrip the means of subsistence.24 Ricardo set out a subtler,
more complete theory of economics, but agreed that agricultural returns would diminish as
population grew and more lands were cultivated.25 James Mill published the first textbook

20 See infra note 47 and accompanying text.
21 In this context, the terms “imperialism” and its younger cousin “colonialism” overlap. For a précis of the
history and relationship of the two terms see H.L. Wesselring, Imperialism and Colonialism, supra note 18 at ix-x.
of Economics].
23 Ibid.
Happiness with an Inquiry into our Prospects Respecting the Future Removal or Mitigation of the Evils which It Occasions
(6th ed. 1826, reprinted with an introduction by M. Blaug in Homewood, Ill.: Richard D. Irwin, 1963) at 1
[Principle of Population]. Malthus describes “the constant tendency in all animated life to increase beyond the
nourishment prepared for it.”
on economics in 1821, and endorsed Malthus's principle of population growth as "the grand practical problem".\textsuperscript{26}

They did not resolve the problem, but they all agreed that colonization was not the solution.\textsuperscript{27} The younger political economist Edward Gibbon Wakefield disagreed. In his view:

The objects of an old society in promoting colonisation seem to be three: first, the extension of the market for disposing of their own surplus produce; secondly, relief from excessive numbers; thirdly, an enlargement of the field for employing capital.\textsuperscript{28}

It appears that, for Wakefield at least, by the 1830s the traditional military and Machiavellian political objectives of imperialism had faded in importance. He saw empire as a resource for the growth of British society, a resource that, if managed sensibly, would not only preserve but improve British society both economically and socially.\textsuperscript{29}

Although most historians relegate Wakefield's contribution to a footnote, his theories helped to shift England's colonial goals towards settlement and reshape colonial policy for land use.\textsuperscript{30} He did not conceive these theories independently. His writings reveal not only the influence of the political economists but also the influence John Locke.\textsuperscript{31}

\begin{footnotes}
\footnotetext[26]{Mills, Critical History of Economics, supra note 22 at 77.}
\footnotetext[27]{Malthus objected particularly strongly to emigration as a solution. Arnold Toynbee suggests in Industrial Revolution Lectures, supra note 14 at 93 that Malthus might have felt differently about the colonies as a solution had he foreseen the benefits of steam navigation for speeding emigration and building commerce. At the same time, Toynbee acknowledges Malthus's opinion that the relief would only be temporary. This opinion caused environmentalists in the 1970s to herald the vision of Malthus and the other classical economists, even if mainstream economists refused to resurrect their theories. Resource Economics, supra note 25 at 2, 18-19. Another, less creditable explanation for Malthus's objections to emigration may lie in his negative view of the lands and native peoples of the new world. The Principle of Population at 17-32.}
\footnotetext[28]{Wakefield quoted in Mills, Critical History of Economics, supra note 22 at 78 [emphasis added].}
\footnotetext[29]{Wakefield saw emigration as a safety valve that would prevent social collapse in England and increase the empire's economic prosperity. He also saw the colonies as a place in which to improve upon English society. The class system, in his model, was necessary, but he envisioned a "progressive state of society" with upward mobility for the labourer class. Edward Gibbon, Wakefield, The Collected Works of Edward Gibbon Wakefield, ed. with introduction by M.F. Lloyd Prichard (London: Collins, 1968) at 377 [Works of Wakefield].}
\footnotetext[30]{He was much better noted in his day, receiving John Stuart Mill's praise in The Principles of Political Economy. M.F. Lloyd Prichard, introduction to Works of Wakefield, ibid., 9 at 16-17 [Prichard Introduction to Wakefield].}
\footnotetext[31]{Locke himself had built upon the natural law scholars such as Hugo Grotius and Samuel Pufendorf, but Locke's theories were not identical to theirs. Grotius laid the groundwork for Locke's view of human dominion}
\end{footnotes}
government and property in the seventeenth century, Locke was particularly influential on land policy in British North America. Wakefield’s vision for the new colonies in Canada, Australia, and New Zealand emphasized three central features of Locke’s theories: First, “God hath given the world to men in common [...] and commanded him to subdue it.” Second, Wakefield’s report on the four eastern colonies of Canada repeatedly characterizes wilderness as “primitive” and a “waste land,” contrasting it with cultivation, specifically agriculture, which he and Locke saw as the route to civilization and progress. And third, individuals have to earn property by improving land, and the resulting property right has limits: speculative accumulation of more than one can use is harmful to society, as is the right to own but not use property. These ideas are consistent throughout Wakefield’s writing and in the colonial correspondence about the creation of the first land statutes in British Columbia. They are central to the first B.C. land laws, and remain influential in those laws.

over the earth, and of the labour theory of property. See Richard Tuck, *Natural rights theories: Their origin and development* (Cambridge: Cambridge University Press, 1979) at 60-62, 170 [Tuck, *Natural rights theories*]. Pufendorf questioned the idea of dominion as a gift from God, focusing more on rights as relations among humans, and complicated the labour theory as giving a right, as opposed to a claim. This latter argument may have influenced Locke’s view of natural limits (as much as we can use) to private property. Tuck, *Natural rights theories*, *ibid.* at 159-61, 171-72. For a slightly different distinction among the differences in perspective among these thinkers, see Cole Harris, *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia* (Vancouver: University of British Columbia Press, 2002) at xxii [Harris, *Making Native Space*].


33 I enclose my own ellipses in square brackets to distinguish them from ellipses in the original text.


36 *Ibid.*.

37 *Ibid.*, paras. 27-28, 38, 47-50 at 287-88, 295, 300-02. In Locke’s words, private property ownership must leave “enough, and as good [...] in common for others”. Wakefield wholeheartedly agreed with Locke’s loathing of any legal system that confers a right to allow property to fall into or remain in a state of waste.
In the role of government converting waste land to cultivation and in creating a society, Wakefield, however, had his own ideas. The model Wakefield formed for colonial land system gave an instrumental role to the government in determining how land was to be used, and who was entitled to use it. This might seem to contradict the influence of Locke who is often invoked in arguments against government intervention in private affairs. In fact, Locke’s criticism of land allocation in seventeenth century Virginia suggests that Wakefield’s application of his theories may have been more consistent than is commonly supposed. To the extent that Wakefield diverged from Locke’s view of the proper role of the state, however, it is Wakefield’s theories that held sway during the colonization of British Columbia, and marked a sharp difference from the early land laws in eastern Canada and the United States. I will now turn to Wakefield’s conception of his model, and how he won the British Colonial Secretary over to it.

(3) Colonial land policy for Canada

By Wakefield’s day, the eastern lands of North America had long been colonized, and England had just begun to settle New Zealand and Australia. While in prison—after a disastrous attempt to elevate himself socially by coercing a wealthy young woman to marry him—Wakefield became interested in the punishment some of his cellmates faced, of forced “transportation” to the Australia. He began to read and then to write about colonization,

38 Karin P. Sheldon, “How Did We Get Here? Looking to History to Understand Conflicts in Public Land Governance Today” (2002) 23 Pub. Land & Resources L. Rev. 1 at 7, for example, characterizes Locke’s theory of “property ownership as a pre-political right, one that exists outside of government, and which must be respected by government in order for government to be legitimate.”

39 Locke advised the colonial board of trade on the inefficient allocation of land in Virginia. See History of Public Land Law, supra note 32 at 36. His comments affirm the importance to him of limiting the size of landholdings and of ensuring access to land to all who can earn reasonable means. For Wakefield’s similar vision of a “progressive state”, see supra note 29, and infra note 54 and accompanying text.

40 The next section comments on eastern Canada. On the laissez-faire application of Locke’s labour theory of property, see Hibbard, Benjamin Horace, A History of the Public Lands (Macmillan, 1924, reprinted in Madison, Wisc.: University of Wisconsin Press, 1965) at 547, quoting Thomas Jefferson: “I am against selling [i.e. charging for] the land at all.”
and was, in some accounts, reborn as a man with a crusade when he emerged from prison in 1830.\textsuperscript{41} He immediately joined with other prominent citizens to form a society for the promotion of colonization and a model of concentrated settlement.\textsuperscript{42}

The group’s timing was good. The Colonial Office was turning its attention to the settlement and management of its colonies in New Zealand and Australia, and to problems in Canada. The Swan River settlement in Australia had just failed, for the reasons Wakefield’s model of concentrated settlement predicted: “Lack of concentration of settlement, of combined labour, of co-operation between settlers, [and the] absence of communications”.\textsuperscript{43} The Colonial Secretary of the day did not wish to encourage emigration, but when Lord Goderich took the office in 1831, Wakefield and his colleagues had a receptive ear.\textsuperscript{44} They succeeded in establishing a colony in southern Australia under the Wakefield system of managed emigration and sale of surveyed land at a “sufficient price” to ensure a labouring class.\textsuperscript{45} Wakefield turned his attention to New Zealand, where colonization was proceeding “in a most slovenly, scrambling and disgraceful way.” Working with Lord Durham and others, Wakefield helped to form the New Zealand Association in 1837, with plans to emigrate and settle in the colony. This project went awry in 1838, just as Lord Durham had become High Commissioner to British North America. So Durham, Charles Buller, and Wakefield set sail for the eastern colonies of Canada,\textsuperscript{46} and

\textsuperscript{41} Prichard Introduction to Wakefield, supra note 30 at 13.
\textsuperscript{42} Ibid. at 29-30. The others included John Stuart Mill, Charles Buller, and Colonel Robert Torrens.
\textsuperscript{43} Ibid. at 30.
\textsuperscript{44} Ibid.
\textsuperscript{45} Ibid. at 30-33. I will describe the class system below. The colony struggled in the late 1830s, but regained its footing by 1842, with the help of Crown subsidies and the discovery of valuable minerals.
\textsuperscript{46} Ibid. at 40-41, 44. Buller’s title was Chief Secretary and Chief Commissioner of Crown Lands. Lord Durham intended to install Wakefield in the latter position, but received orders from London forbidding it. Wakefield did the work without the title.
returned within the year to produce the Durham Report and its appendix, the Buller Report on lands.48

Their reports depict colonies in disarray. In addition to problems in the legislatures and conflict between French and English settlers, the pattern of land ownership was the opposite of that under the Wakefield model. Individuals held large swaths of uncultivated land.49 Private properties were separated from each other by distances that inhibited commerce and left those lands, and the public lands between, in a state of waste.50 And in many instances Americans were squatting on private but unimproved lands.51 Although political interference and ill health caused Lord Durham to end the mission to Canada within the year, his report earned Parliament’s approval, and enabled Wakefield to return to Canada for three years before finally moving to New Zealand, where he enjoyed a long career as a politician.52

Historians have been dismissive of Wakefield’s particular system for settlement.53 The more fundamental premises of his model of colonization also earned theoretical scorn during his own time from Karl Marx, for whom Wakefield’s “progressive” notion of a class

47 John George Lambton, the Earl of Durham, Report on the affairs of British North America (London: Her Majesty’s Printer, 1839) [Durham Report]. It is likely that Wakefield wrote some of the Report himself, and in any event Lord Durham was clearly taking Wakefield’s counsel throughout his mission to Canada in 1838. The Report proposes two major reforms for the eastern colonies: responsible government and a Wakefieldian lands policy. The latter policy is set out in a section entitled “Emigration. Disposal of Public Lands” at 72-94.  
48 Charles Buller, Report to his Excellency the Governor-general, Appendix B to the Durham Report, ibid. 1 at 2 [Buller Report]. (Citations are to the original, but the Report is reproduced in Works of Wakefield, supra note 29 at 637.) Buller later stated that Wakefield wrote this report, which provides the substance of the section in the Durham Report on emigration and public lands. Prichard Introduction to Wakefield, supra note 30 at 47.  
49 The landholdings were especially outsized in Lower Canada, due to the colony’s wholesale adoption of rights created under the French Crown’s seigneurial system, but all the colonies had the problem. The colony of Prince Edward Island was worst off, having granted the entirety of the Island in one day “to absentee proprietors”. Buller Report, ibid. at 4 (on Lower Canada), 8 (Upper Canada), 12 (Nova Scotia), 13 (New Brunswick), 14 (P.E.I.).  
50 Ibid. at 1.  
51 Ibid. at 14, 32.  
52 Prichard Introduction to Wakefield, supra note 30 at 48-52, 64ff.  
system was, at best, a transparent attempt to project the capitalist system abroad with a layer of insulation against the excesses that would inevitably provoke class warfare.\textsuperscript{54} Marx’s attention to Wakefield underlines the influence of the model, which held sway in the Colonial Office in the mid-1800s, and became the frame within which Governor James Douglas created a land policy for the new colony.\textsuperscript{55}

The vision inside that frame was the settlement of British subjects.\textsuperscript{56} Wakefield sought to create a society of opportunity and order that would attract settlers. The main elements of this society were:

1. a landholding class who would live on and work their land, and a labouring class that would provide the necessary additional labour;
2. upward mobility for the labouring class (what he called a “progressive state”),\textsuperscript{57} and
3. concentrated communities of cultivated lands linked by roads and communication systems, and centred around markets for trade, export, and social intercourse.

To create these elements, Wakefield laid out an instrumental approach to lands policy with two key functions:

\textsuperscript{54} Marx, Karl. \textit{Capital} vol. 1, c. 33 in C.B. Macpherson, \textit{Property: Mainstream and Critical Positions} (Oxford: Blackwell, 1978) 67 at 67-69. Marx’s critique is primarily a dismissal of Wakefield’s (and J.S. Mill’s) idea that the owners of land will not accumulate more capital, and that labourers will, once they have earned enough money, be able to become capitalists themselves. History has borne out Marx’s argument more than Wakefield’s idea of a progressive state, but an examination of the way in which this happened, and continues to happen, is beyond the scope of this paper.

\textsuperscript{55} See Cole Harris’s summary of the thinking in the Colonial Office in the 1840s and 1850s in \textit{Making Native Space}, supra note 31 at 5.

\textsuperscript{56} The Buller Report, supra note 48 at 3 points out that the poor land policy “not [only] retards the prosperity of the thousands [of colonists], but [...] prevents the millions, to whom [the colonies] might eventually afford an asylum, from enjoying the advantages to which they are entitled [...] and [leaves] the North American Provinces [...] valueless to the empire.”

\textsuperscript{57} \textit{Works of Wakefield}, supra note 29 at 377.
1. setting a sufficient price for land, to deter speculators, maintain a labourer class,\textsuperscript{58} and attract buyers who would make the investment worthwhile by occupying and cultivating the land;\textsuperscript{59} and

2. managing the location of lands for sale, to avoid stretches of waste land between properties, and thereby foster the creation of transportation routes, communication links, markets, and social centres.\textsuperscript{60}

In the Buller Report, Wakefield wrote that the “disposal of the public land [...] in new countries is the most important of all the functions of Government,”\textsuperscript{61} and emphasized the more important point that this function required a strong, instrumental government willing to override individual property interests.\textsuperscript{62} Left to their own devices, with only John Locke’s labour theory and Adam Smith’s invisible hand to guide them, settlers might have wound up mired in a private-property version of the tragedy of the commons. John Stuart Mill, approving Wakefield’s system, described this scenario:

However beneficial it might be to the colony in the aggregate and to each individual composing it that no one should occupy more land than he can properly cultivate, nor become a proprietor until there are other labourers ready to

\textsuperscript{58} Prichard Introduction to Wakefield, supra note 30 at 31 quotes R.C. Mills: A “price was charged for land a little higher than the usual price, ... with the particular object of preventing labourers from becoming landowners too soon.”

\textsuperscript{59} It was important that the purchaser of the land live on and cultivate the property. The Durham Report, supra note 47 at 79 depicts the ideal land owner as someone with the “muscular strength to go into the wilderness” and “the pecuniary means to improve their grants”.

\textsuperscript{60} The Durham Report, supra note 47 colourfully depicts the disastrous opposite of this rural marketplace community.

\textsuperscript{61} Buller Report, supra note 48 at 2.

\textsuperscript{62} Wakefield wrote in the Buller Report, ibid, at 2 that “The measures which I [...] propose [...] demand the exercise of the powers of the Imperial Legislature; but they [...] may be deemed that they involve too great an interference with the property of individuals, and with provincial legislatures [...] and [...] of the right to the colonies [...] . [...] it is the plain duty of the Imperial Legislature to interfere [because] it is for the interest of each of these colonies [...] and higher interests than those of the colonies, those of the empire [...] that Parliament should establish at once, and permanently, a well-considered and uniform system. The waste lands of the colonies are the property [...] of the empire, and ought to be administered for imperial [i.e. emigration and settlement], not merely for colonial, purposes.”
take his place in working for hire, it can never be the interest of an individual to exercise this forbearance unless he is assured that others will do so too.\textsuperscript{63}

Thus Mill, despite his notoriety as the champion of \textit{laissez-faire} government, endorsed Wakefield’s argument that only the government could create this assurance, through a positive land policy inscribed in law. It is quite possible Locke would have approved, too, since the model incorporates most of his precepts about land.\textsuperscript{64}

**Part 2—Colonial British Columbia: The Golden Mean(s) to a New Society**

Prior to the establishment of the proprietary colony of Vancouver Island in 1849 and of the mainland colony in 1858, the only “land policies” in British Columbia were those of the First Nations.\textsuperscript{65} The North West Company and Hudson’s Bay Company built a small number of fur-trading forts in strategic locations, but otherwise left the land to the First Nations. Until the 1840s, the companies limited their development of land to that necessary for subsistence and transportation.\textsuperscript{66} Two events brought led to the creation of a colony on Vancouver Island. First, British colonial policy changed its goal from trade to colonization.\textsuperscript{67} Then, in 1846, the Oregon Treaty defined the boundary with the United States, making British Columbia a site for settlement of British subjects.\textsuperscript{68} By this time the Hudson’s Bay Company (now merged with the North West Company) was diversifying its industry to

\textsuperscript{63} Mill quoted in Prichard Introduction to Wakefield, \textit{supra} note 30 at 20.

\textsuperscript{64} In addition to a shared dislike of waste lands and love of cultivation, Locke shared Wakefield’s zeal for equal opportunity to obtain land. See \textit{supra} note 39 and accompanying text. And see J.W. Gough, “The Rights of the Individual” in \textit{John Locke’s Political Philosophy: Eight Studies}, 2nd ed. (Oxford: Clarendon Press, 1973) 27 at 35, 38, in which Gough distinguishes Locke from advocates of absolute individual rights by pointing out that, for Locke, individual interests and the public interest in general were not separate.

\textsuperscript{65} Supra note 12 and accompanying text.

\textsuperscript{66} Margaret Ormsby, \textit{British Columbia: A History} (Vancouver: Macmillan, 1958) at 46 [Ormsby’s \textit{History of B.C.}] describes the modest level of agriculture the trading posts pursued. Fish was their staple of subsistence.

\textsuperscript{67} See \textit{supra} note 44 and accompanying text.

\textsuperscript{68} Ormsby’s \textit{History of B.C.}, \textit{supra} note 66 at 89.
include agriculture and salmon fishing. The British government dispatched Richard Blanshard to Fort Victoria, the new Hudson’s Bay headquarters under James Douglas, to announce that England had granted Vancouver Island to the Hudson’s Bay Company to settle. The Company was, however, slow to fulfil its obligation to settle the new proprietary colony and create an elected government. The reasons for this delay included Governor Blanshard’s indifference to settlement policy; the establishment, at Colonial Secretary Earl Grey’s behest, of an excessive price for land; and geographic factors that undermined the Wakefield system—specifically, remoteness and cheaper land in the United States.

When Britain created the mainland colony of British Columbia, in 1858, it was more careful to put the Wakefield model into effect in legislation. Land use was a dominant concern of early colonial policy. The first land law for the mainland colony of British Columbia was, however, not a statutory enactment of Wakefield’s system for allocating land.

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69 Fishing was shifting from a source of sustenance for traders to a source of export income for the Hudson’s Bay Company. In 1848 the first sawmill opened on Vancouver Island, supplying the booming San Francisco market, and the next year the Company started to mine coal on the Island’s east coast. Ibid. at 71; and Paul Woodcock, British Columbia: A History of the Province (Vancouver: Douglas & McIntyre, 1990) at 80-81 [Woodock’s History of B.C.].

70 Douglas, the company’s chief factor, moved from Fort Vancouver to Fort Victoria in early 1849. Ibid. at 82.

71 British Columbia Department of Lands, Forests, and Water Resources, A History of the British Columbia Lands Service (Victoria: Province of British Columbia, 1971) at 1 [History of the Lands Service, 1858-1971]. According to Ormsby’s History of B.C., supra note 66 at 97-98, James Fitzgerald had pursued the right to found a colony on Vancouver Island based on coal mining. The Hudson’s Bay Company won out, on exaggerated claims of its ability to project British power, and its commitment “to establish ‘a settlement or settlements of resident colonists, emigrants from Our United Kingdom’.”

72 Cail, Land, Man, and the Law, supra note 6 at 3-4.

73 Ibid. Governor Blanshard vocally disparaged the Wakefield system. Ormsby’s History of B.C., supra note 66 at 101. Earl Grey insisted on a price of 1 pound per acre, with a minimum lot size of 20 acre, based on the price in Australia, despite the competition of the United States. Ormsby, ibid. at 100-02. Wakefield himself had refused to set an arbitrary price for his model, saying that the local market for land and labour would have to determine it, taking into account U.S. competition. Frichard Introduction to Wakefield, supra note 30 at 22-23; Buller Report, supra note 48 at 32. The experience on Vancouver Island, and possibly Wakefield’s views on determining the right price for the local setting, likely contributed to Douglas’s recommendations for the land policy in 1858 and afterward.

74 One measure of the importance of land laws is that, in 1871 when the new provincial government collected the significant spent or repealed laws of the colonial period on Vancouver Island and the mainland, 27 of 60 acts were land statutes. Appendix to the Revised Statutes of British Columbia, 1871 index.
land. Before the mainland became a colony, James Douglas made two proclamations about
gold rights in 1857.\textsuperscript{75} Douglas was reacting to an unexpected event—the discovery of gold
on the Thompson River—rather than taking the first step in a carefully worked out,
Wakefieldian plan.\textsuperscript{76}

It is likely because of events such as the gold rush that most commentators disregard
Wakefield’s influence in British Columbia. I suggest a different interpretation of the early
laws. The gold proclamations and subsequent responses to the many difficulties of settling
British Columbia did not cause Douglas and his successors to discard the model of
controlled settlement. In fact, these laws reveal the importance of the vision of controlled
settlement in the new colonies: settlement contained within British sovereignty and a British
model of society.\textsuperscript{77} The discovery of gold did not disrupt the vision for the mainland colony;
it merely hastened the establishment of the mainland colony and of the government’s
creation of policies to define that colony’s economic and social structure. The rush also
spurred the demand for land—the demand necessary for Wakefield’s system to work.
Further, as the remainder of this chapter argues, the gold laws were emblematic of the
narrative of land policy for the next several decades: a tug-of-war between reaction and
control.

\textsuperscript{75} Proclamation by His Excellency James Douglas, 28 December 1857 (20 Vict.). Although he did not yet govern the
mainland, Douglas later made this proclamation valid. Cail, \textit{Land, Man, and the Law}, supra note 6 at 4. The Colony
of British Columbia, \textit{Gold Mining Ordinance}, 1865, 28 March 1865 (28 Vict.), then the United Colony of British
Columbia, \textit{Gold Mining Ordinance}, 1867, 2 April 1867 (30 Vict.), Appendix to the Revised Statutes of British
Columbia 1871, no. 90 replaced the proclamation, and continued the position of gold commissioner.
\textsuperscript{76} F.W. Howay, \textit{British Columbia: From the Earliest Times to the Present} (Vancouver: S.J. Clarke, 1914) vol. 2 at 10
[Howay’s \textit{History of B.C.}] on the discovery of gold. And see Ormsby’s \textit{History of B.C.}, supra note 66 at 138, 145;
Woodcock’s \textit{History of B.C.}, supra note 69 at 93.
\textsuperscript{77} Douglas was concerned both with maintaining colonial control of land and with creating a British society on
the mainland. Howay’s \textit{B.C. History}, \textit{ibid.} at 25 quotes Douglas writing to the Colonial Secretary in May 1858: “If
the country [pre-colony mainland] be thrown open to indiscriminate immigration, the interests of the Empire
may suffer from the introduction of a foreign population, whose sympathies may be decidedly anti-British.
Taking that view ... suggests a doubt as to the policy of permitting the free entrance of foreigners without ... the
oath of allegiance”. Douglas was writing about the threat to British sovereignty that the gold rush posed, but his
words also reflect the importance to him and the home office of creating a society that was British in character.
(1) Land policy, 1858-64: reactive and proactive assertions of authority

Wakefield’s system did not work in an orderly, mechanical way, in British Columbia, but the critical elements of the system became the foundations of the Province’s land laws and policies. And the philosophical roots of his model of colonization dominated the goals of the B.C. government’s land regime well into the twentieth century. This part of the chapter considers in detail how the government’s land laws—with their focus on agricultural settlement, complementary support for mining, and early disregard for forestry—demonstrate a commitment to the model of systematic settlement under crown control. This interpretation does contradict to some degree the view of some historians that the colonial government of British Columbia set out to apply the Wakefieldian model but quickly abandoned it in favour of a more “permissive, individualistic” model “that viewed the land in terms of a frontier”. Such a view portrays land policy in British Columbia as being similar to early policy in the eastern colonies of North America, and in particular to free-for-all land policy the United States adopted until the late 1800s. But in fact, the land laws of the colonies reveal the great care the governments of the two colonies took to control who could own and use land and how they used it.

Asserting crown authority in 1858

Douglas’s first step towards a land policy was the reactive one of asserting crown ownership of gold and creating a licensing system for this valuable mineral, despite his lack

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78 Christopher Garrish, “Unscrambling the Omelette: Understanding British Columbia’s Agricultural Land Reserve” (2002/03) 136 BC Studies 25 at 28 [Garrish, “Unscrambling the Omelette”]. These words of Garrish’s reflect the dominant view of land development in British Columbia. While I contest this characterization of public land policy in the Province as a whole, I accept that this view is more applicable to land on which his article focuses, within and on the edges of municipalities.
of legal authority over the mainland.\textsuperscript{79} This stratagem set a theme for many of the early colonial laws, by turning a potentially negative event—an uncontrolled rush for land, which had the potential to make government superfluous—into a positive legal regime. He followed the gold proclamations by recommending the creation of a surveyor-general for area on which the gold rush had begun, along the Fraser River.\textsuperscript{80} His correspondence with Colonial Secretary Sir Edward Bulwer Lytton prompted the English Parliament to assert control of the mainland in August 1858. The English statute that created the colony expressed the goal of having “permanent settlements […] thereupon established […] and the number of colonists increased” upon these “wild and unoccupied territories”.\textsuperscript{81} Lytton also dispatched a company of sappers and engineers to help mark out and prepare the land for sale, and appointed as their leader Colonel Richard Clement Moody, who went on to be a major figure in the governance of land in British Columbia.\textsuperscript{82}

In September, not yet aware of the creation of the mainland colony and his appointment as its governor, James Douglas continued to plan for the new colony—and to respond to the gold rush. When opportunists attempted to create and sell lots on the “Derby Townsite” at old Fort Langley, the same location Governor Douglas had chosen for the capital of the colony, he proclaimed the sales invalid, asserting the crown’s sole authority to

\textsuperscript{79} For more on these laws, see Ormsby’s \textit{History of B.C.}, supra note 66 at 147-48. The licensing system took effect on 1 February 1858. By “legal authority” I mean the imprimatur of the British government. This thesis focuses on colonial law, and inevitably uses the terms of that law. First Nations contest England's right to grant Douglas any such authority, pointing out the “legal magic” that created it. For a concise history of this magic, See Peter H. Russell, \textit{Recognizing Aboriginal Title: The Mabo Case and Indigenous Resistance to English-Settler Colonialism} (Toronto: University of Toronto Press, 2005), c. 2.

\textsuperscript{80} \textit{History of the Lands Service}, supra note 71 at 3.

\textsuperscript{81} \textit{An Act to Provide for the Government of British Columbia} (U.K.), 21 & 22 Vict., c. 99, Preamble. The English Parliament passed the Act on 2 August 1858.

\textsuperscript{82} Howay’s \textit{B.C. History}, supra note 76 at 55-57.
sell lands. By November, Douglas had learned of the creation of the colony, and of the revocation on 2 September of the crown grant of Vancouver Island to the Hudson’s Bay Company. He immediately proclaimed Vancouver Island a crown colony, then held a ceremony in Fort Langley on 19 November to proclaim the creation of the new colony. In December, he signed a proclamation authorizing himself to grant “to any person [...] any Land belonging to the Crown”. He then set to work on the mainland colony’s first land law.

Land Proclamation, 1859

Three months after formally taking office as Governor of British Columbia, Douglas passed the Land Proclamation, 1859, in an effort to establish crown control of land. Building on the colonial vision of the mainland as “wild and unoccupied” — the blank slate — the Proclamation affirmed crown ownership of “all the lands in British Columbia, and all the mines and minerals”. It then set a price of ten shillings (half a pound sterling) per acre for surveyed public lands other than town sites and mineral lands (which were to be sold by auction), and formally instituted the Chief Commissioner of Lands and Works to administer public auctions of properties in towns and set rules for rights of way and other interests in

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83 Proclamation by His Excellency James Douglas, 15 September 1858 (22 Vict.), Appendix to the Revised Statutes of British Columbia 1871, no. 57. Douglas took advantage of the speculators’ preparatory work, and in November began to sell lots on the site, by auction in Victoria. Howay’s B.C. History, supra note 76 at 59-60.
84 Proclamation by His Excellency James Douglas, 3 November 1858 (22 Vict.), Appendix to the Revised Statutes of British Columbia 1871, no. 58.
85 Proclamation by His Excellency James Douglas, 19 November 1858 (22 Vict.), Appendix to the Revised Statutes of British Columbia, 1871, no. 30. For an account of the ceremony, see Victoria Gazette (20 November 1858), online: <http://www.fortlangley.ca/langley/2bbirth.html>.
86 Proclamation by His Excellency James Douglas, 2 December 1858 (22 Vict.), Appendix to the Revised Statutes of British Columbia 1871, no. 11.
87 Proclamation by His Excellency James Douglas, 14 February 1859 (22 Vict.), Appendix to the Revised Statutes of British Columbia 1871, no. 13 [Land Proclamation, 1859].
88 Ibid., s. 1. This language also reveals much about the vision built into the law: converting waste into useful land — i.e. farm land — and into mines and minerals. The term "wild and unoccupied" is in An Act to Provide for the Government of British Columbia, supra note 81.
In fact, Colonel Moody had already arrived and taken up his post in December 1858. Moore and his team of engineers had been busy responding to reports of uprisings against crown authority at Hill's Bar, near Yale. The immediate job of the Commissioner, aside from policing land-use disputes, was to survey lands to ensure contiguous settlement. This purpose was central to the Wakefield model's goal of averting a patchwork of disconnected private properties scattered among unimproved waste lands.

In the Land Proclamation, 1859, Douglas aimed the price of "settlement land" at the "golden mean between dispersion and density of population," and saw auctions as the best means of avoiding speculation on the more valuable town lots—as well as a needed source of revenue. Douglas did not invent this policy independently; he was implementing the Wakefield model at the Colonial Office's behest. From the date of British Columbia's creation in August 1858, Colonial Secretary Lytton had been writing to Douglas to emphasize the importance of promoting agriculture, preventing speculation on underpriced land and squatting on waste lands, generating income to avoid dependence on the home office, and maintaining sovereignty over people as well as land. The difficulty of achieving these goals became the subject of much of the correspondence between the Governor and the Colonial Secretary during the next five years.

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89 Ibid., ss. 2, 4.
90 Howay's B.C. History, supra note 76 at 57; History of the Lands Service, supra note 71 at 3-4.
91 Howay's B.C. History, ibid. at 61-62.
92 These are Wakefield's words. Prichard Introduction to Wakefield, supra note 30 at 23. Wakefield was paraphrasing a critic who pointed out that the sufficient price for this golden mean might be impossible to calculate.
93 Cail, Land, Man, and the Law, supra note 6 at 4-5, citing a directive from Colonial Secretary Sir Edward Bulwer Lytton to Douglas.
94 Despite difficulties of implementation in Australia and New Zealand, the colonial officials in London were still "convinced Wakefieldians." Making Native Space, supra note 32 at 5; Ormsby's History of B.C., supra note 66 at 96-97.
95 See Cail, Land, Man, and the Law, supra note 6 at 5-16 for an account of the correspondence.
Pre-emption system of 1860: improving land to prove worthy of ownership

The model in the *Land Proclamation, 1859* satisfied Lytton, but could not keep up with the rush for gold. Gold spurred immigration and demand for land, but posed the risks of desultory settlement and transient squatting. The surveyors could not survey land quickly enough or in the right places, so Commissioner Moody could not dictate the location or scale of settlement. Douglas’s response, with the help of Judge Matthew Baillie Begbie as drafter, was to adapt the system to maintain crown control. The *Land Pre-emption Proclamation, 1860*, signed less than one year after the first land proclamation, allowed “British subjects and aliens who shall take the oath of allegiance to her Majesty” to claim and settle upon any lands, to a maximum of 160 acres. When the surveyor arrived, the person holding the pre-emption could buy the land provided the “nearest Magistrate [confirmed the person] had made permanent improvements on the said plot to the value of ten shillings per acre.” The conditions of occupation were substantial: the pre-emptors had to immediately file their claim with the government for eight shillings; were limited to a modest amount of property; had to both continuously live on and make “permanent

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97 Canadian Biographical Dictionary Online, s.v. “Sir Matthew Baillie Begbie”, online: <http://www.biographi.ca/EN/ShowBio.asp?BiolId=40080>. Begbie, who went on to become the Chief Justice of British Columbia, was at this time a judge and a member of Douglas’s executive council. Begbie played an important role in the creation of the mainland colony. Among the other statutes he drafted is the *Gold Fields’ Act*, infra note 156. He also swore Douglas in as Governor on 19 November 1858.

98 Proclamation by His Excellency James Douglas, 4 January 1860 (23 Vict.), Appendix to the Revised Statutes of British Columbia 1871, no. 15, ss. 1 (citizenship or oath), 2 (enter and settle 160 acres) [*Land Pre-emption Proclamation, 1860*]. The inclusion of aliens — provided they pledged an oath — was important to Governor Douglas and Colonial Secretary Lytton, who wanted to attract as many settlers as possible. Cail, *Land, Man, and the Law*, supra note 6 at 6. Section 1 of the *Land Pre-emption Proclamation, 1860* was, however, the first statement of this policy in law. Douglas was more cautious about foreigners, however, writing to the Colonial Secretary about the threat the gold rush posed to sovereignty and society. Howay’s *B.C. History*, supra note 76 at 25-26, quoted in part supra note 77. Section 1 flows from that concern.

99 *Ibid.*, s. 3 (purchase on survey), and 4 (improvements rule).

100 *Ibid.*, s. 2. The local magistrate received the claims and fees.
improvements [worth] ten shillings per acre” to the land;\textsuperscript{101} and had to pay the prescribed settlement price (“not exceeding […] ten shillings per share”) for it, once the government’s surveyors had arrived to define the property’s “metes and bounds.”\textsuperscript{102} As an incentive to ambitious farmers, the Proclamation allowed the purchase of “any number of acres” of additional, unclaimed land at the same price, but only once the government had surveyed it.\textsuperscript{103} The Proclamation also elaborated on a section of the \textit{Land Proclamation, 1859} by subjecting the pre-empted lands to expropriation “for roads or other purposes”, and to water privileges for free miners licensed by the Gold Commissioner.\textsuperscript{104} Finally, it added British Columbia’s first dispute resolution process for land rights, which gave the local magistrate complete discretion.\textsuperscript{105}

\textbf{Fine-tuning the land regime, 1860-64: creating certainty and infrastructure}

In the next year, the government passed several laws to support this land allocation regime by stamping out uncertainty about land ownership,\textsuperscript{106} empowering more agents to

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\textsuperscript{101} \textit{Ibid.}, ss. 3 (“continuous occupation”), 9 (cancellation of the claim on cessation of occupation), 4 (improvements).

\textsuperscript{102} \textit{Ibid.}, s. 3. Metes and bounds is a system for describing unsurveyed lands. It combines measurements with narrative description of landscape. A “metes and bounds description” would be along the lines of: “\textit{From the point on the south shore of the Fraser River two miles above the meeting of the Fraser and Brunette Rivers, west for 200 yards, then north to the large fir tree on the edge of the woods, then northeast to a set of boulders, then east to the Fraser River, then down along the riverbank to the starting point.}” Today one can still register land with the government using metes and bounds descriptions, though with much more of the Province surveyed, most descriptions should include some reference to existing district lots or survey markers. See British Columbia, Ministry of Environment, Lands and Parks, \textit{Descriptions of Land} (Victoria: Province of British Columbia, 1994).

\textsuperscript{103} \textit{Ibid.}, s. 7

\textsuperscript{104} \textit{Ibid.}, ss. 15, 16. The \textit{Land Proclamation, 1859}, supra note 87, s. 6 makes land sales subject to “public rights of way” and “private rights of way … [for] using water for animals, and for mining”, but is poorly worded. The new Proclamation is both more specific about the nature of the limitations on title, and clearer about their rules.\textsuperscript{105} \textit{Ibid.}, s. 17.

\textsuperscript{106} \textit{The Proclamation by His Excellency James Douglas, 20 January 1860} (23 Vict.), Appendix to the Revised Statutes of British Columbia 1871, no. 16 affirmed that the pre-emption system did not change the rule in s. 5 of the \textit{Land Proclamation, 1859} that the government could sell “by private contract” (i.e. direct application by a buyer) lands unsold after a public auction.
sell surveyed lots,\textsuperscript{107} and clarifying ownership of land in early settlements.\textsuperscript{108} While the
government was establishing its land regime on the mainland, Douglas was also creating
colonial laws for Vancouver Island. These included two important precedents for the
colonies. First, concerned about revenue to keep the fledgling colonial government
operating, Douglas signed the \textit{Real Estate Tax Act, 1860},\textsuperscript{109} The Act set for “all Real Estate [...] an Annual Tax of £1 per centum on the market value” save that owned by Her Majesty, and
created assessors to valuate land and improvements.\textsuperscript{110} January 1861 brought the second
precedent: the colonies’ original \textit{Land Registry Act}.\textsuperscript{111} The Act established a Land Registry
Office and Registrar General in Victoria, and set out the rules for filing proof of fee simple
ownership of land.\textsuperscript{112} Along with technical provisions for registration,\textsuperscript{113} the Act gave the
Surveyor General of Vancouver Island—the new title of the Hudson’s Bay Company’s
Colonial Surveyor, J.D. Pemberton—considerable power to determine ownership.\textsuperscript{114} The Act

\begin{footnotesize}
\textsuperscript{107} The Proclamation, \textit{ibid.}, empowered not only the Chief Commissioner of Lands and Works but all magistrates, the Gold Commissioner, and assistant gold commissioners to sell town and suburban lots at the “upset price” established at the auction, and sell surveyed agricultural lands that remained unsold after an auction, at the prescribed price of 10 shillings per acre.
\textsuperscript{108} \textit{Proclamation by His Excellency James Douglas}, 8 May 1860 (23 Vict.). Douglas had leased lots to settlers in 1858 in Lytton, Douglas, Fort Hope, and Fort Yale. Some lessees had innocently purchased their lots before the land laws were in place, so s. 1 of the Proclamation allowed those still in possession of lots to petition for fee simple ownership. Douglas issued two similar proclamations later in 1860, including for Vancouver Island.
\textsuperscript{109} Colony of Vancouver Island, \textit{Real Estate Tax Act, 1860}, 17 December 1862 (24 Vict.).
\textsuperscript{110} \textit{Ibid.}, s. 1. Today basic property taxes throughout the Province continue to be approximately 1% of market value.
\textsuperscript{111} Colony of Vancouver Island, \textit{Land Registry Act, 1860}, 18 January 1861 (23 Vict.), Appendix to the Revised Statutes of British Columbia 1871, no. 3. The contemporary version of this Act is the \textit{Land Title Act}, R.S.B.C. 1996, c. 250.
\textsuperscript{112} \textit{Ibid.}, ss. 2, 3. “Fee simple” is the greatest interest—perhaps more precisely the least limited interest—a person can have in land, under English law. \textit{Black’s Law Dictionary}, 7th ed., s.v. “fee simple”. For a detailed critique of the history of the concept and language of individual ownership of land, its relationship to Crown authority, and the receipt into Canadian law of the English law of private ownership, see James (Sakej) Youngblood Henderson, Marjorie L. Benson & Isobel M. Findlay, \textit{Aboriginal Tenure in the Constitution of Canada} (Scarborough, Ont.: Carswell, 2000), c. 2.
\textsuperscript{113} The basic provisions for registration are set out \textit{ibid.}, ss. 8-13. Among the other technical provisions are, at ss. 34-46, a procedure for settling disputes; ss. 47-51, on transfers of ownership; and ss. 54-63, a subdivision process.
\textsuperscript{114} \textit{Ibid.}, ss. 16-17. Joseph Despard Pemberton was the Colonial Surveyor from the inception of the office, in 1851, and continued as Surveyor General for the Island until 1864. His replacement, B.W. Pearse, held the office until the two colonies merged in 1866, at which time Joseph William Trutch, who had become the first Surveyor General of British Columbia in 1864, took both offices. \textit{History of the Lands Service, supra} note 71 at 33.
\end{footnotesize}
also took a step towards the Torrens' system of certainty of title. The registry was to be the absolute authority on ownership; title became “absolute and indefeasible […] against all the world” after five years of registration, if no one claimed a competing title. This system reinforced the instrumental role of the government. It sought to replace the common law system for transfer of title, so that only the crown could grant ownership of land, and the new government registry was the only authoritative proof of that ownership. The registration system did, however, have the potential to undermine Wakefield’s model, since it enabled the easier transfer of land, with no requirement for the new purchaser to earn the land by dwelling on and cultivating it. Indeed, the Land Registry Act reveals fee simple ownership as an exception to the other laws conferring land rights, which all stipulated that the failure to use the right, to water, grazing land, timber, or minerals, caused the right’s forfeiture. In the early land laws, the government’s instrumental role in determining the use of land did not extend past the point of the fee simple grant. It seems likely the government assumed that pre-emptors would not sell their land to speculators once they had met the strict requirements for improving the property, building dwelling houses. The limitation of lots to 160 acres was also part of the crown’s effort to create networks of adjacent, settled agricultural plots that would hinder speculators’ attempts to acquire large contiguous areas of land.

Later in 1861, Governor Douglas created a similar land registry for the mainland colony, located in the newly chosen site for the colony’s capital, New Westminster. The British Columbia Land Registry Act put into effect substantially the same system as its

115 Ibid., s. 20.
counterpart for Vancouver Island. The Governor also established a pre-emption law for Vancouver Island that essentially duplicated the system for the mainland.

In 1861 the government passed numerous clarifications and adjustments that responded to ambiguities or loopholes in the Land Pre-emption Proclamation, 1860. These adjustments included the:

- clarification of rules for the shape and survey of pre-empted and purchased lots;
- reduction by more than half of the pre-emption and auction upset price, from 10 shillings to 4 shillings, 2 pence (4s. 2d.) per acre, the equivalent of one U.S. dollar, for “all unsurveyed country land” (i.e. land outside towns and suburbs);
- the extension by six months of the period a pre-emptor was allowed to temporarily leave land without losing the right to it; and
- restriction of pre-emption to one property at a time, so that pre-empting another property caused the forfeit of any previous pre-emption.

These amendments reveal the government’s effort to adapt the pre-emption law, itself an adaptation of the Wakefield system, to circumstances. The creation of the term “country

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117 Proclamation by His Excellency James Douglas, 19 February 1861 (24 Vict.), Appendix to the Revised Statutes of British Columbia 1871, no. 4.
118 Colony of British Columbia, Pre-emption Amendment Act, 1861 (19 January 1861) (24 Vict.), Appendix to the Revised Statutes of British Columbia 1871, no. 17.
119 Colony of British Columbia, Country Land Act, 1861, 19 January 1861 (24 Vict.), Appendix to the Revised Statutes of British Columbia 1871, no. 18, s. 2 set the price “of all unsurveyed country land ... whether acquired by pre-emption or purchase under the [Land Pre-emption Proclamation, 1860 at] four shillings and two pence per acre.”
120 Proclamation by His Excellency James Douglas, 9 May 1861 (24 Vict.), Appendix to the Revised Statutes of British Columbia 1871, no. 5.
121 Colony of British Columbia, Pre-emption Purchase Act, 1861, 28 May 1861 (24 Vict.) Appendix to the Revised Statutes of British Columbia 1871, no. 19. On the completion of a pre-emption purchase, however, a purchaser could still acquire other surveyed lands that remained unsold. Land Pre-emption Proclamation, 1860, supra note 98, s. 7.
land,” for example, and the setting of a lower price for it was part of the government’s continuing search for the Wakefieldian golden mean. Setting the price too low encouraged speculation; setting it too high created an incentive for squatting. Governor Douglas’s correspondence at the time reveals that he set the new price “solely to encourage and induce the settlement of the country” with the corresponding objective “to guard against the speculative holding of land”. The other changes, similarly, were intended to reward “true” settlers and deter others.

The mainland colony’s Pre-emption Consolidation Act, 1861 consolidated these amendments. With its counterparts on Vancouver Island, the Act stood as the law for allocating land in the colony until James Douglas’s retirement in 1864. There were no major changes to the land allocation regime until 1865, aside from the formal creation in 1864 of a Surveyor-General for the mainland. Among the significant public land laws passed during his period were numerous proclamations for the creation of roads, an essential element of Wakefield’s vision for interconnected agrarian settlements; the

123 Colony of British Columbia, Pre-emption Consolidation Act, 1861, 27 August 1861 (25 Vict.) Appendix to the Revised Statutes of British Columbia 1871, no. 21.
124 There were few amendments on the mainland until 1865. For Vancouver Island, the government belatedly updated the regime to match the mainland’s in Colony of Vancouver Island, Vancouver Island Land Proclamation, 1862, 6 September 1862 (26 Vict.), Appendix to the Revised Statutes of British Columbia 1871, no. 9.
125 History of the Lands Service, supra note 71 at 33.
126 Road construction was the responsibility of the Chief Commissioner of Lands and Public Works. The proclamations and acts were mostly for the raising of funds for road-building in the mainland colony. The successive proclamations are too numerous to cite, but the description in the table of Acts in the Revised Statutes of British Columbia, 1871 describes their content aptly: “Proclamation for establishing and levying Road Tolls; such Tolls to be applied in forming, maintaining, and improving the land communication from the points at which such Tolls may respectively be levied.” The citation is Proclamation by His Excellency James Douglas, 15 October 1860 (20 Vict.), R.S.B.C. 1871, c. 32.
division of the mainland into mining districts, to reinforce crown authority;\textsuperscript{127} and a statute regulating fishing and the hunting of game.\textsuperscript{128}

\textit{Land Ordinance, 1865: leasing and licensing regimes for water, timber, grazing, \& reserves} 

In 1865, with the “initial stampede of gold seekers [giving] way to a more stable level of population and economic” activity,\textsuperscript{129} the mainland colony passed the \textit{Land Ordinance, 1865}.\textsuperscript{130} It consolidated the two laws for land allocation—the \textit{Land Proclamation, 1859} and the amended \textit{Pre-emption Consolidation Act, 1861}—and added to or elaborated on the existing regime in several ways. The most important additions were the creation of geographical districts to the administration of pre-emptions,\textsuperscript{131} and the first colonial laws for tenuring logging, grazing, and water use, all of which reflected Wakefield’s influence.\textsuperscript{132}

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\textsuperscript{127} Colony of British Columbia, \textit{Mining District Act, 1863}, 27 May 1863 [26 Vict.]. See infra, notes 131 and 172 and accompanying text.
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\textsuperscript{128} Chapter 4 discusses the successors to the \textit{Game Act}. The first game law was in fact one of the first statutes in the colonies, enacted in 1859 as Colony of Vancouver Island, \textit{An Act for the preservation of Game}, 20 April 1859 (22 Vict.). It was amended in 1862 by Colony of Vancouver Island, \textit{The Act for the preservation of Game}, 5 September 1862 (26 Vict.), R.S.B.C. 1871, c. 12, although it appears this statute was never brought into force. See Douglas C. Harris, \textit{Fish, Law and Colonialism: The Legal Capture of Salmon in British Columbia} (Toronto: University of Toronto Press, 2001) at 36. The mainland did not have any game legislation until 1869: United Colony of British Columbia, \textit{Game Ordinance}, 1869, 12 March 1869 (Vic.), replaced by the \textit{Game Ordinance}, 1870, 20 April 1870 (33 Vict.), R.S.B.C. 1871, c. 133. From 1862 to 1892, the game laws were amended well over a dozen times. Most amendments were minor, adding or changing prohibitions on hunting certain species. Until 1878, the game laws were spread across a series of short statutes. That year, the provincial government consolidated them as the \textit{Game Protection Act}, S.B.C. 1878, c. 9. The Act then grew from 13 sections in 1878 to 56 when it became the \textit{Game Act}, S.B.C. 1914, c. 33. The \textit{Game Act} became the \textit{Wildlife Act}, S.B.C. 1966, c. 55; now R.S.B.C. 1996, c. 488.
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\textsuperscript{129} History of the Lands Service, \textit{ibid.} at 6.
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\textsuperscript{130} Colony of British Columbia, \textit{Land Ordinance, 1865}, 11 April 1865 (29 Vict.). Appendix to the Revised Statutes of British Columbia 1871, no. 23 [Land Ordinance, 1865]. Section 1 affirms the Ordinance replaces the Proclamation of 1859, save for the provisions about a capital city for the colony, the consolidated pre-emption laws, and the Mining District Act, 1863.
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\textsuperscript{131} \textit{Ibid.}, ss. 40, 48, and others, which now refer to the Gold Commissioner or magistrate “of the district”, whereas the earlier laws referred to the “nearest Magistrate” (e.g. \textit{Land Pre-emption Proclamation, 1860}, supra note 98, s. 17). The districts were established in the \textit{Mining District Act, 1863}, which s. 1 of the Ordinance repealed. See infra, note 172 and accompanying text.
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\textsuperscript{132} Other amendments also continued the Wakefield model. Two worth noting are the statement in s. 6 that “all the land […] will be exposed in lots for sale, by public competition, at the upset price […] after [they have] been surveyed”, a rule that promoted controlled settlement, and in ss. 12-43 a much more detailed code for pre-emption that continually emphasizes the need for pre-emptors to earn the land by improving and dwelling on it.
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The new tenure systems deserve attention. The regime for licensing a landowner's right to use water comprised sections 44-50. Section 44 allowed anyone "lawfully occupying and bona fide cultivating lands [to] divert any unoccupied water from" adjacent or traversing streams, lakes, or rivers, "upon obtaining the written authority of the Stipendiary Magistrate of the district". The Ordinance did not define "unoccupied", but specified a first-come, first-licensed rule. The magistrate did not have a discretionary role in granting licences. This simple system is typical of the land regime of the time, which was concerned with encouraging agrarian settlement and did not attempt more complicated calculations of the relative "best use" of land.

While simple, the new water regime was intended to encourage the cultivation of land. It was a significant departure from the common law rules for "riparian rights," i.e. the landowner's right to the use and flow of water adjoining or running through their land. As with the government's laws for land ownership and miners' water privileges, the water licensing regime overrode the common law to promote the development of land. U.S. legal historian Morton J. Horwitz describes the underlying precepts of the original common law rules: "the flow of water in its natural channel was part of nature's plan, [so] any [substantial] interference with its flow was [...] impermissible"; and subject to this natural order of things, private ownership was supreme, so one landowner could not interfere with the flow of water through a neighbouring landowner's property. As a result the courts

133 The 1865 water licensing provisions were not the first laws related to water rights, however. Since 1859, miners had been entitled to water privileges when they obtained free miners' certificates. See infra, note 160 and accompanying text. I suggest below that the miners' water privileges did not amount to a water licensing regime.
134 Ibid., s. 46.
135 For a summary of the riparian law the B.C. legislation overrode, see H.A. Maclean, "Historic Development of Water Legislation in British Columbia" in British Columbia Natural Resources Conference, Transactions of the Eighth British Columbia Natural Resources Conference (Victoria: British Columbia Natural Resources Conference, 1953) at 243 [Maclean, "Development of Water Legislation"].
would not allow the diversion of any substantial amount of water under the common law rules, and this created a serious economic hindrance in the late eighteenth and early nineteenth centuries. Horwitz argues that “[t]he premise underlying the [old riparian] law was that land was not essentially an instrumental good or a productive asset but rather a private estate to be enjoyed for its own sake.” This conception of rights to land and water held sway in the United States until the second decade of the nineteenth century, when the courts began to work out a “reasonable use” test that would encourage improvements to land. By the 1860s this test balanced the right of a riparian owner to use water against the right of a downstream owner to suffer no material injury as a result. Even with the new emphasis on economic use of water, however, the test was, and remains, restrictive. It allows an owner to use as much water as needed for domestic purposes, i.e. drinking or washing, but leans towards the downstream owners’ rights when allowing other uses. Irrigation is especially restricted: a riparian owner “may not take more than an amount adjudged reasonable under the circumstances, […] must return the water to the stream […] with no diminution other than that caused by evaporation and absorption caused by irrigation[, and] may […] cause no material injury to the riparian owners below”. The riparian owner also has no right to grant the user of water to others.

In colonial British Columbia land was a productive asset and an instrument for creating a new society. The government did not intend to rely on the common law test, which had already proved inadequate for mining. The 1865 water licensing rules dispensed with the

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137 Ibid. at 34-42. At 37-38 Horwitz describes the period in the early 1800s when the U.S. courts began to adopt “the relative efficiencies of conflicting property [as] the paramount test” of conflicts over water use, instead of the old notion of “natural use and priority”.
139 Ibid.
balancing test entirely. The magistrate had no authority to balance interests: the system rewarded enterprising farmers with a licence for whatever they needed, as long as they did in fact use it. The regime overrode any residual common-law notions that private ownership as supreme or that one should not disturb the natural course of water. Water rights for farming and mining trumped private land ownership and nature. The goal was to ensure the pre-emptors used their land and created local markets and towns. It is also significant that, unlike the United States, in which common-law rules governed water rights, the Ordinance gave the government the instrumental role of allocating water rights and ruling on disputes over those rights.

The first timber leasing regime was a different matter. It was hardly a regime at all. The government was slow to encourage the nascent logging industry on the west coast, despite the abundant supply of high-grade wood. It treated logging as merely adjunct to the task of clearing land for farming and towns, likely because of its view of logging as an itinerant activity: cut the trees and move on. Agriculture and mining required a long-term commitment to settle in one place, and create communities. Beginning with the Land Proclamation, 1859, the crown treated timber-cutting as an incident of settlement and agriculture. Farmers needed to clear the land, and the trees were necessary for dwellings,

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140 The later statutes did, however, start to incorporate rules for determining priority that operated as a legislative balancing test. Maclean, “Development of Water Legislation”, supra note 135.
141 A continuing feature of water licensing in British Columbia is the requirement to use the amount of water licensed for the purpose in the licence. Maclean, ibid; and Water Act, R.S.B.C. 1996, c. 483, ss. 22.01, 23(2). Section 41(1)(o) makes it an offence to “divert water that the person does not use beneficially”.
142 The dispute mechanism for water rights, ibid., s. 48, gave the “Stipendiary Magistrate” in the district the power to decide disputes with, “at the option of either of the contending parties[.] ... a jury of five men”. Of course, the decisions of the magistrate could have drawn on common law concepts of private ownership, but would presumably, have been guided by the Ordinance’s emphasis on the cultivation of land, not on absolute notions of ownership.
143 Ibid., ss. 53-54 comprise the logging regime in 1865.
barns, towns, and factories. But when sawmill owners had exhausted their and their neighbours’ pre-emption land in the early 1860s, they started to demand access to public land to cut timber. Section 53 of the *Land Ordinance, 1865* was the government’s hesitant response. It authorized:

Leases of [...] unoccupied Crown lands [...] to any person [...] for the purpose of cutting spars, timber, or lumber, and actually engaged in those pursuits, subject to such rent, terms, and provisions as shall seem expedient to the Governor.

This section seems almost an afterthought in comparison to the more detailed and supportive provision for grazing leases in s. 51, discussed below. The government appeared to treat logging as an activity to be controlled to prevent harm to the economy, rather than encouraged to grow into an industry. Section 54 reinforced this regulatory function: applications for timber leases “must be in writing [...] in duplicate [...] to the Governor, who alone shall decide on any such lease.” Only the Governor was allowed to grant timber leases, whereas grazing leases and indeed the sale of land were matters delegated to junior officials.

Historian Gordon Hak describes the context of this law:

The government, for its part, wanted to encourage industrial activity, but at the same time it feared timber falling into the hands of speculators. The government also was leery of lumbermen controlling land that was suitable for agricultural settlement, since farmers were perceived as the backbone of a stable, flourishing society.

The government initially allowed sawmill owners to log “their own private land, neighbouring pre-emptions, and, on occasion, public land”. The government’s hesitancy to comply with the subsequent demand for the exclusive right to cut on public land did not

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144 The *Land Proclamation, 1859* and its successors explicitly stated that timber rights went with title to land. *Supra* note 87, s. 7. And see Cail, *Land, Man, and the Law*, *supra* note 75 at 91, 93.  
end with s. 53 of the Land Ordinance, 1865. For each lease, the Governor sought assurances such as the following affirmation from one of British Columbia's first two lumber barons, Sewell Prescott Moody: "[T]he land on which this heavy timber grows is unfitted for agricultural purposes, [making] it [...] impossible for [a lease] to interfere in any way with the rights of actual or intending settlers."147 Through the 1870s the Governor continued to negotiate leases one at a time. Each one "stipulated that the timber holder had to have and operate a sawmill."148 This requirement was an attempt to hew forestry in the image of the Wakefield model: creating more permanent economic centres around which towns might be established. Only in 1884, with the advent of railways and the possibility of interior development and substantial export markets, did the government begin to enact a new form of timber tenure that enabled the smaller operators to enter the industry.149

If timber leases were an afterthought, the Land Ordinance, 1865 set out a markedly different regime for grazing rights. Section 51 allowed leases of "unoccupied and unsurveyed land [...] for pastoral purposes" provided the lessees were "bona fide pre-emptors or purchasers of land".150 The following section allowed lessees to eject trespassers as if the lessee were a landowner.151 However, the provisions made it clear that farming had priority; under section 51 grazing leases were subject to "pre-emption, reserve, and purchase [...] without compensation". Presumably, then, a grazing lessee could not eject those who entered the leased lands to stake a pre-emption claim. The section is also

147 Ibid. at 68-69, quoting Moody. The other was Edward Stamp, who set the precedent that Moody invoked in his letter. For more on their history, see James Morton, The Enterprising Mr Moody, the Bumptious Captain Stamp: The Lives and Colourful Times of Vancouver's Lumber Pioneers (North Vancouver: J.J. Douglas, 1977).
148 Ibid. at 69. These leases had a standard term of 21 years, which
149 Ibid. Chapter 3 touches on the expansion of the regime for logging tenures, infra note 254 and accompanying text.
150 Grazing leases are more consistent with an agricultural vision for the colony, so it is possible the government chose to make it simpler to obtain such leases by allowing delegation. I have not, however, researched archival records to verify this hypothesis.
151 Pre-emptors awaiting fee simple transfer had the same right to enforce trespass.
consistent with the pre-emption regime’s requirement of improvements: Lessees must “within six months stock the property […] in proportion of animals to the one hundred acres” as set by the magistrate.152 Grazing fit the vision for an agrarian society, but ranchers still had to qualify for the right to use land.

The Land Ordinance, 1865 also includes, in s. 5, the power to, “for such purposes as [the Governor] may deem advisable, reserve any lands [...] not [...] sold or legally pre-empted.” This provision merely continued the power granted under s. 3 of the Land Proclamation, 1859.153 These were the first provisions for removing land from development. Reserves are important in the later narratives of land law in British Columbia, as different types of reserve powers—for parks, forestry—appeared.154

Mining and settlement policy: gold legislation, 1859-64

By 1865 the pre-emption regime was well established, and the land laws had diversified, however tentatively, into timber, grazing, and water allocation. Mining was the other land use for which the government had, by the mid-1860s, created a considerable body of law.

The first mining laws, established on the eve of 1858, were a reaction to the gold rush, and an attempt to affirm colonial control of land and immigration before the mainland became a colony. Those acts merely reserved gold to the crown and required a licence for its extraction.155 They were the sole statement of the law of mining in the colonies until Governor Douglas signed three mining proclamations in early 1859, and then on 31 August

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152 Ibid., s. 51. This is a rare instance of the stipendiary magistrate having apparent discretionary authority.
153 Supra note 87.
154 These land reserves were, however, distinct from the Indian reserves the government began to create in the 1860s. See Infra note 203 and accompanying text.
155 Cail, Land, Man, and the Law, supra note 6 at 71-72.
replaced all five proclamations with the *Gold Fields' Act, 1859*. On first reading this Act seems to enact the Wakefield model only in the negative, by treating gold mining as a potential threat to colonial control of land: Its preamble sets out the purpose of “regulating” mining and ensuring the “administration of justice”. But even this early statute was much more than a mere assertion of authority: legal scholars identify it as the “first systematic Canadian mining law”. Governor Douglas modelled the Act on legislation in Australia and New Zealand, borrowing the approach of inducing compliance with governmental control by offering rights and protection to miners at a relatively modest cost. Miners could buy certificates for one pound sterling per year. Without a certificate, an individual miner had no right to mine; with one, the person became a “free miner” with an almost unrestricted “right to enter [...] any of the waste lands of the Crown” to explore and stake claims without paying any further fees. The Act also recognized water privileges for miners, which the government quickly adapted into a licensing system that replaced common law rules that required private ownership of land to confer any rights and did not allow the substantial use of water required for mining. The Gold Commissioner, assistant

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156 Colony of British Columbia, *Gold Fields’ Act, 1859*, 31 August 1859 (23 Vict.) [*Gold Fields’ Act, 1859*]. Although the proclamation does not give a short title, I cite the proclamation as an act because all subsequent laws refer to it thus.


158 Ibid. at 236-37.

159 *Gold Fields’ Act, 1859*, supra note 156, ss. 3 (fee and certificate), 5 (“right to enter ... any of the waste lands”), 7 (exclusive right). Cail, *Land, Man, and the Law*, supra note 6 at 72. Cail notes that for a fee of £25, miners could also buy 10-year mining leases for up to ten acres.

160 The water privileges for miners borrowed a system that gold miners worked out in California. Maclean, “Development of Water Legislation”, supra note 135 at 244-45. These privileges predated by five years the statutory regime for the use of water by landowners. I have already discussed that regime and the common law, supra note 133. The *Gold Fields Act, 1859*, ibid., does not specifically set out a regime for water rights; it merely refers, in ss. 6, 8, 11, 16 to water rights created one week later in the first full set of regulations for mining: Colony of British Columbia, *Rules and Regulations for the working of Gold Mines* 7 September 1859 (23 Vict.), ss. 7, 8. The regulations gave the gold commissioners discretion to grant exclusive ditch or water privileges, for a monthly rent equal to “one average days’ receipts” from sales the miner made from the privilege. As with later water
gold commissioners, and justices of the peace were responsible for issuing certificates and water privileges, and also had the “authority and jurisdiction of a Justice of the Peace” to settle disputes.\(^{161}\)

The “law and order” undertone of the early mining statutes, including the grant of judicial powers to gold commissioners, is consistent with accounts of the “wild west” atmosphere in the young colony, with the government sometimes treading a delicate line to maintain authority over disputes among miners and other users of land.\(^{162}\) Likewise, the rights a miner obtained at such low cost underscores the delicate bargain the government had to strike to obtain compliance with its authority. But as noted above, the early mining legislation was not solely premised on mining as a threat to the peace or to colonial jurisdiction. Instead the early legislation reveals the government’s various goals: establish law and order, assert colonial authority over land, generate revenue, and implement the Wakefieldian vision of an agrarian society of interconnected town centres.

This last goal is subtle in the mining laws, but a closer examination reveals provisions means to shape mining to the government’s vision. As broad as the free miners’ rights were, the legislation subjected them to the public good in various ways. For example, a gold commissioner was only to allow mining companies to form if they were in “the interests of mining in [that] district”.\(^{163}\) And even though the earliest mining laws authorized miners to build homes on their claims—legal recognition of an existing practice—those laws also

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\(^{161}\) *Gold Fields’ Act, 1859, ibid.,* ss. 15-17. This authority was restricted, in the case of mining partnerships, to partnerships worth less than £200. Larger disputes were, apparently, a matter for the Governor himself.

\(^{162}\) See Howay’s *B.C. History, supra* note 76 at 259-62 for a lively account of the tentative peace Governor Douglas’s successor achieved in this violent dispute between two gold-mining companies. It is no surprise that by 1865, when the government delegated the commissioner’s authority to grant certificates and licences, it was the newly created magistrates who took on these duties, in addition to their general role of enforcing the peace.

\(^{163}\) *Gold Fields’ Act, 1864, ibid.,* s. 9.
subjected miners' homes and gardens to the community's interests. The 1859 mining regulations required the gold commissioners to “keep in view the general interests of all the miners in that locality” and, where land was scarce, to “allot small plots only” to prevent a few from taking up too much land.\footnote{164 Colony of British Columbia, \textit{Rules and Regulations for the working of Gold Mines} 7 September 1859 (23 Vict.), s. 17.} And the right to a claim and to the use of water was conditional on the continuous exercise of the right. Thus the legislation was both an attempt to legitimize otherwise uncontrolled mining and temporary settlement, and to fit mining into a vision of settlement in which each resident had only as much land as necessary for a viable community, and used that land productively.

The assertion of colonial authority was more prominent the statutes of 1859 and 1860, but became less significant as the colony established itself and the government came to see mining as an inducement to settlers. The development of the mining laws, conversely, only emphasized Wakefield’s vision. As in Australia and New Zealand, the contemporary colonies that Wakefield’s model influenced, the government quickly came to see mining as an industry to be encouraged, both as a source of revenue and as an attractor of settlers.\footnote{165 The revenue function of the mining laws was explicit in the preamble of the Colony of British Columbia, \textit{Gold Fields' Act}, 1864, 26 February 1864 (27 Vict.) [\textit{Gold Fields' Act, 1864}]. And on the incentive, see below, note 175 and accompanying text.} The series of early mining laws laid out a detailed system for authorizing miners to explore and make claims and, even as early as 1859, to obtain leases for mines over sites larger than a claim.\footnote{166 Colony of British Columbia, \textit{Rules and Regulations for the working of Gold Mines}, 7 September 1859 (23 Vict.), ss. 20-26.} By 1864, the legislation had expanded in scope to allow miners to form companies for more intensive projects—with subjecting companies to the service of the public good in that community.\footnote{167 \textit{Gold Fields' Act, 1864}, supra note 165, s. 10 authorized three or more miners to form companies to work “bed-rock flumes.” See Cail, \textit{Land, Man, and the Law}, supra note 6 at 74 on bedrock flumes (where he incorrectly attributes the first authorization of companies to an 1867 ordinance). As noted above, s. 9 required that proposed...}
The eight mining laws Governor Douglas proclaimed between the *Gold Fields' Act, 1859* and his retirement in 1864 reveal this shift in emphasis from control to cautious support of the industry. Miners' rights grew more substantial in 1863 when the government passed a series of laws on mining. Having redefined the rights of registered free miners in March that year, the government specifically proclaimed that pre-emptors could not obstruct free miners. The steady expansion and clarification of special rights for miners suggests both an emerging view of mining as a complement to the government's goal of creating an agrarian society, and a growing induction of the mining community into the Wakefieldian vision of an ideal agrarian society shaped within government policy. Another mining law in 1863 reinforced the growing relationship between mining and land-settlement law. The *Mining District Act, 1863* authorized the Governor to establish mining districts throughout British Columbia. The statute has a seminal place in the history of provincial land management, as the first legislated division of the province into administrative areas. As companies serve "the interests of mining in [that] district". The requirement is similar to the restriction of logging leases to mill owners who maintained the mills as economic hubs for communities.

168 Ibid, at 73. Cail cites seven pieces of legislation, but omits the regulations passed one week after the *Gold Fields' Act, 1859*. Colony of British Columbia, *Rules and Regulations for the working of Gold Mines 7 September 1859* (23 Vict.).

169 The first of three mining laws that year, the *Proclamation by His Excellency James Douglas, 24 February 1863* (26 Vict.) elaborated the regulations under the *Gold Fields' Act, 1859*.

170 *Proclamation by His Excellency James Douglas, 25 March 1863* (26 Vict.).

171 Colony of British Columbia, *Mining District Act, 1863*, 27 May 1863 (26 Vict.) [Mining District Act, 1863]. The preamble states that "it is desirable for the protection of Miners to retain in [...] the Crown power to prevent [Miners] from being obstructed or hindered by the Claims [...] of persons holding land under" the Land Proclamation, 1861.

172 *Mining District Act, 1863*, ibid., s. 1. Districts were not completely new; the statute creating the provincial land registry allowed for district offices in addition to the main office in the capital city, New Westminster. Colony of British Columbia, *British Columbia Land Registry Act, 1861*, 26 August 1861 (25 Vict.), Appendix to the Revised Statutes of British Columbia 1871, no. 20, ss. 8-10.

173 In the trial decision in Canada's first major court case on aboriginal title and rights, the British Columbia Supreme Court recognized the significance of this legislation to the establishment of imperial authority over British Columbia by citing it, among many early land laws, as evidence of the extinguishment of aboriginal title. *Calder v. British Columbia (Attorney General)* (1969), 8 D.L.R. (3d) 59 at 78, 71 W.W.R. 81 (B.C.S.C.).
discussed above, the mining districts became part of the pre-emption regime when the *Land Ordinance, 1865* absorbed the *Mining Districts Act.*

As chapter 3 will explain, by the 1870s mineral claims and particularly coal mines had begun to operate as sites of settlement around which the government could survey lands and create community economies. The statutes of the 1860s do not indicate how conscious the government was of this consequence of the legal regime. It does appear from contemporary literature such as Matthew Macfie's 1865 survey of the two colonies that there was a general awareness of the value of mining as a leader of settlement. Macfie's sources support the conclusion that the government of the 1860s promoted potential new industries if they were consistent with the model of concentrated settlement, i.e. cultivated lands connected by roads or waterways to markets and supplies, and ignored or even suppressed those that were not, such as logging.

(2) *Extending the vision: excluding “Aborigines”; including minerals*

The next six years, before British Columbia joined the confederation of Canada in 1871, continued the model the early land proclamations and gold laws established. Most of the changes were to consolidate legislation spread over numerous ordinances, or to embellish

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174 See *supra* note 131 and accompanying text, and the *Land Ordinance, 1865, supra* note 130, ss. 13, 20, 22, 30. Each district had a “Stipendiary Magistrate” to manage applications and, in some cases, disputes.

175 Matthew Macfie, *Vancouver Island and British Columbia: Their History, Resources, and Prospects* (London: Longman, Green, 1865; reprinted Toronto: Coles, 1972) [*Macfie, History of Vancouver Island and British Columbia*]. Macfie was a Congregational minister in Victoria. Howay's *B.C. History, supra* note 76 at 115. His book was less a history than a detailed pamphlet promoting immigration to the new colonies, but contains a useful contemporary account of the perspective of developers, settlers, and the government. It also provides copies of and context to the mining laws, noting the abundant mining opportunities in the colonies. *Ibid.*, c. 9, 10.

176 *Ibid.* at 147, Macfie especially promotes coal, which was then still limited to exports from the coal mine in Nanaimo, but which soon earned the government's attention.

177 *Ibid.* at 141-43; and see 131, 134-35, 138, respectively, on the abundance of timber on Vancouver Island and the mainland, the existence of only one company exporting wood, and the relative profitability of the export of wood, compared to gold. Woodock's *History of B.C., supra* note 69 at 80 notes the potential beginnings of a lumber export business as early as 1848 on Vancouver Island. Despite this potential, the lumberers failed to establish a viable export industry until the 1880s.
the procedures for buying and registering land. These statutes included the consolidation of the numerous gold laws\(^{178}\) without changing their substance except to enable larger mining operations;\(^{179}\) the adaptation of procedural rules to better facilitate pre-emptions;\(^{180}\) and the protection of homesteads.\(^{181}\) The two exceptions to this series of technical amendments were the extension of the land laws to encompass the mining of coal and minerals other than gold, and three statutes that were among the few to acknowledge the First Nations that the settlers were displacing. I will first consider these statutes and their role in the exclusion of First Nations from the legal landscape of British Columbia.

**Narrowing society: exclusion, containment, and possession of First Nations**

The *Pre-emption Ordinance, 1866* was designed to affirm a strict version of the Wakefield model. It expressly excluded companies and "Aborigines" from pre-empting land.\(^{182}\) The former clarification was merely an explicit statement of the existing law: the Wakefield model intended only individuals to own land—land they lived on and farmed. By contrast, preventing native individuals from participating in the colonial system for allocating land

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\(^{179}\) The most notable feature of these ordinances was the expansion of the tenure regime to allow companies to form and obtain mining leases. But even the early legislation allowed leases and joint-stock partnerships, and the 1864 gold mining regulations allowed three or more miners to form a company for mining bedrock flumes. *Supra* notes 166-98 and accompanying text.

\(^{180}\) Colony of British Columbia, *Pre-emption Ordinance, 1866*, 31 March 1866 (29 Vict.). Appendix to the Revised Statutes of British Columbia, 1871, no. 24, ss. 2, 3, adapted the rules for pre-empting lands that did not fit the previous legal rules for shape and size, and designated the stipendiary magistrates in the districts as assistant commissioners. The latter change formalized the role of the magistrates in managing land allocation, and further incorporated the newly created districts into the land regime. See *supra* note 174 and accompanying text. A later procedural amendments was: United Colony of British Columbia, *Pre-emption Payment Ordinance, 1869*, 10 March 1869 (32 Vict.). Appendix to the Revised Statutes of British Columbia, 1871, no. 26, which revised the rules for payment for pre-empted lands.

\(^{181}\) Colony of Vancouver Island, *The Homestead Act, 1866*, 21 August 1866 (30 Vict.) protected homesteads on Vancouver Island from seizure. When the colonies united in 1866, this law was re-enacted as United Colony of British Columbia, *The Homestead Ordinance, 1867*, 22 March 1867 (30 Vict.). Appendix to the Revised Statutes of British Columbia, 1871, no. 77.

\(^{182}\) *Pre-emption Ordinance, 1866*, *supra* note 180, s. 1.
was a change from the policy under Governor Douglas. The goal behind this exclusion seems to have been the establishment of a properly British society. The government wanted the members of this new society to fit a particular model of British citizenship, a desire James Douglas shared and that his correspondence emphasizes. Douglas allowed pre-emption only because he believed natives could be assimilated if the land-use rules were onerous enough. But Joseph Trutch, who took office as both Chief Commissioner of Lands and Works and as Surveyor-General for the mainland in 1864, had more of a purist’s attitude towards the social aims of Wakefield’s model. The 1866 amendment was, in fact, part of a larger strategy to ensure minimal native interference with pre-emption and settlement through exclusion and containment. The containment came in his new rules for Indian reserves. Under Trutch, there would be no treaties with First Nations, large reserves would be reduced, and new reserves would be limited to allotments of 10 acres of land for each native family. He saw these changes as the “increased means of bringing out [the] real merits and capabilities” of a land system that had so far been “essentially benevolent toward the Indians.” And in 1869, the government decided to formally enact its policy for Indian

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183 This is not to say the native peoples were not British subjects, since the crown did define them as such, and as the following text describes, made them British subjects in the sense of subjection to crown rule. My point here is that the laws began to exclude natives from participation in the new British society. For new entrants to British Columbia, British citizenship or the oath of allegiance to the crown were from the beginning requirements for land ownership in the colonies. Supra note 98. See also supra note 77 on James Douglas’s particular concern with ensuring citizens in the colony were pro-British.

184 As noted infra, note 198, in 1862 Douglas had considered creating a stricter set of requirements for pre-emption by native individuals, intended to increase their assimilation into settler culture.

185 History of the Lands Service, supra note 71 at 31, 33. In 1866, when the colonies united, Trutch’s job expanded to include Vancouver Island. In 1871, he became the Province’s first Lieutenant-Governor. Ormsby’s History of B.C., supra note 66 at 251.

186 Harris, Making Native Space, supra note 31 at 58, noting Trutch’s efforts at this time to establish native peoples on smaller reserves than those Douglas had begun to create on Vancouver Island in the 1850s. These reserves were to be created around existing villages, and their creation was to “interfere,” as Harris summarizes, “as little as possible with land already taken up by whites.” Harris also paraphrases one of the district magistrates, Trutch’s brother-in-law Peter O’Reilly, who felt that “the overly large reserves in the colony caused settlers much inconvenience.”

187 Trutch quoted in Harris, Making Native Space, ibid. at 68.
reserves, passing the *Indian Reserve Ordinance, 1869.*\(^{188}\) This Ordinance, and Trutch's previous changes, while more restrictive than those of Douglas, were in fact the culmination of a series of colonial policy decisions that demonstrate the impossible position of First Nations in a legal regime designed to reinvent the land from a blank slate. To understand this point, we must consider the history that led to the 1866 and 1869 statutes.

Governor Douglas had begun to create reserves on Vancouver Island in 1850,\(^{189}\) and on the mainland from the first year of the colony.\(^{190}\) The small reserves he created on the Island were different from their mainland counterparts, since they flowed from treaties he signed from 1850 through 1854. These treaties, negotiated with First Nations on the south-east of the Island, enabled the government to purchase lands the Hudson's Bay Company intended to settle. The treaties, and much of his correspondence at the time, indicated that Douglas viewed First Nations as having title to lands, a title the government could not take without consent. But historical geographer Cole Harris has argued that Douglas's correspondence indicates that the more important reason for the treaties was a practical approach to the job of settlement.\(^{191}\) Douglas was simply attempting to avoid conflicts by gradually expanding settlement on lands First Nations ceded to the crown. As he wrote to Colonial Secretary Earl Grey in 1852, "Every means in the power of this Government will also be exerted to keep the Colonists together, and to prevent them from straggling into the Indian Country, and forming detached settlements, which from their weakness and isolation, would be greatly

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\(^{188}\) United Colony of British Columbia, *Indian Reserve Ordinance, 1869,* 15 March 1869 (32 Vict.), R.S.B.C. 1871, c. 125

\(^{189}\) Harris, *Making Native Space,* supra note 31 at 27.

\(^{190}\) Harris, *ibid.* at 34-44 describes Douglas's creation of reserves on the mainland.

\(^{191}\) Harris, *ibid.* at 21.
exposed to Indian depredations.” The Wakefield model was one reason for planned, contiguous settlement; Douglas’s concern about conflicts with First Nations was another.

However, for reasons canvassed in Harris’s Making Native Space, Douglas abandoned the treaty-making approach as too time-consuming and, possibly, because his views on native title had changed. Settlement on Vancouver Island proceeded slowly, and did not force him to choose an alternative policy on the Island. But in 1859, faced with the much greater task of settling the mainland, Douglas did have to decide what to do about First Nations’ presence on the land. He did not choose to pursue treaties again. At Colonial Secretary Lytton’s suggestion, Douglas decided, according to Harris, to “group Native people in permanent villages” for “their instruction and civilization”. The solution was more expedient than negotiating treaties, but it was not initially intended to isolate First Nations and exclude them from the settlement process. The reserves Douglas created were small compared to the traditional territories over which the First Nations had exercised their own land policies prior to settlement, but much larger than the reserves of later in the 1860s. Douglas’s instructions to Surveyor General Moody in 1859 were to create reserves covering “several hundred acres around each [native] village”. His primary goal was to enable British settlement of land, but as noted above, he seems to have genuinely intended that First Nations would participate in that process of settlement. The reserves were to be

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192 Douglas to Grey, Fort Victoria, 15 April 1852, quoted in Harris, *ibid.* at 22.
193 Harris, *ibid.* at 21.
194 *Ibid.* at 34.
196 Douglas to Moody, Victoria, 7 October 1859, quoted in Harris, *ibid.* at 34.
197 Although this summary is not intended as a substantial critique of a complex history, I do wish to acknowledge the criticisms of Douglas’s goals and methods. Among the practical criticisms are the question of whether the reserves included all the village sites in the “seasonal round” of fishing, hunting, and harvesting and, more importantly, the flaw of expecting First Nations to switch from their traditional cultural practices and means of sustenance to a European societal structure and agricultural economy. A more fundamental question, of course, is the source of authority to circumscribe native land use without a treaty. This question is the basis of a growing body of case law on aboriginal rights and title since the late 1960s.
their base, on lands they currently occupied, with sufficient space to cultivate land—“as much land [...] as they could till”—for their communities, and equal opportunity for native individuals to pre-empt land elsewhere and fully join the new colonial society.¹⁹⁸

Joseph Trutch reversed that policy with the 1866 law prohibiting natives from pre-empting land.¹⁹⁹ Having excluded natives from the new colonial society, Trutch then began his strategy to contain native societies. The reserves created under Trutch’s direction were smaller, and the government began to cut area from the reserves Douglas had created.²⁰⁰ First Nations became more isolated as the government continually shunted them out of the way of settlement and resource development.²⁰¹ The government justified the policy with its belief that First Nations would or could not embrace agrarian societyhood. A gold commissioner in Lytton described First nations as “a vagrant people who live by fishing, hunting and bartering skins; and the cultivation of their ground contributes [only] a few days digging of wild roots.”²⁰²

In 1869, with this policy well under way, the government issued the Indian Reserve Ordinance. Its preamble states the goals of “avoidance of disputes among Indians and Settlers [and providing] a more speedy means [...] for the settlement of all such questions.” The remainder of the short ordinance is framed as protecting Indian Reserves from encroachment by pre-emption. Section 1 authorizes stipendiary magistrates to settle disputes “between or among any Indian or Indians and any other person [...] as to the right

¹⁹⁸ Harris, ibid. at 35. Harris notes at 36 that Douglas considered creating a more onerous standard for pre-emption, requiring two years of continuous presence on the land, as well as detailed requirements for a log house on the property. Such a law, which did not come about, would have been consistent with the social aims of the Wakefield model, as noted supra, note 180 and accompanying text.

¹⁹⁹ Supra note 180 and accompanying text.

²⁰⁰ Harris, Making Native Space, supra note 31 at 56ff.

²⁰¹ Later in the century, after the government of Canada took charge of the creation of Indian Reserves, the policy of exclusion had grown to the point that some reserves moved First Nations away from not only their village sites but their traditional territories.

²⁰² Philip Henry Nind, Gold Commissioner, to Arthur Nonus Birch, Colonial Secretary, 17 July 1865, quoted in Harris, Making Native Space, supra note 31 at 56.
to enter into or occupy [...] any Crown lands [...] being Indian Reserves of Settlements.” The most significant implication of this Ordinance is that the government was asserting its view that the First Nations did not own even the lands reserved to them. Instead, the ordinance treats native peoples almost as guests of the crown, and certainly people under the protection of the crown. This was the position of First Nations as the colony pushed ahead with its settlement plans, at the time of confederation.

The other statute of this time related to First Nations also says much not only about the colonial attitude towards First Nations, but about the legal creation of British Columbia. The Indian Graves Ordinance, 1865\(^{203}\) was the first legislation for the protection of archaeological sites.\(^{204}\) But more importantly, the statute reveals how the government went about creating not only the territory of the colony, but everything in it. The short Ordinance, which sets a penalty for damage to “any image, bones, article or thing ... in or near any Indian Grave”,\(^{205}\) goes on to state that, in prosecutions under the ordinance, “it shall be sufficient to state that such grave, image, bones, article or thing is the property of the Crown.”\(^{206}\) As with villages and reserves in the Indian Reserve Ordinance, the Indian Graves Ordinance created sites of cultural significance to First Nations: redefined them as “archaeological sites,” deemed them the property of the crown, and brought them into being within then land regime.

\(^{203}\) Colony of British Columbia, Indian Graves Ordinance, 1865, 28 March 1865 (28 Vict.), re-enacted in United Colony of British Columbia, The Indian Graves Ordinance, 1867, 5 March 1867 (30 Vict.), R.S.B.C. 1871, c. 69.

\(^{204}\) Heritage Conservation Act, R.S.B.C. 1996, c. 187.

\(^{205}\) Supra note 203, s. 1 (1865); 2 (1867).

\(^{206}\) Ibid., s. 2 (1865); 3 (1867).
Expanding development: Mineral Ordinance, 1869

Other than the three statutes dealing with First Nations, the only other significant legislation between 1869 and 1870 was the Mineral Ordinance, 1869. This Ordinance was the first mining statute for any mineral other than gold. It was also the first law to allow the sale of land for mining. This precedent responded to the movement of "mining operations [...] from easy panning in creek beds to more tedious prospecting in the hills." The Ordinance was more sophisticated than the pre-emption and gold mining laws that preceded it, and set a precedent for the purchase of leased or licensed lands that remains relevant today. The Ordinance had two major regimes for minerals and coal, one for licensing prospectors; the other for the sale of mine lands.

The licensing system "for silver and all the baser metals and minerals, including coal" started with a general right to enter and explore lands for these minerals. Miners could then apply to the Assistant Commissioner of Lands and Works for a renewable prospecting licence of up to two years. The size of the licensed area was five times larger for coal than for minerals, and likewise five times larger for associations or companies than for

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207 United Colony of British Columbia, Mineral Ordinance, 1869, 10 March 1869 (32 Vict.), R.S.B.C. 1871, c. 123 [Mineral Ordinance, 1869]
208 Cail, Land, Man, and the Law, supra note 6 at 75.

210 Mineral Ordinance, 1869, supra note 207, s. 1.
211 Ibid., ss. 2 (application), 13 (renewal—requiring application before expiry of the original licence).
individuals. The licence carried considerable powers, including the right to "search for, raise, get, make merchantable, and sell [...] all metals and minerals [...] specified [in the licence], and [...] to make and erect the necessary roads, works and buildings" as well as the right to a right of way or railway to the sea.

The Ordinance's other major feature was a land sales system for coal and mineral mines. Until 1969, the government sold land only for town lots or agricultural settlement. Section 11 of the Mineral Ordinance, 1869, however, allowed current licence holders to apply for a crown grant over part of the licence area. Sections 16 to 29 set out a detailed set of rules for crown grants of mining lands. These rules draw on the pre-emption system's requirement of the proof of improvements and diligent use, and included:

- A limit of 1,000 acres for a crown grant of coal lands, and, for other mines, 0.6 acres for individuals or 18 acres for associations or companies;
- Allowance for a right of way or railway from the mine to the ocean;
- A detailed process that started with a total of five months of public notice of the application, followed by a certificate, then a survey at the applicant's expense, after which the Commissioner granted the land upon payment of the appropriate price;

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212 Ibid., s. 11. For coal, a company was allowed up to 2,500 acres; an individual, 500. For minerals, a company was allowed up to 500 acres; an individual, 100.
213 Ibid., ss. 12, 17.
214 Ibid., s. 16. The section applies only to "association[s] or compan[ies] of ten or more persons". Since individuals could not obtain licences for more than 500 acres, it appears they were allowed to obtain a crown grant to their entire licence area.
215 Ibid., s. 21. The limit is given in chains: three chains by two, for individuals, and thirty by six, for associations and companies. Presumably the chains were the English unit chain, also known as the surveyor's or land chain.
216 Ibid., s. 17. This right applies to both licensees and holders of crown grants.
217 Ibid., s. 22. Paragraph 22(a) requires the applicant miner to post notice on the land and in the Government Gazette for three months, after which the Assistant Commissioner posts a notice in the land office for two months. If no adverse claimants come forward, the process moves on. Adverse claims would start the dispute resolution process set out in s. 28ff.
• For coal lands, a price of $5 per acre, unless the applicant spent $10,000 in working the land (similar to the requirement of improvements for pre-emption), in which case the fee was waived;\textsuperscript{218} and

• For mineral lands other than coal and gold, a flat fee for the entire grant of $100 for individuals, or $250, for associations or companies of ten or more individuals.\textsuperscript{219}

The fee for mineral lands could also be waived, but not automatically on proof of a certain level of expense, as with coal lands. Miners had first to prove they had "expended in bona fide mining [...] not less [...] than one thousand dollars or (if an association or company of three or more persons) five thousand dollars" and then ask the "Governor in his discretion" to waive the price of the grant.\textsuperscript{220}

The remainder of the Ordinance dealt with matters relevant to both prospecting licences and crown grants. These include section 30-36, which set out a detailed dispute-resolution process for adverse claimants (heard by the Assistant Commissioner, with judicial review if necessary), and s. 39, which authorized the Governor to create new districts. Section 43 is a definitions section, one of the first such sections in British Columbia's land laws.

The Mineral Ordinance, 1869 is consistent with previous statutes, in its process for applying for tenure, and its reward for genuine improvements to land. In turn, it influenced the legislation of the 1870s with its more detailed elaboration of process. And although the Province no longer sells land for mining,\textsuperscript{221} the Ordinance's influence continues today in

\begin{footnotesize}
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\item \textsuperscript{218} Ibid., s. 24.
\item \textsuperscript{219} Ibid., s. 25
\item \textsuperscript{220} Ibid., s. 26
\item \textsuperscript{221} Land Act, R.S.B.C. 1996, c. 245, s. 19 prohibits outright the sale of land that has potential for mining. Likewise, s. 50 of the current Act extends the 1859 rule that ownership of gold does not run with title to land, including
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land policies for the grant of leased lands, e.g. recreational lots and lands under agricultural lease. The current policies, in a manner similar to the requirements under this Ordinance, require a tenure holder to maintain their tenure in good standing, and to prove some degree of improvement of the tenured lands before they can obtain a crown grant. This policy blends the pre-emption system's requirement of improvements with the "tenure-first" system of the Mineral Ordinance. The Ordinance's complexity and completeness also draws on the refinements to the previous land laws, and prefigures the rapid growth of subsequent legislation.

Crown grants and registration: assimilation and technical amendment

In 1870, as talks about the possibility of British Columbia joining the confederation of Canada were beginning, the government of the United Colony of British Columbia passed three ordinances that consolidated "and assimilate[d] the Law [...] in all parts of the Colony of British Columbia" for land allocation, registration of title to land, and game. However, these ordinances did not substantially change the regimes already in place.

title to all minerals including coal, as well as petroleum. The chapters below trace the expansion of the reservations from title.

222 Supra note 209 cites the current lease-purchase residential policy. The current policy for agricultural leases does not set out a detailed sales procedure, but in practice the process is similar: to buy agricultural land, one must first lease it, then "earn" the right by working and improving the land appropriately for some time. British Columbia. Ministry of Agriculture and Lands. Land Use Operational Policy: Agriculture – Intensive (Victoria: Province of British Columbia, 2005) at 5, online: <http://www.al.gov.bc.ca/clad/leg_policies/policies/agriculture_in.pdf>. Since 2003, however, the Lands Service has begun to loosen the restriction on direct sales of land for agriculture. The policy is very similar to the rules from the 1860s that allowed pre-emptors to buy a certain amount of land contiguous with their property Improved pre-emption lot. The informally applied policy does not require farmers to apply for contiguous properties, but is limited to "existing farmers who already own a parcel of land within 15 kilometres of the parcel they are applying to purchase, and that they have developed to a certain stage and are currently using for agriculture (to a certain percentage of cultivation)." Greg Kockx, Manager, Operational Program, Lands Programs Services Branch, Ministry of Agriculture and Lands. Electronic mail communication (3 October 2007) [Kockx, Electronic mail].

223 Reinforcing the continued importance of the government's land administration, Joseph Trutch played a critical role in the decision to unite British Columbia with Canada. As Margaret Ormsby notes, "on March 9, 1870, Attorney General Crease Commissioner of Lands and Works Trutch — both of whom had up to this time been unenthusiastic about Confederation — introduced the resolution for union." Ormsby's History of B.C., supra note 66 at 245.
The first and most significant change was to divide the colony in two: Vancouver Island and the southwest corner of the mainland Vancouver Island, on one side, and "that portion of the Colony [...] to the northward and eastward of the Cascade or Coast Range of Mountains," on the other. In the land to the north and east, later to be called the "interior," individuals could pre-empt up to 320 acres, a half-section of land. Pre-emptors in the fertile and more populous lands of the colony's southwest corner could still only pre-empt 160 acres of land. Thus the government began to encourage the spread of settlement, which at that point was still concentrated on the Island and region and New Westminster.

The other change of note in the 1870 ordinance was in s. 21, which set the price of surveyed, pre-empted land at $1 per acre, replacing the old price of 4s. 2d. As noted above, this change shifted the colony's land laws to the decimal dollar, just before British Columbia became a province of Canada. With the British Columbian land regime consolidated and the Canadian currency in effect, the colony was ready to join Canada.

Conclusion

As the colony of British Columbia entered confederation in 1871, the basic elements of its land laws were in place. The laws had served their two primary goals: to assert crown control over the land and the native and settler populations, and to legally define the land as a productive resource for the creation of a specific society. The first goal merely served the second, since colonial policy, inspired by Wakefield, required control to channel individual

224 United Colony of British Columbia, Land Ordinance, 1870, 1 June 1870 (33 Vict.), R.S.B.C. 1871, c. 144, s. 3 [Land Ordinance, 1870].
225 Ormsby's History of B.C., supra note 66 at 310 provides a pair of maps that indicate just how concentrated was settlement in the southwestern corner of the Province. The only areas marked as "essentially settled" are the southeastern side of Vancouver Island and a band of land starting in what is now Greater Vancouver and travelling up the Fraser River to a point west of what is now Kamloops.
226 Ibid., s. 21.
enterprise towards the desired economic and social system. That system, and the society it was meant to create, flowed straight from Locke's vision of the cultivation of waste land by individuals who earned property through their labour, and used only as much as they needed. The first land laws, from the gold-mining ordinances and pre-emption proclamations through water, timber, and mineral licensing, to the sale of coal mines, were the blueprints for the creation of such a society. To convert land into a productive asset while harnessing the initiative of private enterprise, they replaced the common law of land ownership and use with laws that enacted Wakefield's model.

The vision for a new society was stronger than the goal of supporting economic activity for its own sake. Economic use of land was clearly a goal of the land laws, but a subsidiary one: a means, not an end in itself. The end was settlement of agrarian townships with an upwardly mobile populace of landowners and labourers who could strive to earn enough to pre-empt and cultivate their own property. The preference for an agrarian society and early distrust of forestry and, to some degree, the gold rush was not arbitrary, nor was it merely the result of Locke's emphasis on cultivation. The government saw agriculture as the industry most conducive to settlement, though even then it saw a need to restrict farms to small lots—enough to support a family and a few labourers—and to impose as a condition of ownership the actual settlement on and "improvement" of the land.

When circumstances, such as the gold rush, and geography made orderly settlement and agricultural cultivation difficult, the government adapted the land laws. But these adaptations did not undermine the Wakefield model. The colonial government consistently reacted to impediments to the model in ways that in fact reinforced it. The adaptations reveal a determination to maintain instrumental authority to determine the appropriate use of land, and the consistent pursuit of the model's vision of settlement. Thus the mining laws
encouraged activity that the government saw as a driver of settlement, but also found ways to mould mining and miners in the colonial image of a settled society. Thus the forestry laws were much more restrictive, as the government sought to tie each lease to a local sawmill, and create hubs of employment and incidental industry that would both fulfil the vision of interconnected economic centres and attract potential pre-emption farmers. Thus the laws were cautious in allowing companies to obtain rights to land or resources, limiting the size of the companies, and ensuring they actively used the resource and were rooted to particular places, rather than speculating throughout the colony. And thus all users of land, companies or individuals, had to improve land to obtain it, and to use resources to keep their licences or leases. To be a land-owning member of this new society, one had to meet the government’s test not only for citizenship but the diligence and form of one’s use of land. The government supported private ownership and enterprise, but only when it fit the vision.

This instrumental role for government goes some way to explaining why in the ensuing decades the government retained ownership of so much land. If most of British Columbia had been as suited to farming as the Fraser Valley, there would not have been a “95/5 split” today. But the government’s role would likely have been no less instrumental in shaping the use of land, and the economic and social structure of the society that resulted from that land use. And the systems for regulating and managing land (more precisely, land use) that emerged in the 1970s would likely have appeared sooner, to prevent abuses of private ownership rights that undermined. Of course, the history of land law in the Province of British Columbia complicates such speculation, since at various times the government altered its land laws in ways that undermined the original Wakefieldian vision. But as chapter 3 describes, despite some changes in the mechanics of the land laws, the
instrumental role established for government in the 1860s only reinforced itself and grew more significant over the next one hundred years. Likewise the vision of land as a resource to be used for the benefit of society remained central to the legal system. This role of government and vision of land continued to emerge from and be re-embedded in the legislation for land use as the lands bureaucracies grew in size and importance, and took on new roles. Throughout the many changes to the laws in the decades following confederation, the laws remained within their organizing principle: the crown allocates private rights in land for the purpose of achieving a specific vision of a new society, and these rights and the resulting land uses must serve that vision by settling the land and growing the economy.
Chapter 3 - Government of the Economy

[T]his land, year after year, lies open and ready for man's planting. It is servile to man. The West is servant to no one but growth only.\textsuperscript{227}

After the Colony of British Columbia joined confederation in 1871, the government continued to operate within its organizing principle of shaping the use of land to form the Wakefieldian society. The laws of the 1870s through 1890s illustrate the need to adapt to circumstance in the effort to settle the Province with suitable British subjects who will improve and live on the land, converting it from waste to productivity, and forming an agrarian economy. The bureaucracy remained small through the turn of the century, maintaining the basic role of allocator and encourager of land development. The land-allocation laws, however, began to grow more complex in the late 1880s, particularly for mining and forestry. The advent of railways connected British Columbia to wider markets and helped to convince the government to change its laws to encourage rather than constrain the forest industry. The railways also brought settlers to the mining and logging towns in the Province's interior. After a lull in immigration in the 1870s, settlement increased and reached a boom period in the late 1890s that carried into the new century, defining the two decades in which the Lands Service sold the majority of the land that remains privately owned in the twenty-first century. This period also saw the rapid expansion of the new "dirt departments" — Agriculture, Lands and Works, and Mines — that

had formed in 1894 and 1899, and the diversification of the land laws into separate regimes for water, highways, and forestry.

At the same time, the function of the bureaucracies was extending beyond their original instrumental function of allocating land to particular uses. The departments and bureaus responsible for land use began to gather information about land, land use, and economics and trade. They shared this information with industry and began to subsidize agriculture and, indirectly, forests and mining. This support carried on the tradition of laws to encourage development, but in a way that also led to more regulation and regulation. The Province's first conservation controversy, over forestry, pushed the government further into an interventionist, managerial role in land use, just at the start of the modern era of economic development. The resource development period of the 1800s moved into industrial development, in subsequent decades, and then economic development by the middle of the twentieth century.

Part 1 of this chapter summarizes the continued struggle to legislative British Columbia into Wakefield's model, focusing more on the operations of the land bureaucracies than on the specific statutes that framed their work. The second part steps back to consider three themes that emerge from the history of the late nineteenth and first half of the twentieth century: the government's assumption of the role of researcher and educator; its intervention in the resource economy in the form of direct and indirect subsidies, and the emergence from these new laws of an ethos of economic development. Two case studies draw these themes together: the forest conservation debates and new forest management licensing regime of the 1930s and 1940s; and provincial parks and their relationship with the gradual appearance of a recreational class in the 1950s.
Part 1 — Developing a Province

In 1871 British Columbia, now united as a colony with Vancouver Island, joined the Canadian confederation. The new Province of British Columbia retained ownership and legal authority over land under s. 92 of the constitution.228 The transition to provincial status was therefore smooth for the lands bureaucracy, with colonial statutes continuing in force, under the Terms of Union.229 It became the Department of Lands and Works, under the Chief Commissioner of Lands and Works, who was by now in practice also the Surveyor-General. The Chief Commissioner’s duties were expansive: selling and leasing lands for all purposes; surveying and mapping land; building roads, bridges, and provincial buildings; and promoting immigration.230 Oversight of provincial programs for immigration might seem to stand out among these duties, but it fit well with the role of the land laws as the instruments for creating a new British society.

The greatest changes in the first two decades after British Columbia joined Canada were the encouragement of mining and attendant complexity of the mining laws, the arrival of railways and the massive land grants that brought them into the Province, the expansion of the logging laws from terse to a full tenure system of leases and licences, and continual adjustment to and diversification of land sales to achieve the desired settlement pattern. In the first years of the 1870s, as the gold boom petered out, government policy switched to coal and mineral mining as inducements to settlement. Coal mining, in particular, proved to

228 Constitution Act, 1867 (U.K.), 30 & 31 Vict., c. 3, reprinted in R.S.C. 1985, App. II, No. 5, s. 92(5) [Constitution Act, 1867]. This provision of the Act, originally the British North America Act, confers on the Province power over “The Management and Sale of the Public Lands, belonging to the Province and of the Timber and Wood thereon.” The Constitution gave Canada legal power over fisheries in s. 91(12), but this was an area in which the B.C. government had not yet passed any laws, aside from some restrictions in the Game Act, which continued in force.

229 History of the Lands Service, 1858-1971, supra note 71 at 7. This history, at 8, notes that an order-in-council in 1871 recognized the Lands office as a department.

230 Ibid. at 8.
be even more compatible with agrarian settlement, since it required intensive work in a
limited area. The government's policy for timber licensing, by contrast, was careful to the
point of hostility, reflecting the implicit view that logging was antithetical to the creation of
stable towns, except as a means of clearing land for local settlement. Encouraged by the
arrival of the railway, which opened export markets for lumber in the 1880s, the
government gradually acknowledged the importance of the logging industry, and embraced
its growth by building a tenure system of leases and licences. And, to encourage
immigration during the lull after the gold rush, the government added a direct-sales regime
for rural lands, and tinkered with the size and price of rural lots throughout the 1880s and
1890s, in an attempt, not always successful, to maintain that golden mean between
uncontrolled squatting and unproductive speculation.

In the 1870s, the government’s regulatory regime began to expand. Coal mining,
already under way in the 1860s, became a significant industry in the interior, and a driver of
settlement patterns. The government’s legislation and practice in the 1870s and 1880s
encouraged coal mining as a means of establishing township centres around which
immigrants would pre-empt land and establish farms and grazing leases. In 1873, the Land
Ordinance expanded significantly, with a more detailed regime for pre-emption,231 “public
works” provisions for dyking, highways, and schools that complemented the new Public
Works Act;232 and expanded rules for grazing, hay, and timber leases.233 The law reflected the
growing complexity of settlements across the Province, the growth of government and its

231 Land Ordinance Amendment Act, 1873, S.B.C. 1873, c. 1, ss. 2-7 [Land Ordinance Amendment, 1873].
232 Ibid, ss. 17-20. Public Works Act, 1872, S.B.C. 1872, c. 28, s. 1 authorized cabinet “to acquire and take possession
[...] of any land, or real estate, streams, waters, water-courses, fences, and walls [...] for the use, construction, or
maintenance of any public work or building” and other public works. Section 2 is the compensation provision.
233 Land Ordinance Amendment, 1873, ibid., ss. 9-14.
role in building infrastructure, and the government’s increasing concern about preventing land sales merely for the purpose of cutting trees.

Mines come to be centres of settlement

Although there were other lands officials, notably the Gold Commissioner, mining recorders, and coal mine inspectors, the Department of Lands and Works was the only bureaucracy for lands. It was nonetheless a small, centralized group of only seven employees.234 The field staff was surveyors working on contract. For mining, the government established the position of Minister of Mines in 1874, but it was simply an additional title for an existing minister. There was no bureaucracy for the minister to oversee, and no additional salary.235 The mining recorders and inspectors were contractors scattered across British Columbia, working part-time for the government. Indeed, in 1874 gold miners were even allowed to appoint their own recorders if none were available, another example of the government asserting formal authority over activity that was happening in fact in an effort to maintain its authority.

In 1869, the government had begun to use mining to encourage settlement in the interior.236 Hoping to increase rates of settlement further, in 1877 the government passed the first Minerals Act, which boldly stated its purpose to correct the failure of the existing mining legislation “to develop the mineral resources of the province”.237 The Act simplified

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234 History of the Lands Service, 1858-1971, supra note 71 at 8. The staff were the Commissioner of Lands and Works, Surveyor-General, Clerk of Records, a drafter, an accountant, assistant drafter, and a clerk. These were the direct employees of the Lands Department, and does not include the magistrates and other officials who had authority to record pre-emption claims. Those officials did not, however, have the authority to make Crown grants or issue leases or other forms of land tenure.
235 Minister of Mines Act, 1874, S.B.C. 1874, c. 16. Cail, Land, Man, and the Law, supra note 6 at 77: “John Ash, provincial secretary, assumed the new portfolio.” It appears his duties were largely to collect the reports of mining claims and revenue from them.
236 Supra note 207 and accompanying text.
237 Minerals Act, 1877, S.B.C. 1877, c. 29
the process for holders of non-coal mineral claims to purchase land. However, the purchase price remained high, and the law continued to require the miner to earn the land by working it first. The price and “diligent use” requirement were meant to prevent speculation and to ensure permanent settlement, modelled on the pre-emption sales requirement of substantial improvement to the land.\textsuperscript{238} Robert Cail describes the increasingly symbiotic relationship between mining and settlement:

\begin{quote}
[T]he [gold] excitement did bring a population which sought new employment as the original incentive was lost. Many of the thousands who went to the Cariboo took up land and formed a nucleus of an agricultural settlement.
\end{quote}

Placer mining for gold [...] contributed indirectly to the disposal of large tracts of crown land for agricultural and industrial purposes, but its activities required no permanent acreage. Lode mining and coal mining [on the other hand] required holdings of a more permanent nature, but the total acreage alienated, either directly or as mining property for indirectly for settlement, formed a negligible amount of British Columbia’s vast area.\textsuperscript{239}

**Direct purchases: a new tool to spur settlement**

Although a major event of the 1880s, the completion of the Canadian Pacific Railway also did not alter the legal regime for settlement and development. Indeed, the driving of the last spike in 1885 helped to hasten immigration to the growing town centres, and provided a route for exports of lumber and minerals.\textsuperscript{240} The railway also helped the government to formalize or at least anticipate the pattern of settlement, and became a mechanism for opening the interior, especially the Kootenays in the south-east. Thus the crown began to commission “exploratory surveys to assess the settlement potential of

\textsuperscript{238} Cail, *Land, Man, and the Law*, supra note 6 at 75-76: Mining companies could also earn a free crown grant if they spent enough to develop a mine. In 1882, the price for coal lands was $10 per acre. *Land Amendment Act, 1882*, c. 6.

\textsuperscript{239} Cail, *Land, Man, and the Law*, ibid. at 77-78. Cail’s last point indicates that the mines themselves didn’t take up excessive amounts of land, while at the same time the permanency of fee simple ownership of the mine increased the incentive for permanent settlement of lands around the mine.

\textsuperscript{240} History of B.C. Lands, supra note 71 at 9.
various parts of the Province" from the 1880s through the 1910s. To establish the railways, however, the government had to compromise its rule of converting only small, settled areas of land to private ownership. The provincial government's contribution to the building of railways came in the form of land grants, usually via transfers to the government of Canada. These grants, which totalled more than 8 million acres by the start of the first world war, made the successful railways into housing developers and, later, sellers of land for logging. Concerns about mismanagement of the resulting private forests helped to provoke a forestry crisis in the 1930s.

As land sales began to grow in the 1880s, spurred by the railway, the government continued to adapt its legislation to maintain control of land use. To encourage the spread of settlement beyond existing communities and the new railway corridors, the government extended the means of purchasing residential and agricultural land. Most notably, the changes enabled the purchase of agricultural land without pre-emption—which for convenience I will call "direct purchase"—in two circumstances. First, starting in 1873, the government allowed the sale of "unappropriated, unoccupied and unreserved lands" at the upset price of $1 per acre. This provision removed the onus of occupying and working

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241 Ibid. at 11. Cail notes that from 1910 to 1913, the surveyors marked out 10 million acres for settlement. Of this, the relatively modest amount of 265,871 was for mining claims, suggesting the government was successful in limiting mining grants to smaller areas and avoiding speculation that would hinder settlement. Cail, Land, Man, and the Law, supra note 6 at 79.

242 Cail, Land, Man, and the Law, supra note 6, ch. 8, 9 at 125-52 covers the history of and debates about the land grants to the railways in some detail.

243 Cail, Land, Man, and the Law, supra note 6 at 138. The grants were conditional on the performance of the railway. Since many railways failed, most of the granted land reverted to government ownership.

244 See part 2, section 4, below.

245 This is not a term the Department of Lands used at the time, but it is a convenient means of distinguishing these new means of purchase from the existing system for pre-emption and for sale by auction.

246 Land Ordinance Amendment Act, 1873, S.B.C. 1873, c. 1, s. 16. This section was poorly drafted, and only implied that these lands had to be surveyed. The version of this provision in the first Land Act corrected this and other flaws in s. 16. Land Act, 1875, S.B.C. 1875, c. 5, s. 61.
land for at least two years before gaining title.\textsuperscript{247} Second, the first \textit{Land Act}, in 1875, allowed individuals to purchase between 160 and 640 acres of unsurveyed land without pre-emption, provided the purchaser met a set of conditions. These conditions required the seeker of land to make a down payment of 10 per cent of the price, pay for a survey on the "approved rectangular or square system," and pay the remaining 90 per cent immediately on the Commissioner's acceptance of the survey.\textsuperscript{248} The price at that time, as for all except that sold at auction, was $1 per acre. The \textit{Land Act, 1875} also allowed "firms" of up to four individuals to unite "in partnership for the purpose of pre-emption, holding, and working land […] as a firm" up to 160 acres per partner west of the Cascade Mountains, and 320 acres per person to the east.\textsuperscript{249}

These direct-purchase and partnership provisions adapted the land regime to encourage the spread of settlement and the expansion of agriculture between the end of the first rush for gold and the arrival of the railway. By the 1880s, however, the government began to recognize that the best agricultural land was becoming scarce. Its response, in 1884, was to raise the cost of directly purchased surveyed and unsurveyed country lands from $1 to $2.50.\textsuperscript{250} Robert Cail notes that the goal of this increase was to discourage speculation and

\textsuperscript{247} The survey system was still behind settlement patterns, but with the advent of railways, was starting to accelerate in coverage. It was not until the turn of the century that large teams of surveyors began to catch up and define and map the areas of desired settlement. \textit{History of the Lands Service, 1858–1971}, supra note 71 at 11.
\textsuperscript{248} \textit{Land Act, 1875}, S.B.C. 1875, c. 5, s. 62. The \textit{Land Amendment Act, 1882}, S.B.C. 1882, c. 6, s. 1, rewrote s. 62 to set out the rules more clearly. In the new consolidation of 1884, the \textit{Land Act, 1884}, S.B.C. 1884, c. 16 [\textit{Land Act, 1884}], the provision became s. 30, and the 1875 provision for the purchase of country land already surveyed, s. 61, supra note 246, became s. 31.
\textsuperscript{249} \textit{Land Act, 1875}, S.B.C. 1875, c. 5, s. 32 which allowed up to four individuals to pre-empt land as a firm. This and the above two means of purchase joined the existing means, which from 1865 onward included (leaving aside the purchase of mining sites discussed above): (a) town and suburban lots at auction; (b) unsold (auction) lots at an upset price of $1; (c) pre-emption of unsurveyed land after occupation and use, and other conditions; (d) pre-emption of surveyed land on the same conditions; and (e) pre-emption of additional land adjacent to the purchaser's completed pre-emption. There were other changes in the land sales system between 1870 and 1884, including the introduction of a more detailed system for pre-emption and survey in the \textit{Land Amendment Act, 1879}, S.B.C. 1879, c. 21, and a rule allowing pre-emptors to hasten the process by paying for the survey themselves. For the purposes of this study, the changes are not important.
\textsuperscript{250} \textit{Land Act 1884}, S.B.C. 1884, c. 16, ss. 30, 31.
to encourage more diligent use and settlement of land.\textsuperscript{251} However, the price for pre-emptors remained $1 per acre. The reasons for this distinction lay in the Province’s original land policies. Unlike direct purchases, the pre-emption system required diligent use as a condition of purchase. There was no need, therefore, to charge more for pre-empted land if the goal was to limit speculation.\textsuperscript{252} The upset price for auctioned land and for regular pre-emption of surveyed and unsurveyed land therefore remained at $1 until 1891, when a new classification system arrived, bringing a three-tiered pricing system.\textsuperscript{253}

**Forestry gains full legislative support**

The *Land Act, 1884* also responded to the emergent timber industry. Before then, the government had treated commercial logging with suspicion, enacting only nominal legislation for timber in the *Land Ordinance* of 1865 and 1870, and requiring potential loggers to negotiate leases directly with the Governor.\textsuperscript{254} The government had remained indifferent

\begin{itemize}
\item \textsuperscript{251} Cail, *Land, Man, and the Law*, supra note 6 at 37; *History of the Lands Service, 1858–1971*, supra note 71 at 9. Preventing speculation was a constant effort through the 1870s and 1880s. For example, in 1873 the B.C. government struggled to enact a Wild Land Tax that would deter speculation but not railway development. See Cail, *Land, Man, and the Law*, supra note 6 at 130-31. *Land Tax Act, 1873*, S.B.C. 1873, c. 11 (full title *An Act to impose a Wild Land Tax*). The tax was one per cent of the value per acre, but s. 1 listed twelve exemptions that reveal the Wakefieldian goal of penalizing owners who did not use their land and rewarding those who did. These include government land (which covered land transferred to Canada for railways), land with improvements worth at least 20\% of the land’s value, occupied pre-emption lands, and active ranch land.

\item \textsuperscript{252} It is not clear how deliberate this policy choice was. The government may, in fact, have intended to phase out pre-emption, perhaps intending the new means of purchasing land to replace the colonial system. For a time in the 1870s, pre-emption of unsurveyed land became restricted to those lands not yet surveyed. The *Land Act, 1875*, S.B.C. 1875, c. 5, s. 3 [*Land Act, 1875*] allowed pre-emption of “any tract of unoccupied, unsurveyed, and unreserved” land. Section 23 set out a detailed definition of “Surveyed Lands” and states that “land surveyed during the year 1873, and hereafter to be surveyed, shall not be open for pre-emption until notice [is] published in the Gazette.” There follows, in s. 24ff., the rules for pre-empting surveyed land, which presumably would only apply to lands specifically approved for pre-emption. By 1884, however, the Act had erased this tentative distinction, and the new rule for pre-emption applied to both surveyed and unsurveyed lands. *Land Act, 1884*, supra note 247, s. 3. So it seems unlikely that by 1884 the government was trying to wind up pre-emption and adopt the price of $2.50 per acre for all agricultural lands.

\item \textsuperscript{253} *History of the Lands Service, 1858–1971*, supra note 71 at 9. The *Land Act, 1884*, ibid., s. 23 set the price at $1 per acre for all pre-empted lands. Section 3 continued to allow pre-emptors in the interior (north and east of the Cascade, a.k.a. Coast mountain range) to occupy and purchase up to 320 acres, vs. 160 in the southwest, but they had to pay the same price per acre.

\item \textsuperscript{254} *Supra* note 148 and accompanying text. For analysis of timber leases under the *Land Ordinance, 1865*, see *supra* note 143 and accompanying text.
and even resistant to logging in the 1870s, and the "public [held the] attitude that standing timber was of no value". 255

The government’s reluctance to support the forest industry came from Wakefield’s vision of a stable agrarian society. However, the reluctance seems to have inadvertently threatened that vision in the late 1870s, when the government sold lands that were valuable primarily for timber. As the Province’s first commission on forestry noted in the 1910 Fulton Report: “[i]n the early days of the Province timber lands seem to have had little or no value in the public estimation. They could be acquired by purchase and Crown Grant from the Crown in the ordinary way [i.e. direct sale and even pre-emption] and at the same rates as any other land.” 256 By 1884 the government was starting to recognize this threat to its vision, at the same time as the Lands Service was coming to accept the value of forestry as a means of attracting immigration and building an economy. 257 The Timber Act, 1884 created the first licensing regime for forestry, 258 while the rewritten Land Act that year embellished the rules

255 Cail, Land, Man, and the Law, supra note 6 at 90; and, at 91-92, noting “the failure of provincial governments for years to recognize the value of timber resources [and] lack of interest in British Columbia’s timber”. Cail does not offer a reason for the lack of recognition; nor does Richard Macfie, who nonetheless offers a compelling description of the government’s indifference and even resistance to logging in his 1865 history: Macfie, History of Vancouver Island and British Columbia, supra note 175, c. 5. Macfie commented on Vancouver Island’s wealth of timber and its greater value as an export than that of gold, and expresses puzzlement over the government’s failure to support the timber industry at all. The fact that the industry grew without legislative support raises the question of how effective law is at shaping economic activity. While it appears laws that do not expressly support an industry may not be able to prevent that industry from emerging, it does seem that the laws can slow or hasten the industry. Thus as the laws began to accommodate forestry in the 1880s, they helped the industry to flourish.


257 The term “Lands Service” did not attach itself to the government’s land administration until the twentieth century, most formally in 1945, when the Department of Lands and Forests. For convenience, however, I will use this term for general references to the lands bureaucracy, even in its earlier form.

258 Timber Act, 1884, S.B.C. 1884, c. 32, s. 2 outlaws the cutting or carrying away of “any trees or timber upon or from any of the Crown lands of this Province” without a licence. This provision appears to have applied only to crown lands, i.e. land the government had not yet granted in fee simple. That changed in An Act to amend the “Land Act, 1884”, S.B.C. 1887, c. 17, ss. 4-7 [Land Act Amendment Act, 1887], which established a licensing regime for pre-emptors who wished to cut and sell the trees on their property.
for leasing land for hay and timber, and banned the sale of timber lands, stating that "none of [...] the public lands [...] chiefly valuable for timber shall be disposed of by public or private sale." The ban was not immediately effective. The small bureaucracy, the poor wording of this and subsequent versions of the ban, and, possibly, political pressure to allow the continued sale of forest land made the ban impossible to enforce. Changes to the Land Act over the next decade expanded the timber tenure system—merged in 1888 into the Land Act—and to improve the rule against the purchase of timber land. One of these changes, in 1887, reserved ownership of timber to the crown: land owners required a licence before cutting a tree. Although the Act contradicted itself, undermining the enforceability of this reservation, the change was the first step towards adding timber to gold and silver on the

259 The new leasing provisions in the Land Act, 1884, supra note 247, ss. 35-42 offered, however, only slightly more detail than the previous statutes, and some of these sections applied to hay leases as well as timber. The regime continued to hinder loggers by requiring them to obtain leases from cabinet, rather than from the Commissioner.

260 Land Act, 1884, ibid., s. 35. "Ban" is not an accurate term for this provision, which in fact allowed the pre-emption of land under a timber lease—by the lessee or anyone else—provided the pre-emptor would "only [...] cut such timber as he may require for use upon his claim; and if he cut timber on the said land for sale, or for any purpose other than for such use as aforesaid [for use on the claim, i.e. for construction of a home and farming buildings], or for the purpose of clearing the said land [for cultivation], he shall absolutely forfeit all interest in the land".

261 Cail, Land, Man, and the Law, supra note 6 at 93-94. As Cail notes at 92, however, in the end the total amount of forest land the government granted was not great, amounting to 1 million acres by 1913. The railway grants, however, contributed a good deal of additional land to the forest industry in the twentieth century.

262 An 1888 amendment to the Land Act repealed the Timber Act, 1884 and Timber Act, 1886, S.B.C. 1886, c. 22 (which made minor amendments to the 1884 Act), and incorporated their licensing regime. An Act to amend the "Land Act, 1884", S.B.C. 1888, c. 16, s. 5. Section 8 of this amending statute also replaced the old lease provision, s. 35 of the Land Act, 1884, specifying a duration for timber leases of up to 30 years. See also Cail, Land, Man, and the Law, supra note 6 at 92.

263 For an account of the rule against the sale of timber land, see Cail, Land, Man, and the Law, supra note 6 at 91-95. The 1887 statute was specifically about forestry: its first section is given the explanatory title, "Timber lands not to be sold", but as with all the Acts until 1896, the statute failed to define timber lands.

264 Land Act Amendment Act, 1887, supra note 258, s. 3: "Every grant from the Crown of land hereafter purchased under the said Act shall contain reservations [...]— A reservation in favour of the Crown of all timber upon the land".

265 Ibid., s. 8: "Nothing in this Act shall be so construed as to deprive any pre-emptor or settler after he has acquired a Crown grant of his land of any of the timber growing thereon, and every such Crown grant shall be deemed to pass the timber on the land." For commentary on the contradictory clauses on forest lands, see Cail, Land, Man, and the Law, supra note 6 at 93. Cail focuses on other contradictions in the 1888 consolidation of the Land Act (not the 1888 amending statute, but a consolidation that prefigured the later system of regular "Revised Statutes of British Columbia"), suggesting as the cause "either [...] pressure applied to members of the
list of materials to which the crown retained ownership.266 Despite resolving in 1888 to deal with the growing amount of forest land in private ownership,267 the government did not establish an enforceable rule against the sale of timber until 1896. By the turn of the century there was a detailed regime for logging tenures, the government began to effectively prevent the sale of timber land.268 The flurry of forestry laws in the late 1880s and the 1890s reflected not only the government’s acknowledgement of the reality of the logging industry, but also its decision to begin actively supporting it. That support remained contingent, however, since the government continued its effort to tie logging to settlement by ensuring the holders of substantial logging tenures maintained mills in rural communities.269

government to leave a loop-hole in the law, or some very muddled thinking”. The matter may be said to be the first of many convolutions in the law of forestry in British Columbia.

266 The Land Proclamation, 1859, supra note 87, s. 7 had explicitly included the right to all timber as part of a crown grant: “the conveyance of land shall include all trees and all mines and minerals […] except mines of Gold and Silver.” Although ownership of minerals continued to run with the ownership of land during the 1800s, the Land Act, 1884, S.B.C. 1884, c. 16, s. 72 did take a first step toward reserving coal rights. This provision “reserved to […] Her Majesty […] a royalty of five cents upon […] every ton of merchantable coal […] from any lands acquired under the provisions of this Act”. Thus the government laid some claim to coal incidentally obtained by a settler. The purchase of coal land under the mining legislation, of course, did not carry this stipulation.

267 Finally, in 1888 the government acknowledged the need to deal with the growing amount of forest land in private ownership. Fulton Report (1910), supra note 256 at 11.

268 Ibid. at 94; History of the Lands Service, 1858-1971, supra note 7 at 9. The Land Act Amendment Act, 1896, S.B.C. 1896, c. 28, s. 12(2)(a) finally established an enforceable definition of timber lands, as “lands which contain milling timber to the average extent of eight thousand feet per acre west of the Cascades, and five thousand feet per acre east of the Cascades, to each one hundred and sixty acres”, and stated that these lands “shall not be for sale.” The prohibition is still in place today. In keeping with the current practice of the Lands Service to confer discretionary authority on its decision-makers, there is no longer a definition of. Instead, the prohibition states: “Unless, in the opinion of the minister, Crown land is required for agricultural settlement and development or other higher economic use, Crown land that is suitable for the production of timber and pulpwood must not be disposed of by Crown grant under this Act.” The minister delegates these decisions to regional managers. Land Act, R.S.B.C. 1996, c. 245, s. 23.

269 The government’s attempt to ensure forestry supports settlement became a significant focus of public attention during the first Sloan Commission in the 1940s, and has continued to be a source of debate through the 2000s. As part 2 of this chapter explains infra note 407 and accompanying text, amendments to the Forest Act in 1947 included a requirement, known as the “appurtenance clause,” that the major logging companies maintain mills near rural communities, as a condition of the vast forest management licences the government granted the companies. This appurtenance requirement, which community and environmental advocates still refer to today as a compact or social contract with communities, was repealed in 2003, helping to spark protests against the new logging laws. For an example of the description of local mills as a social contract, see the Forest Solutions for Sustainable Communities Act, a draft private member’s bill that a coalition of environmentalists, First Nations, community groups, and labour unions created in 2003 as an alternative vision for logging laws, online: <http://www.forestsolutions.ca/PDF/PMBJuly18jc.pdf>. (For political reasons, no member of the Legislative Assembly introduced the bill in the house. Interview of Will Horter, Executive Director, (non-governmental organization) Dogwood Initiative since 1999; Staff Lawyer (forestry), Sierra Legal Defence Fund, 1995–1999 (15
Legally "encouraging" resource development

With the exception of the early resistance to forestry, the land legislation of the 1870s and 1880s encouraged industry, both in tone and content: for example, An Act to encourage the Mining of Gold-bearing Quartz in 1877. Later mining statutes added more “encouragement” and sought to aid the development of resources. Mining, particularly of coal, had proved successful as a significant driver of settlement, creating focal points of industry that the government wished to expand into agrarian communities. The encouragement went beyond the language of the statutes. In addition to regular amendments to create incentives for miners, the statutes also kept tenure fees low to encourage development.

Then in 1891 the government established the Mining Commission. It was the first resource commission in the Province, and the first instance of the government creating a body to study ways to help an industry to grow. The commission’s mandate was to rewrite the mining laws, but the goal was to facilitate mining and, thereby, general economic growth and settlement. In 1891 the Commission produced new statutes for prospecting and lode mining, the Placer-mining Act and the Mineral Act. The statutes set out comprehensive

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February 2007) [Interview of Will Horter].) See also Dale Marshall, “Not the year of the forest community” Canadian Centre for Policy Alternatives Website (1 March 2003), online: <http://policyalternatives.ca/index.cfm?act=news&do=Article&call=634&pA=19933261&type=2,3,4,5,6,7>.

270 Quartz Act, 1877, S.B.C. 1877, c. 13.

271 Examples: Coal Prospecting Act, 1883, S.B.C. 1883, c. 3, Preamble (“to encourage coal mining”); An Act to Aid the Development of Quartz Mines, S.B.C. 1887, c. 24. The language also appeared in later statutes for other industries, such as the Deep Sea Fisheries Act, 1892, S.B.C. 1892, c. 15, Preamble: “encourage deep sea fisheries”.

272 See Cail, Land, Man, and the Law, supra note 6 at 78-80, noting the increase of the size of crown grants in 1877, and increases in the size of allowable claims in 1884 and 1892 legislation.

273 Cail, ibid. at 90 notes that the mining laws, in particular, were not major revenue-generators. The total revenue from mining over the colony’s and Province’s first 50 years was very low.

274 Cabinet created the commission relatively informally, but the Legislature acknowledged the commission and its mandate An Act to recompense the members of the Mining Commission, S.B.C. 1891, c. 27.

275 Placer-mining Act, 1891, S.B.C. 1891, 54 Vict., c. 26; Mineral Act, 1891, S.B.C. 1891, c. 25. The latter, which ran to 165 sections, consolidated and replaced several earlier proclamations and statutes. The former established a separate scheme for placer mining.
regimes for free miners and coal and mineral mining. They drew together and reorganized the existing legislation, establishing the basic system that has remained in place through the twentieth century.

Land classification and diversification of land tenure in the 1890s

Railways and a legal framework that supported resource development were having some effect. The Lands Service described the period from the 1870s through 1890s this way:

The years immediately preceding confederation had been marked by a slow decline of population as the nomadic prospectors drifted away. Production from the Cariboo gold mines matured and stabilized. Agriculture levelled off. After confederation and its promise of a rail link with the Prairies and Eastern Canada, population and economic development again began to build momentum. The last quarter of the nineteenth century was highlighted by the spectacular emergence of the forest industry as a major activity, development of a flourishing salmon-fishing industry, mining developments in far-flung regions as the Atlin gold placers and the coal fields and base metal mines of the Kootenays, and the spread of horticultural crops based on irrigation through the southern Interior “dry belt” valleys.276

One may find in this account a faintly romantic evocation of the era and of the Lands Service itself. The Service goes on to call this “the era of cheap and abundant land, when a man with little capital but a lot of energy could obtain a living for himself and his family by persistence and hard work.” The Lands Service wrote this history in 1971, a pivotal year for British Columbia’s land laws, when the era of land allocation and promotion of development was reaching a crisis. It reveals the extent to which Wakefield’s vision for the new colony had lasted within the culture of the government. But its facts are consistent with other histories of the period, and the statutes passed in the last two decades of the nineteenth century reflect the changing and emerging industries this account describes.

276 History of the Lands Service, 1858-1971, supra note 71 at 8.
What of the bureaucracies that were putting these land laws into effect? I have noted the small size of the Department of Lands and Works in 1871, and the lack of an agency for mines, despite the cabinet position Minister of Mines in 1874. Municipal relations also lacked a bureaucracy, although the provincial legislation governing municipalities had grown rapidly since the first municipal ordinance in 1865. The largest body of land-related public servants was the surveyors who were responsible for imprinting the legal regime on the landscape, converting, in the 1880s, the Province from a loose township system into 58 district lots. The surveyors also took on a slightly different function in the 1890s: the analysis and classification of land.

The consolidation of the Land Act in 1888 had indirectly divided land into two classes. It required surveyors to distinguish “mountainous […] useless” land from useful land. This tentative step towards land analysis became more pronounced with the Land Act Amendment Act, 1891, which divided land into three classes, and created a corresponding price schedule for land. The bureaucracy was starting to shift from a clerical function of marking and

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277 Colony of British Columbia, The Borough Ordinance, 1865, 22 March 1865 (28 Vict.), R.S.B.C. 1871, c. 57; Municipal Act, 1891, S.B.C. 1891, c. 29. The 1865 statute had as its full title, An Ordinance for the formation and regulation of Municipalities in British Columbia, but there were staff for regulating municipalities. The Municipality Act, 1872, S.B.C. 1872, c. 35 succeeded the Ordinance. This was still a modest statute at 33 sections and eight pages, concerned with municipal elections, bylaws, and real-estate taxes. The statute grew rapidly. By the 1877 consolidation of B.C. statutes, the Act was 107 sections in length. This figure almost doubled in four years: The Municipal Act, 1881, S.B.C. 1881, c. 16 ran to 204 sections covering 54 pages.

As with the mining statutes of the same year, the overhauled Municipal Act, 1891, which included 270 sections and 93 pages, represented the maturation of municipal laws; the municipal statutes continued to change frequently, but less substantially. For land use, the municipal acts are of tangential interest, other than for the planning regime that began in 1924, and which is beyond the scope of this thesis. Section 5 of this part does briefly note the provision in 1896 for municipal parks, infra note 427. The government did not create a department for municipal relations until the Department of Municipal Affairs Act, S.B.C. 1934, c. 52.

278 Land Act, C.A. 1888, c. 66. [Consolidated Land Act, 1888]. (C.A. 1888 denotes the Consolidated Acts of British Columbia 1888, a precursor to the Revised Statutes, which began in 1897.) The change indirectly classified land into useful and useless. By default, land was considered useful. Sections 29, 30 priced the direct purchase of unsurveyed and surveyed land, respectively, at $2.50/acre. Section 32 kept the price of $1/acre for direct purchase of “mountainous tracts […] unsuitable for cultivation, and useless for lumbering purposes”. Section 31 merely clarified that s. 30 does not apply to surveyed “town, city or suburban lots”, which were still "sold at public auction." On the classification system, see Cail, Land, Man, and the Law, supra note 6 at 45-47.

279 Land Act Amendment Act, 1891, S.B.C. 1891, c. 15, s. 4.
recording to one of analysis and data-gathering. The adoption of this function was not the deliberate goal of the amendment; the categories and differential prices were an attempt to induce settlement without encouraging speculation. In the late 1880s the government saw that the direct-purchase provisions had led to a rise of the latter. Several fortunes were made as a result—the records of land sales in the 1880s, in retrospect, “read like a Who’s Who for the province”—but such fortunes violated the social as well as economic aims of the land laws.

To restrict the accumulation of large tracts of land, the 1891 amendments set a cap of 640 acres for any land purchaser, established a classification system, and altered the price structure for land, with a new price of $5 for first-class land, $2.50 for second, and $1 for third. First class was the most suitable for agriculture, hay meadow, or logging; second class required effort to cultivate; and third class was completely unsuitable for any of these three purposes. This new system applied only to the direct purchase of surveyed or unsurveyed lands, however, so the price of pre-empted land remained at $1. The new

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280 As part 2, section 2 points out, below, this shift occurred in intermittent stages, particularly in the Lands Service. I should state that by “clerical function” I do not mean to belittle the difficult job the surveyors were doing, particularly in remote regions. But there is a significant difference between the task of marking land and studying it for its capabilities and, later, suitable uses. On the nature of the surveyors’ work, see Dave Havard, I Slept in a Courthouse: confessions of a land inspector (Smithers, B.C.: D.G. Havard, 2003), c. 8 at 61-66 [Dave Havard, Confessions of a land inspector], on the work of “the 40 or so surveyors [did] in the early 1900s, and earlier, who did the field work”.

281 Ibid. at 46.

282 Cail, Land, Man, and the Law, supra note 6 at 46. This limit may have been more a matter of policy than law, since the 1891 statute does not include such a provision; it merely emphasizes the existing rule that no direct-purchase transaction may include more than 640 acres.

283 Land Act Amendment Act, 1891, supra note 279, ss. 4, 5 [Land Act Amendment Act, 1891], amending ss. 29, 30 of the Consolidated Land Act, 1888, supra note 278.

284 Ibid., s. 4 created s. 29(1), which charged surveyors to “classify the lands […] as first class, second class, or third class lands,” as defined in s. 29(2), with first class being “[l]ands which are suitable for agricultural purposes, or which are capable of being brought under cultivation profitably, or which contain timber suitable for lumbering purposes (i.e., lands which contain milling timber to the average extent of five thousand feet per acre to each one hundred and sixty acres), or which are wild hay meadow lands,” and second class as “[l]ands which are suitable for agricultural purposes only when artificially irrigated, and which do not contain timber valuable for lumbering purposes, as defined above,” while third class lands were “[m]ountainous and rocky tracts of land which are wholly unfit for agricultural purposes, and which cannot […] be brought under cultivation, and which do not contain timber suitable for lumbering purposes […] or hay meadows”.

285 Ibid., ss. 4, 5 amended only the direct-purchase provisions, not s. 24 of the Consolidated Land Act, 1888, supra note 278. That section maintained the price of pre-empted land at $1.
system appears to have worked, since the annual volume of land granted in the next few years declined, until the start of the Province's greatest land-sales boom in 1896.\footnote{Cail, Land, Man, and the Law, supra note 6 at 47, 49. Of course, it is difficult to draw conclusions about individual accumulation from aggregate figures, but other histories indicate a steady flow of immigration at the time, suggesting that speculation did decline.}

The demands on the lands bureaucracy grew rapidly in the 1890s, as the land tenure system rapidly diversified in response to the rapid intensification and spread of settlement.\footnote{See Cail, Land, Man, and the Law, supra note 6 at 49. The boom really got under way after 1900. History of the Lands Service, 1858–1971, supra note 71 at 11: "In 1888 the department issued 548 pre-emptions; by 1905 the number had risen to 955. Between 1908 and 1916 pre-emptions exceeded 1,000 each year, reaching an all-time high of 4,304 in 1914. The acreage deeded by Crown Grant also regularly surpassed 100,000 acres annually for most of the period from 1900 to 1914."} No longer overseeing paper work for standard pre-emption claims, the Department had to deal with the forest industry, on one hand, and the need to accommodate denser settlement in some areas while increasing the incentive to settle more remote areas, on the other. The adaptation of the tenure system included rights of way "to any railway or tramway company incorporated" in British Columbia,\footnote{Land Act Amendment Act, 1891, supra note 279, s. 17. Today the forms of tenure under the Act include licences (including short-term permits), leases, rights of way, and fee-simple grants.} smaller pre-emption lots of 40 and 80 acres,\footnote{An Act to amend the "Land Act", S.B.C. 1892, c. 25, s. 2.} and then leases of 20-acre lots for agriculture and settlement.\footnote{Land Act Amendment Act, 1894, S.B.C. 1894, c. 24, c. 24, s. 2. The earlier Acts did lease land for forestry, grazing, and hay, but these uses were much less intensive.} The rights of way and leases marked first instances of such tenures under the \textit{Land Act}. The Act responded to intensifying settlement in the interior by allowing cabinet to limit pre-emptions to 160 acres in certain areas east of the Cascade Mountains,\footnote{Land Act Amendment Act, 1895, S.B.C. 1895, c. 27, s. 8.} and, conversely, encouraging pre-emption in the sparsely populated Kootenays by allowing "actual settlers" there to purchase up to 320 acres "adjoining their locations" for the usual pre-emption price of $1 per acre.\footnote{Ibid., ss. 9, which authorized the purchase of adjacent lands anywhere east of the Cascade mountains, but was intended for the Kootenays. Cail, Land, Man, and the Law, supra note 6 at 48. The right to purchase adjoining land was not new. As early as 1860, pre-emptors had enjoyed the right to purchase "any number of acres" of
disputes over land, reflected the growing reach of settlement, the resulting scarcity of good land in the more settled areas, and the government's increasingly difficult adaptation of the land laws, provincially and regionally.

**Formation of departments and division of the land laws, 1894–1912**

With this more complex range of functions, the Department of Lands grew, albeit slowly at first, reaching 17 employees by 1899, supported by magistrates, government agents, and approximately 40 surveyors across the Province. Meanwhile the new mining legislation had further divided between coal and "metalliferous" mines and grown to include regulations and an inspection regime. These laws made further demands on the Department of Lands and the relatively unorganized mining officials. This would lead, in 1899, to the formation of the Department of Lands and Works and the Department of Mines. The Department of Lands had "charge of public lands and water rights, and all matters connected therewith." For Mines, the minister became a separate member of the

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293 The amendments in 1891 introduced the first formal rule for disputes, which required the competing proponents to bid on the land. *Land Act Amendment Act, 1891*, supra note 279, s. 4 added to s. 29 of the *Land Act* paragraph (4)(d), which states that "when there are two or more applicants for the same tract of land, and a prior right of either [...] is not established [...] the same [land] may be tendered for by the applicants and sold to the highest bidder." Earlier statutes, at least as early as the *Land Pre-emption Proclamation, 1860*, supra note 98, s. 17 had empowered lands and mining officials and stipendiary magistrates to resolve disputes, but those provisions left the resolution to the discretion of the official. The 1891 provision may, therefore, be the first formal rule for resolving disputes. The *Land Act Amendment Act, 1895*, S.B.C. 1895, c. 27, s. 3 took another step to formalize the existing dispute-resolution process for pre-emptions. (See the Consolidated *Land Act, 1888*, supra note 278, s. 20 for the Commissioner's discretionary power to resolve pre-emption disputes.) This provision specified an appeal process, but did not create a rule for solving the dispute, leaving disputes to the Commissioner's discretion. The current Act lays out a more detailed process for disputes and appeals, but also leaves the disputes and appeals to the discretion of the courts. *Land Act, R.S.B.C. 1996*, c. 245, ss. 63-64. There are some rules for resolving disputes, but as with most details of the contemporary Act's administration, disputes are left to policy manuals. Interview of Tom Cockburn, Senior Policy Advisor, Ministry of Agriculture & Lands; biologist and policy advisor, Department of Recreation and Conservation and B.C. Lands Service, 1973 to 2007 (18 July 2006) [Interview of Tom Cockburn]. My interviews confirmed the emphasis on agriculture and settlement through the mid-twentieth century, and even during the growth of the logging industry in the 1960s.


296 Department of Lands and Works Act, S.B.C. 1899, c. 39; Department of Mines Act, S.B.C. 1899, c. 48.

297 Department of Lands and Works Act, ibid., s. 10.
cabinet, not merely a second portfolio, and gained a bureaucracy with authority for “all kinds of mining” and the “charge of all matters connected with the issuing of Crown Grants for mineral claims”, although in practice the Department of Lands and Works retained authority to grant land rights related to mining through the first half of the next century.

These were not the first departmental statutes for land use, however. In 1894 the government established the Department of Agriculture, with a mandate to support agricultural research and training. The establishment of these three departments, along with an informational office called the Bureau of Mines, set the stage for the growth of a more administrative role of the government in the new century, a role rooted in the 1890s with the emerging information-gathering and land-analysing role discussed in part 2, section 1, below.

In the first twelve years of the new century, the government: formed a Board of Fisheries, which eventually became the Department of Fisheries; established in 1905 a

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297 See supra note 235 and accompanying text.
298 The Department of Mines only issued licences for the minerals and, later, oil and gas, not for the right to work the land itself. By 1953 the Department had gained full authority for mining rights. Infra note 371. That year the Department of Mines also assumed responsibility for fossil fuels, taking over the Petroleum and Natural Gas Branch that had been a part of the Department of Lands since the early 1940s. History of the Lands Service, 1858-1971, supra note 71 at 23. (The first petroleum licensing legislation, however, was from 1910. See infra, note 308.)
299 See infra note 317 and accompanying text. The Bureau, created in 1895, did not officially become part of the Department of Mines until the Department of Mines Act, S.B.C. 1934, c. 42, but in practice it was a branch of the Department of Mines much earlier. On mining administration in the 1920s, see Arthur Fleming Crowe, Mines and Mining Laws of British Columbia: A Practical Reference Book on Provincial Metalliferous Mining Laws and Provisions (Calgary: Burroughs & Company, 1930) at 22ff. The later statutes for the Department of Mines, such as that of 1934, emphasize the Department's informational over its allocative functions.
300 See infra note 317 and accompanying text. The Bureau, created in 1895, did not officially become part of the Department of Mines until the Department of Mines Act, S.B.C. 1934, c. 42, but in practice it was a branch of the Department of Mines much earlier. On mining administration in the 1920s, see Arthur Fleming Crowe, Mines and Mining Laws of British Columbia: A Practical Reference Book on Provincial Metalliferous Mining Laws and Provisions (Calgary: Burroughs & Company, 1930) at 22ff. The later statutes for the Department of Mines, such as that of 1934, emphasize the Department's informational over its allocative functions.
301 British Columbia Fisheries Act, 1901, S.B.C. 1901, c. 25; British Columbia Fisheries Act, 1901 Amendment Act, 1902, S.B.C. 1902, c. 26. The Act established a regime for permits, leases, and licences to fish in “Provincial waters”. The practical application of this regime was a complicated matter that British Columbia negotiated formally and informally with the government of Canada over the next two decades. The result of that process was that Canada, which had constitutional authority over all fisheries under s. 91(12) of the Constitution Act, 1867, supra note 228, limited its practical jurisdiction in British Columbia to ocean fisheries. The amendment in 1902 statute changed the bureaucracy from a Board of Fishery Commissioners and a staff of “Commissioners, Fishery Overseers and other officers” (ss. 2, 4, 5 of the 1901 Act) to a member of cabinet called the Commissioner of Fisheries, with the support of a Deputy Commissioner, Fishery Overseers, and […] other officers and clerks” (ss. 2, 4 of the 1902 statute), and made provincial constables ex officio fishery overseers (s. 5).
more substantial mandate for the construction of public highways; \(^{303}\) divided Lands and Works into separate departments in 1908; \(^{304}\) passed the next year the first *Water Act*, \(^{305}\) which consolidated and substantially expanded the laws related to water, most significantly water use and diversion, \(^{306}\) and added a Water Rights Branch to the Department of Lands; \(^{307}\)

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\(^{302}\) The informal fisheries staff that the Deputy Commissioner managed from 1902 came to be called the Fishery Office, which in 1947 became a Department. *Department of Fisheries Act*, S.B.C. 1947, c. 36. Section 1, below, comments briefly on its functions.

\(^{303}\) *Highways Establishment and Protection Act*, 1905, S.B.C. 1905, c. 26. The government had, of course, been building roads, and designating existing roads as public roads, since the early days of the colony. This new statute drew out and expanded the provisions in the *Land Act* on road-building, while continuing to confer the power to build roads on the Chief Commissioner of Lands and Works, an arrangement that had legislatively been in place since the consolidated *Land Act*, 1875, supra note 252, ss. 71-73. There had also been a specific statute for road construction (and special road taxes) since at least 1869. Colony of British Columbia, *Roads Ordinance*, 1869, 9 March 1869 (32 Vict.), R.S.B.C. 1871, c. 118. And in 1875, the year the road-construction laws moved into the *Land Act* (by which time there were no longer special road-building taxes), roads consumed 57% of the government's budget. Cail, *Land, Man, and the Law*, supra note 6 at 131.

The 1905 highways statute is notable more because it was the next step toward a separate legal regime for highways, which eventually became a separate department. It augmented the existing public-safety statute, the *Highway Traffic Regulation Act*, R.S.B.C. 1897, c. 92, and in 1911 merged with that statute to form the two parts of the *Highway Act*, R.S.B.C. 1911, c. 99.

\(^{304}\) *Department of Lands Act*, 1908, S.B.C. 1908, c. 31; *Department of Public Works Act*, S.B.C. 1908, c. 41. Section 2 of the latter established a Minister of Public Works. The terminology of a Deputy Minister for each department was not yet in use, so the head of the Department of Public Works was, by s. 3, the Public Works Engineer. (Under the *Department of Lands and Works Act*, 1889, supra note 295, ss. 3-5, this official was the Chief Engineer and ran the Works Branch, while the Deputy Commissioner of Lands and Works ran the Lands Branch. The Department of Lands continued to have a Chief Commissioner of Lands as its head, rather than a minister. In 1911 that official became the Minister of Lands, and the Deputy Commissioner a Deputy Minister. *Land Act Amendment Act*, 1911, S.B.C. 1911, c. 29, ss. 14, 15.)

As with all departments at this time, every employee was a cabinet appointee (ss. 3, 4). Section 5 made the Department responsible for “construction of all new Government Buildings, and of all public roads, bridges and other public works [as well as] the management, charge and direction of the heating, maintenance and keeping in repair of the Government buildings, [Legislature], Court Houses, Gaols [...] Asylums, [...]”. Section 6 empowered the Public Works Engineer to oversee maps, plans, and estimates for new public works projects and repairs.


\(^{306}\) The *Water Act*, ibid., is a substantial statute of seventeen parts and 337 sections: more than any other statute of that time, though the municipal legislation was of greater length. It draws together laws related to water rights—both in legislation and common law—and sets out an extensive regime for allocating the right to use water and alter water courses or bodies, covering in addition to general users the use of water by farmers, ranchers, and miners. Its preamble first asserts provincial ownership and jurisdiction over “all the water” not within “exclusive jurisdiction [...] of Canada, remaining unreserved and unappropriated on the 23rd day of April, 1892”. Section 4 protects the riparian rights of land owners, but s. 5 overrides other common-law rights, stating: “No right to the permanent diversion or [...] use of any water shall be acquired by any riparian owner or by any other person by length of use or otherwise than as the same may have been acquired or conferred under this or some former Act.” Part 5 of the statute sets out the rules for water licences, and part 6 the licensing regime for works constructed on or adjacent to water courses. The Act is more thorough and detailed in its treatment of water than the lands legislation is in dealing with land, even including a requirement, in s. 302, that the government name all unnamed streams. See Cail, *Land, Man, and the Law*, supra note 75 at 111 and *History of B.C. Lands*, supra note 71 at 10 for commentary on the importance of the water legislation to the mining industry.
widened the scope of the mining laws to encourage petroleum exploration and extraction in 1910;\textsuperscript{308} created Strathcona Provincial Park, the first of its kind, on Vancouver Island in 1911; and in 1912 moved the forestry regime from the \textit{Land Act} into its own \textit{Forest Act},\textsuperscript{309} and further rearranged the Department of Lands by creating the Forest Branch.\textsuperscript{310}

In the first half of the twentieth century the newly established bureaucratic institutions responsible for land use—the "dirt departments"—grew in size, number, and sophistication, but continued to pursue the colonial vision of agrarian settlement.\textsuperscript{311} Within their legal frame, however, the departments' functions began to shift. Rather than merely allocating land to encourage resource development, they became more directly involved in the resource industries themselves. They gradually began to assume the role of developing industry. This role included such functions as information-gathering and dissemination; oversight of training institutions and industrial associations; promotion of industry, including subsidies and loans; the regulation of industrial practices; the analysis, classification, and inventory of land; and, by the late 1950s, a more direct role in the

\textsuperscript{307} Water remained under the jurisdiction of the Department of Lands, but in a more formally organized branch, albeit one with a smaller bureaucracy of the Chief Water Commissioner and Water Commissioners in districts the Chief Commissioner created. The Chief's title changed in 1912 to Comptroller of Water Rights. See the \textit{Water Act}, \textit{ibid.}, ss. 2, 7; \textit{History of the Lands Service}, 1858-1971, supra note 71 at 10, 29.

\textsuperscript{308} \textit{Coal-Mines Amendment Act, 1910}, S.B.C 1910, c. 33. This next revision of B.C. statutes changed the Act's name to recognize the change. \textit{Coal and Petroleum Act}, R.S.B.C. 1911, c. 159.

\textsuperscript{309} \textit{Forest Act}, S.B.C. 1912, c. 17 [\textit{Forest Act}]. As with the (much longer) \textit{Water Act}, this statute was more organised and detailed in its structure. It also gave the newly created Forest Branch of the Department of Lands a more detailed set of roles, rules, and directions than the Lands Branch had. (The bulk of the details in the \textit{Land Act} were specific to pre-emption.) The Act had 13 parts in total, as follows: Part 1 (ss. 4-6), Forest Branch and Provincial Forest Board; Part 2 (ss. 7-9), Prevention of Trespass; Part 3 (ss. 10-12), Holding and Method of Disposition; Part 4 (ss. 13-16), Timber Leases; Part 5 (ss. 17-31), Timber Licences; Part 6 (ss. 32-58), Rights of way; Part 7 (ss. 58-68), Royalties, Taxes, Collections, etc.; Part 8 (ss. 69-87), Timber Scaling; Part 9 (ss. 88-99), Timber Marking; Part 10 (ss. 100-04), Manufacture within Province; Part 11 (104-33), Fire Prevention; Part 12 (s. 134), Regulations; Part 13 (ss. 135-42), Penalties and Procedure.

\textsuperscript{310} Sections 4-6, \textit{ibid.}, established the Forest Branch and a forest board for disputes. At this point the hierarchy of the Department of Lands started at the top with the Minister of Lands, the Deputy Minister of Lands, and four branches that reported to the Deputy: Lands Branch (with two senior officials, the Supervisor of Inspections and the Inspector of Pre-emption); Surveyor-General's Branch (Surveyor-General and Chief Geographer); Water Rights Branch (Comptroller of Water Rights); and the Forest Branch (Chief Forester). \textit{History of the Lands Service}, 1858-1971, supra note 71 at 10.

\textsuperscript{311} From 1899 to 1913, the Lands Department grew from 17 to 195, \textit{History of the Lands Service}, 1858-1971, supra note 71 at 113.
economy and, through highway and hydro-electric construction, the development of land. The second half of this chapter focuses on the emergence of these functions of government from the 1890s through the mid-1960s.

Part 2—From Allocation to Administration

This part of the chapter shifts the focus from the development of the statutory instruments of land to the institutions responsible for those statutes, and to what has been described as “the beginnings of a new era […] as the government began to take the first steps towards a more prominent role in resource regulation.” It organizes this examination into several themes that became the backdrop for the upheaval of land laws in the 1970s. The first three themes organize the new functions of government as follows: the emergence of an information-and-dissemination role for government, both on land-use and the economy; a related increase in government intervention in the economy, both to support and subsidize industries and to regulate their practices; and the subsequent formation, in the 1950s, of economic-development policy and an (even) more economically instrumental government. The part concludes with a pair of historical case studies that draw threads from the first three sections: the forestry debates of the 1930s and 1940s, which marked the first appearance in British Columbia of major conflict and controversy over land use, and the relationship between provincial parks and the demand for space in which to enjoy “unmolested” nature, a demand that fed a pressure for change that erupted in the 1970s.

(1) From rudimentary classification to (fitful) research and analysis

Until 1891, the government carried out almost no research into land’s potential for agriculture, mining, or forestry. Aside from some mineral surveying, research and exploration was left to private initiative. That began to change with the classification system for land in 1891, followed by the establishment in 1894 of the Department of Agriculture, and the Bureau of Mines the next year. By 1919, when the government established a Department of Industries, all of the government offices responsible for land use had adopted the function of analysing land and industrial use of it, and sharing the results with industry to support development of resources. This section describes some of the most significant early examples of this function.

The land classification system of 1891 was the first formal step. The Mining Commission of 1891 was another step, one that focused specifically on industry and its needs from a tenure regime, rather than land. The government moved more decisively towards a research and education role when it established the Department of Agriculture. Its two purposes were to gather and provide information, and to oversee agricultural education. Section 7 of the Act created the position of “Statistician of the Department […] to collect and disseminate facts” about and useful to the industry. In the twentieth century

314 Supra, note 275 and accompanying text.
315 Department of Agriculture Act, 1894, supra note 299, s. 3(2): “control and supervision of schools, model farms, and agricultural, horticultural, and dairying societies”. Section 2 of this part returns to the Department’s oversight of associations and schools. Infra note 331 and accompanying text.
the Department’s agricultural research focused more on soil quality and identifying the best lands for agriculture.316

In 1895 the government established the Bureau of Mines, “a Central Office or Bureau [...] for the collection of all official information relative to the various mines and mining projects of the Province.317 Section 7 of the Bureau of Mines Act corresponded to section 7 in the Department of Agriculture Act, creating a “Provincial Mineralogist [to] institute inquiries and collect useful facts relating to the mining industries [...] and to adopt such measures for disseminating the same [...] to promote improvement in the aforesaid mining ministries.” The Bureau’s other function was also educational: the training of miners.318

These agencies had no authority to authorize land use, but the tenure-granting agencies also began to adopt research functions in the twentieth century. In practice, the Fishery Office’s primary function was research and informational support to the fishing industry. The growing Forest Branch in the Department of Lands and Works also took on informational duties in 1906, although the Timber Measurement Act, 1906 and Timber Manufacture Act, 1906 had more to do with regulating industry and charging royalties than with supplying the loggers with information.319 Nonetheless, they expanded the Branch’s

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316 This research, which extended the rudimentary efforts of surveyors to classify lands, from 1888 onward, remained one of the two primary functions of the Department of Agriculture, along with oversight of education and agricultural associations. In the 1960s, the Department took the most substantial role in the B.C. Land Inventory, the first comprehensive attempt to study land capability in British Columbia. See infra, notes 565, 605 and accompanying text.
317 Bureau of Mines Act, 1895, S.B.C. 1895, c. 3, s. 3 [Bureau of Mines Act].
318 Infra note 349 and accompanying text.
319 These augmented the forest tenure regime with, respectively, rules for the size of timber, and a requirement that timber be used in the Province, rather than exported as raw logs. Timber Measurement Act, 1906, S.B.C. 1906, c. 43 [Timber Measurement Act]; Timber Manufacture Act, 1906, S.B.C. 1906, c. 42 [Timber Manufacture Act]. The former as not the first statute related to measuring timber. It built on and enlarged an earlier statute, the full title of which was An Act to provide for the appointment of Official Scalers of saw-logs and other cut timber, S.B.C. 1894, c. 35.
capacity to analyse industrial activity, and prepared the way for a more substantial role in the *Forest Act*.\(^{320}\)

That role was the surveying of British Columbia to identify a forest reserve, an innocuous provision of the first *Forest Act* that significantly influenced the course of the forest industry in British Columbia, as well as land use, the economy, and, from 1978 onward, the political life of the Province. Section 12 said:

\(1\) The Minister shall cause an *examination* of Crown lands [to delimit] areas [...] it is desirable to reserve for the perpetual growing of timber, and [cabinet may] constitute any such area a *permanent forest reserve*; and [...] all land included within the boundaries of any *such area shall be withdrawn from sale*, settlement, and occupancy under the provisions of the "Land Act," and in respect of the "Mineral Act" and "Placer-mining Act" and "Coal-mines Act" shall be subject to such conditions as [cabinet] may impose.

\(2\) Forest reserves [...] shall be under the *control and management* of the Minister for the *maintenance of the timber growing* [...] thereon [...].\(^{321}\)

The requirement of such an examination responded to the Fulton Report's concern about the lack of information on the forest resource.\(^{322}\) Although the Forest Branch did not begin surveying in earnest until 1927,\(^{323}\) the provision was perhaps the strongest statement of the government's support for the forest industry,\(^{324}\) as well as the government's instrumental role in industrial development. The reserves would give forestry priority over settlement and other industrial uses, but they also moved the Forest Branch beyond the role of allocator to one of both shaping and supporting the growth of the industry. The reserve also altered

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\(^{320}\) The *Forest Act*, *supra* note 309 incorporated both statutes, the latter as s. 100. On s. 100, see *infra* note 410 and accompanying text.

\(^{321}\) *Forest Act*, *supra* note 309, s. 12. Subsection (3) authorized cabinet to exchange any private land within a forest reserve for crown land elsewhere, to consolidate the land under the Department's control [emphasis added].

\(^{322}\) Fulton Report (1910), *supra* note 256.

\(^{323}\) *Infra* note 383 and accompanying text.

\(^{324}\) One might argue that the special licence system for forestry that prevailed between 1905 and 1907 was a stronger statement. These licences, which covered larger areas than previous licences and lasted 21 years, rather than five, created a rush of applications and revenue. Martin Robin, *The Rush for Spoils: The Company Province, 1871–1933* (Toronto: McClelland and Stewart, 1972) at 92-93. This boom had a lasting effect, but was a fleeting show of support in comparison to s. 12, which was a more careful attempt to support forestry, and was ensconced in the established tradition of crown control of the kind, extent, and location of land use.
the position of the forestry staff in the Department of Lands, causing it to grow in size and prestige. An internal unit devoted to analysis, which eventually necessitated forest district offices, was different from the small Lands Branch's reliance on contracted surveyors.

The Lands Branch, despite its position as the primary allocator of interests in land, had the least substantial role in researching and disseminating information about land. The surveys were reaching their peak in volume in 1912-1915, and started to wind down by 1919. Since the Lands Service was focused primarily on settlement and agriculture, it left the research work to the Department of Agriculture until the late 1940s. The entire staff of the Lands Service resided entirely in Victoria until 1947, when it hired land inspectors, and the Service did not create its own district offices until 1971. By contrast, the Department of Mines was extending its research function and presence in the interior. It had absorbed the Bureau of Mines, and in 1917 the Mineral Survey and Development Act augmented the work of the Bureau and doubled the size of the Department's research bureaucracy. The Act divided the Province into six districts, each with a Resident Engineer to oversee survey

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325 History of the Lands Service, 1858-1971, supra note 71 at 11 notes that "[b]etween 1912 and 1915 the annual reports fairly bulged with surveyors' reports of land along the route of the Grand Trunk Pacific Railway through the Central Interior. Even such relatively remote regions as the Queen Charlotte Islands were surveyed."

326 A noteworthy indication of the government's conclusion that its major survey work was complete is the amendment to the Land Act in 1918 to limit pre-emption to lands that had already been surveyed. Land Act Amendment Act, 1918, S.B.C. 1918, c. 43, s. 5 and consequential amendments throughout the Act; and see History of the Lands Service, 1858-1971, supra note 71 at 13; and, on the surge of surveys from 1907 through the mid-1910s, see Cail, Land, Man, and the Law, supra note 6 at 66-67. Thus ended the era of the purchase of unsurveyed land, and so began the era in which the Lands Service did not sell remote lands, a practice that became a formal policy in later years. Interviews of Brian Moen; Tom Cockburn.

327 In addition to the land inspection branch, discussed next, the Lands Service reorganized in 1946, establishing a Land Utilization, Research and Survey Division "to classify and map undeveloped Crown lands according to their potential land-use capability." It drew on some of the Forest Service had begun under F.D. Mulholland. The Division only lasted seven years, however.

328 History of the Lands Service, 1858-1971, supra note 71 at 21; History of B.C. Land Service - 1986 Update, supra note 517 at 3. There were a handful of inspectors in 1947, reporting to the Chief Inspector in Victoria. They borrowed office space from the Forest Service, government agents, and other agencies. By 1971, there were 17 inspectors.

329 S.B.C. 1917, c. 41. To the six employees in the Bureau of Mines in Victoria, s. 6 established six Resident Engineers in district offices. Brown, “The Mineral Survey” supra note 313.
work, and directed them to survey the Province for its mineral potential, and publish this information for industrial use.\textsuperscript{330}

The Department of Industries was the first bureaucracy that supported general industrial development in the Province. Its research functions are a catalogue of the functions the dirt departments had been adopting for the previous twenty-five years. Since the Department of Industries was such a significant example of the government's move into industrial development and support, I will describe it in the next section.

\underline{(2) Intervening in land and the economy}

A parallel, and more coherent, function of the B.C. government in the first half of the century was direct involvement with the businesses that used land, through education, administrative support, and funding. This support also reveals a shift in the role of government, but one that follows logically from the land laws' promotion of specific economic uses of land.

The economic interventionism also began with agriculture. The \textit{Agricultural Societies Act, 1873} and the horticultural, dairy, and farmers' association statutes of the 1890s enabled farmers to organize associations for the promotion and improvement of farming through exhibitions, trade shows, and even essay competitions on agricultural and dairy practices.\textsuperscript{331} And an 1894 statute created a Provincial Board of Horticulture charged with "preventing the spread of contagious diseases in orchards and gardens, [...] and for the prevention,

\begin{itemize}
  \item \textsuperscript{330} \textit{Ibid.}, ss. 4-8. The remainder of the Act set out an aid regimen for prospectors and miners, and protections for wage-earners and investors.
  \item \textsuperscript{331} \textit{Agricultural Societies Act, 1873}, S.B.C. 1873, c. 33; \textit{Horticultural and Fruit Growers' Incorporation Act, 1890}, S.B.C. 1890, c. 1; \textit{Dairymen's Association Act, 1894}, S.B.C. 1894, c. 11, s. 3; \textit{Dairy Associations Act, 1895}, S.B.C. 1895, c. 15; \textit{Farmers' Institutes and Co-operation Act, S.B.C. 1897}, c. 13. The \textit{Agricultural Societies Act} of 1873 limited the societies to electoral districts, until the \textit{Horticultural statute} of 1890 amended it to allow agricultural associations to be provincial. The two dairy statutes of 1894 and 1895 were separate: the latter was specific to cheese and butter associations. They were merged in 1897, as were the agricultural and horticultural statutes.
\end{itemize}
treatment, cure, and extirpation of fruit pests. The associations, in contrast to the Board, were private organizations, but the government set the conditions for their creation and operation. In 1911 the government conflated legislative jurisdiction over the board and all farming associations, under the Agricultural Associations Act. The Department of Agriculture used the associations as recipients and managers of farming subsidies, called “Legislative grants”. The Act also set up a Superintendent of Farmers’ Institutes and provided for provincial and municipal funding for such institutes. It went on to encourage “a Farmers’ Central Institute for the whole Province,” to which up to 25% of the annual funding for farmers’ institutes could flow. Carrying on the colonial concern with shaping British Columbia economically and socially, the Act also permitted separate Women’s Institutes “for the purpose of disseminating information in regard to agriculture and of improving domestic life”. The government further extended the scope of its

332 Horticultural Board Act, 1894, S.B.C. 1894, c. 20, s. 7.
333 Agricultural Associations Act, 1911, S.B.C. 1911, c. 2 [Agricultural Associations Act], s. 22. This statute substantially expanded the rules for agricultural associations, including dairy groups and farmers’ institutes, and for the government’s support of them. The 1911 Act also absorbed rules for livestock associations created in the Dairy and Live-stock Associations Act, 1901, S.B.C. 1901, c. 2. Four years later the government consolidated further. The Agricultural Act, S.B.C. 1915, c. 2 replaced the Agricultural Associations Act and absorbed the credit regime under the Agricultural and Trade Credit Societies Act, R.S.B.C. 1911, c. 8, which had first been enacted as the Agricultural Credit Societies Act, 1898, S.B.C. 1898, c. 2. The new Act created an Agricultural Credit Commission with charge of grants, loans, and farmers’ institutes. The government later renamed the Agricultural Act the Farmers’ and Women’s Institutes Act, R.S.B.C. 1935, c. 94. The citations below are to the 1911 statute.
334 Agricultural Associations Act, ibid., s. 23.
335 Ibid., ss. 29-32.
336 Ibid., s. 33.
337 Ibid., s. 35. The Act did not provide special funding to these institutes, but presumably they were eligible for legislative grants, just as was any agricultural association. The distinction between farmers and women is interesting, as is the language describing the functions of women’s institutes. These obviously reflected contemporary conceptions of the role of women, but it is notable that the government was actively reinforcing those conceptions with its agricultural legislation. Once again, the land laws were as much social as economic. The separation of women’s from farmers’ institutes continued for decades, as in the revised title of the Agricultural Act, supra note 333.

The language of permission in these provisions is also interesting, since there is nothing in the statute to prevent such an institute from being formed as an agricultural association. My interpretation of these sections, therefore, is that the government was encouraging the creation of farmers’ and women’s institutes, without using the word “encourage.” I have not researched further to determine the government’s purpose in fostering institutes distinct from associations, and leave it to the reader to speculate about the social goals in the distinction.
instrumental role in agriculture in the *Agricultural Act, 1915*, which instituted an Agricultural Credit Commission and set out an extensive program for financial loans to the farming industry.\(^{338}\) This Act continued the previous statutes' regime for agricultural associations and information-sharing.\(^{339}\)

These agricultural statutes assisted private enterprise to promote farming and offered funding to enable the industry's growth. At the same time, the statutes drew step by step private agricultural enterprise into the government's regulatory jurisdiction—with, for example, regulations that an Inspector of Fruit Pests enforced.\(^{340}\) This form of legal "embrace," which both enables and controls its object, was typical of the emerging function of government. Some other examples in the agricultural and dairy statutes included the restriction of associations to those sanctioned by the government,\(^{341}\) and creamery inspectors, to go with the older regime of horticultural inspections,\(^{342}\) and the beginning of a labelling system for agricultural products, with the *Eggs Marks Act*.\(^{343}\)

The Lands Service continued to operate primarily as the surveyor and allocator of land, but in conjunction with the Department of Agriculture it also took on a more direct role in development.\(^{344}\) The *Land Settlement and Development Act*, entitled in full *An Act to promote Increased Agricultural Production*, created a Land Settlement Board to acquire, clear, sub-

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\(^{338}\) *Agricultural Act, 1915*, S.B.C. 1915, c. 2, s. 4. Part 1 of the Act, ss. 4-67, set out the procedures for loans.


\(^{340}\) *Horticultural Board Act, 1894*, supra note 332, s. 8. The mandate quoted above was, in fact, a mandate to create regulations. The Inspector had the power to destroy infected property, although the Act required a court order for such a step. *Ibid.*, s. 9.

\(^{341}\) *Agricultural Associations Act*, supra note 333, s. 24.

\(^{342}\) *Supra* note 339.

\(^{343}\) The *Eggs Marks Act*, S.B.C. 1916, c. 18 set standard rules for marking types and qualities of eggs (first-grade, second-grade, preserved, Chinese).

\(^{344}\) Agriculture, with no authority to allocate land but with an interventionist role in the farming industry, obtained some involvement in land use through its collaboration with the Department of Lands, and *vice versa*. It is, however, likely the two agencies maintained their different roles during the project described here. The Lands Service did not begin to create land-use policy until the 1970s.
divide, and develop 46,000 acres in regionally important locations, including Creston, Merville (on Vancouver Island), Kelowna, Fernie, and Sumas. The Sumas reclamation project dyked and drained 30,000 acres for farming in the Fraser Valley, and the Board also took ownership of 300,000 acres of land in the central interior “where bona fide settlers could obtain mortgage funds to acquire land and improve their farms.” Many of the communities the Board developed in its first years were meant to help soldiers returning from the war, and to energize community-building and the economy after the war. A settlement project called the Southern Okanagan Lands Project was originally intended for soldiers.

The Bureau of Mines and mineral survey districts were also much more than research tools to support the mining industry. The former provided not only information but “instruction to prospectors” and “examination[s] for efficiency in the practice of assaying”. Going beyond training and testing, the district resident engineers appointed

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345 S.B.C. 1917, c. 34; History of the Lands Service, 1858-1971, supra note 71 at 16-17. Lands shared responsibility for the Board’s work with the Department of Agriculture. The project was an example of Agriculture playing a more role in development, though it never became a tenuring agency. The Board continued to operate until 1968, when the Department of Agriculture absorbed it.

346 Ibid. 1940 The Board, which continued to operate until 1968, also became involved with the Doukhobor community when a Doukhobor holding company went bankrupt. The Board took 20,000 acres of land and “evaluated, sub-divided and sold or rented [the lots] to qualified Doukhobor applicants.” Given the hostility in the Province to the Doukhobors (see, e.g., Ormsby’s History of B.C., supra note 66 at 360), the project may be worth researching as an instance of the government’s effect on the social structure of a society through the reshaping of that society’s physical space.

347 See Ormsby, ibid, at 407, citing Merville and Creston, as well as Telkwa, just west of Smithers in the northwest. Even more direct support for the settlement of soldiers also came in the Soldiers’ Land Act of 1918, which established a Superintendent of Soldier Settlement from 1918-24. S.B.C. 1918, c. 80; History of the Lands Service, 1858-1971, supra note 71 at 13. This was least the fourth instance of special settlement legislation for soldiers. The colonial government had passed a statute in 1861 giving discounts on land to soldiers, and another in 1863 to provide free grants of up to 600 acres of land. (The latter were intended for Colonel Moody’s royal engineers, which the government disbanded in 1863. Howay’s B.C. History, supra note 76 at 109-10.) Finally, a 1901 statute assisted 1,000 veterans of the Boer War. History of the Lands Service, 1858-1971, supra note 71 at 6, 13; Colony of British Columbia, Military and Naval Settlers’ Act, 1863, 23 February 1863 (26 Vict.), R.S.B.C. 1871, c. 43; South African War Land Grant Act, 1901, S.B.C 1901, c. 51.

348 Ibid, at 13-14. Since not enough soldiers took advantage of the project, the Lands Branch opened it to non-soldiers in the 1920s.

349 Bureau of Mines Act, supra note 317, ss. 10, 12; Mineral Survey and Development Act, supra note 329, s. 9.

350 Ibid., ss. 10, 12(1).
under the latter statute were to aid prospectors and miners by numerous means, which included providing the government's survey results, testing samples for them, and facilitating the creation by the Department of Public Works of access roads for exploration and mining.\textsuperscript{351} The \textit{Mineral Survey and Development Act} provided an even more direct subsidy by authorizing the Minister of Mines to pay for exploratory drilling and preliminary work on leased mine sites.\textsuperscript{352} To support the industry, rather than miners themselves, the statute also required miners to take out security to protect wage-earners, and directed the engineer to vet the claims of mining speculators, and advise investors of inaccuracies. The primary goal of these provisions was not to protect workers and investors, but to avoid harm to the industry due to individual mine failures.

The final example of intervention draws these sectoral projects together into a more co-ordinated initiative. In 1919 the provincial government created the Department of Industries.\textsuperscript{353} This new department served all industries in the Province and provided a broad array of support to them. The \textit{Department of Industries Act} instituted a deputy minister called the Industrial Commissioner, who oversaw the Department's eleven responsibilities.\textsuperscript{354} These included: providing, co-ordinating, and disseminating industrial and scientific research on local and international industry and methods; “an economic survey of the natural resources” and a mandate to “furnish advice” on their best use; “attacking industrial problems”; co-ordinating “various industries [...] to bring together producer, manufacturer and purchaser”; “aid in the establishment of any industries”; “aid by loan, guarantee [etc.] primary or secondary industries”; and “[g]enerally for any other

\textsuperscript{351} \textit{Mineral Survey and Development Act}, supra note 329, s. 9. As noted infra note 303 and accompanying text, the provincial government had only officially assumed responsibility for highway infrastructure in 1910.

\textsuperscript{352} \textit{Ibid.}, s. 11. Section 12 sets out the royalty system by which the miners would repay the government's costs.

\textsuperscript{353} \textit{Department of Industries Act}, S.B.C. 1919, c. 34.

\textsuperscript{354} \textit{Department of Industries Act, ibid.}, ss. 3, 4.
purpose calculated to promote the economic development of the Province.” That final, catch-all responsibility introduces the next theme, the effect of the emergence of an ethos of economic development after the second world war.\textsuperscript{355}

The examples in this and the preceding section reveal the widening the scope of the Province’s land regime: beyond the allocation of land for prescribed land uses and towards an acceleration of the growth of the resulting resource industries. What was emerging, in fact, was not only a larger, “administrative” bureaucracy but a policy of economic development. That policy became more coherent and apparent in the 1950s, and resulted in substantial changes to the bureaucracy, but its seeds were in these early endeavours of government to promote particular sectors of the young economy through research and dissemination, and financial and technical aid.

(3) Developing resources becomes developing economy

The previous two sections cite examples of the new role of government as promoter and regulator of industrial development. They suggest a shift in B.C. land law and its vision of government from allocator of resources to promoter of and participant in their development. I suggest this was a shift in the government’s focus, but not a change in the direction of land policy. Indeed, economic intervention was a logical continuation of the instrumental role the government had always played, through its land laws, in defining the Province’s economy and social structure. The shift did, however, mark a change in the

\textsuperscript{355} The Department also played an important part in this later era, and remains a part of the bureaucracy. It became the Department of Trade and Industry in 1937, reflecting both the growth of international trade and the growth of the Province’s levels of production, particularly in lumber. Department of Trade and Industry Act, S.B.C. 1937, c. 73. In the 1950s, the mandate and name shifted to reflect development economics. Department of Industrial Development, Trade and Commerce, S.B.C. 1957, c. 29. In 1974, the name became simpler; economic development by that time had become an unquestioned goal and technique of government policy. Department of Economic Development Act, S.B.C. 1974, c. 26. In 1979, the Department, by then called a ministry, became a catch-all for resource industries that did not have their own home: Ministry of Industry, Tourism and Small Business Development, R.S.B.C. 1979, c. 275. It has changed names frequently since then.
government's attitude towards land rights. The new laws, while promoting industry, were also restricting the freedom of industries to use their lands however they wished. Again, given how carefully the government strove in the 1800s to control the amount of land individuals and enterprises held and for what purposes they used these lands, I am not suggesting the government was discarding an old theory of land and property in favour of something new. And I am not suggesting government was switching from free enterprise to a centrally directed economy. Indeed, far from having a defined theory of property and economic development, the government appears to have continued to operate, responding to perceived economic needs with laws to promote economic growth. In the 1860s, however, the government's "pragmatism" was shaped by a colonial policy goal that continually directed the laws towards sovereign control of land, settlement of British population, and a socially mobile, agrarian economy. By the start of the twentieth century, as the government pragmatically pursued economic growth for its growing population, the legal regime established in the colonial period had come to serve as the defining framework of the new initiatives. Colonial policy shaped the laws, and now the laws shaped policy. And those laws were providing a springboard for a nascent idea of development of the economy itself, rather than the creation of an economy through the development of resources.

In the past decade, the field of law and development has re-emerged with a nuanced, critical approach to the laws promoting economic development. This focus has been on the industrialized world's export to less industrialized countries of a capitalist legal system devoted to economic growth. Despite this focus, the literature on law and development offers some useful insights to and methods for studying the industrialized world. Some of

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356 I leave aside here the common description, even in the late twentieth century, of British Columbia as a third-world economy. Despite the Province's continued reliance on its resource sector as its economic tent-pole, the
this work includes genealogies of economic and legal concepts that are still largely 
unquestioned in the west, such as the term “economic development,” and the description of 
states as “developed,” “developing” or “less developed,” and “undeveloped” or, the middle 
position. This research almost implies that the term “economic development” was 
invented in the 1930s and popularly launched at the start of the cold war, in 1949. In treating 
“economic development” as a pervasive discourse of public policy, the scholarship is likely 
correct. But as the first two sections of this part suggest, the history of “economic 
development” is more nuanced. Governments were thinking of resource development much 
earlier. B.C. statutes of the 1870s trumpet the development of various resources, and the 
Department of Industries had a mandate to promote economic development in 1919. 
Government was, as part of this promotion, becoming more directly involved in industries 
and land use. At the same time, however, there does appear to have been a change in British 
Columbia in the late 1940s. And in 1951, with the ascent to power of the Social Credit Party 
under Premier W.A.C. Bennett, the fledgling ideas of economic development of the previous 
few decades had reached their own ascendancy in the departments of dirt. 

By this time, the settlement boom had subsided, and the Province was growing more 
affluent, thanks to forestry and mining revenue, as well as the agricultural and fisheries 
industries. But when the B.C. government surveyed the landscape, economic and 
geographic, in the late 1940s, it found that “parts of the province, even where long settled, 

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existed in near frontier conditions.” These conditions were anathema in this era of “developed” and “underdeveloped” states. The government set its land bureaucracies to work to spread economic prosperity throughout the province. As historian Jean Barman remarks, “no comparable attempt had been made previously to link profit-making from resource exploitation to development of the interior and the north.” Laws shaping and encouraging the private sector’s development of land were not enough, or at least were no longer enough, to create the ideal society. So government began to seek ways to both continue to accelerate the prosperity of the resource industries, and to spread the wealth throughout the Province. Under Bennett’s direction, the government sought to develop the Province with a set of Keynesian economic development initiatives. The era of the mega-projects began. These projects, instituted through new laws and institutions, included a new forestry regime featuring vast forest management licences (now called tree farm licences); an extensive infrastructure project of public highways, railroads, and bridges; new departmental support for the oil and gas extraction in the Peace region; expansion of tourism through the government’s construction of infrastructure and marketing of a growing parks system; the “provincialization” of the B.C. Electric Company in 1961; and a series of massive hydro-electric dams.

Jean Barman writes of Premier W.A.C. Bennett: “A strong verbal commitment to free enterprise cheerfully coexisted with a willingness to use the power of the state to set

358 Barman, West beyond the West, supra note 96 at 271.
360 For a survey of the Bennett government’s activist program, see Stephen G. Tomblin, “W.A.C. Bennett and Province-Building in British Columbia” (1990) 85 BC Studies 45.
361 Ibid, at 278-85. By provincialization I (and Barman) mean the government’s assumption of control of the electricity company, and incorporation of this company into the new B.C. Hydro and Power Authority. See also Woodock’s History of B.C., supra note 69 at 244.
capitalism's direction. In the view of Bennett's biographer, David Mitchell, he 'cultivated an activist approach to government.' 363 In a different context, these words could easily be about Edward Gibbon Wakefield: "Government, said Wakefield, was [...] to take a very responsible part in the business of colonization. There was to be regulated appropriation of land. [...] Wakefield would have none of [his conservative critics'] indiscriminate planning [...] . He wanted selected emigrants [...] who would be able to make a proper contribution to their new country." 364 Bennett's activist approach, and indeed the idea of interventionist government was a logical extension of the foundations of the Province's land laws: an instrumental role for the government in shaping the use of land by private enterprise.

The 1950s and 1960s demonstrated that a government with control over the land and the economy can create sustained economic growth. The environmental era that began to take form in the late 1960s suggests a converse potential value of such an instrumental role: that of the government to change the shape of the economy, in response to changing values. As the Lands Service wrote in 1971, at the end of the era of homesteading, and the start of a new, more complex era:

During the first half-century of the Province's history the emphasis was on disposal by Crown Grant. This suited the policy of encouraging rapid settlement and improvement of rural land. [...] Today, the emphasis is on land management to achieve harmony between private and public uses for land. To achieve this aim, a sophisticated variety of systems have been devised for regulating the disposition of Crown land. 365

This vision, which looks naïve in hindsight and was, in fact, much more simplistic in 1971 than the system that emerged in the ensuing decade, is nonetheless less likely to be possible

363 Ibid. at 280.
364 Prichard Introduction to Wakefield, supra note 30 at 20.
365 Foreword to History of B.C. Lands, supra note 71.
under a system that confers a weak role on the state to determine land use and economic activity.

Government grew in size and in the sheer number of departments and divisions during this period. It also grew more directly involved with the research and business communities when the Department of Lands and Forests initiated an annual series of “Natural Resource Conferences” in 1948. These conferences condensed much of the research and educational work that various agencies had been doing since the 1890s. The first conference was entirely a government initiative featuring four papers on agriculture, fisheries, forestry, and mining, “the four major industries of British Columbia.” 366 By 1950 the conference had become an institution billed as “an organization representing Industry, University and Government.” 367 The report that year summarizes the history and reveals much about the view of British Columbia’s lands as a set of resources:

The objective of [the 1948] meeting was to determine whether this kind of gathering should be established on an annual basis. The research, administrative and management authorities who attended enthusiastically endorsed the proposal.

The Second Conference, in 1949, brought together 200 key men from industry, university and government, representing all the natural resources of British Columbia. The sessions were devoted to making an inventory of our resource possessions under the theme, The Wealth of British Columbia.

The theme of the Third Conference, Resources Problems in British Columbia, brought together statements and discussions concerning the problems specific to, and inherent in, the nine major resources of soil, water, agriculture, fisheries, forestry, mining, power and energy, recreation, and wildlife.

This statement and the content of the annual transactions of the conferences draw several themes together: the vision of land, water, flora, and fauna as “possessions” and “resources” that are “represented” by bureaucrats, industrialists, and scientists; the involvement of

367 Ibid. Whereas the Department of Lands and Forests published the transactions of the 1949 conference, from 1950 onward the “British Columbia Natural Resources Conference” was the publisher.
government in industrial activity and business planning; government’s substantial research role; and, conversely, the limits of the research done so far. Although the government published the minutes of the 1949 conference as the first inventory of B.C. natural resources, the document was in fact a description of industrial activity: logs cut, ore mined, revenue generated. There is little data on the natural resources themselves. The definition of “resources” is insightful. It blends the industries with the materials those industries use, to the exclusion, with the exception of soil and water, of the materials themselves.\footnote{368}

The dirt departments themselves are another indication of the new, more instrumental role of government in the economy. They divided and grew rapidly in the late 1940s and 1950s. The proliferation of new or modified bureaucracies included the promotion of the Forest Branch to the Forest Service and the change of its department’s name to the Department of Lands and Forests in 1945, followed by the same treatment for the Water Resources Branch in 1960;\footnote{369} elevation of the Fishery Office to the Department of Fisheries in 1947;\footnote{370} conferral on the Department of Mines of full authority under to grant all mining tenures, including those for coal and petroleum, and the transfer of the Petroleum and Natural Gas Branch from Lands to Mines;\footnote{371} division of the Department of Works into the Department of Public Works and the Department of Highways, to support the new infrastructure initiatives and, incidentally, to expand on an aspect of Wakefield’s model—

\footnote{368}A 1961 conference that the Canadian government organized, called “Resources for Tomorrow”, was different in focus from the natural resource conferences, and perhaps more important, since it led to the start of a more sophisticated inventory of land that began in British Columbia in 1964. See infra note 605 and accompanying text.\footnote{369}Department of Lands Amendment Act, 1945, S.B.C. 1945, c. 45; Department of Lands and Forests Amendment Act, 1962, S.B.C. 1962, c. 22.\footnote{370}Department of Fisheries Act, S.B.C. 1947, c. 36.\footnote{371}Coal Act Amendment Act, 1953, S.B.C. 1953, c. 16. Until this statute, the Minister of Lands and Forests retained the authority to grant interests in land under the Coal Act. Regarding the Branch, see History of the Lands Service, 1858-1971, supra note 71 at 23.}
the creation of good transportation connections among economic centres; creation in 1957 of the Department of Recreation and Conservation, to encourage tourism generally as well as the newest "resource industry," commercial backcountry recreation; and the broadening of the official mandate of the Department of Mines to include Petroleum Resources in 1960. The promotion of commercial tourism gained an even greater mandate with the creation of the Department of Travel Industry in 1967.

The final two sections of this part consider more closely two of the major initiatives of the era of economic development: forestry and tourism.

(4) Conservation — of resources, not nature — takes root in forest(ry)

Forestry came to the fore in the 1940s as the Province’s dominant industry, and remained the leader of the development boom in the 1940s. The overhaul of the forest tenure regime in 1947 illustrates the growth of the bureaucracy’s information-gathering and analysis function, its promotion of the growth of the industry, particularly of the major companies, intervention into industrial activity, and a nascent pre-occupation with

372 Department of Public Works Act, S.B.C. 1955, c. 65; Department of Highways Act, S.B.C. 1955, c. 33. The separation of the departments was useful for the infrastructure boom of the 1950s. In 1976 the government rejoined them as the Department of Highways and Public Works. Government Reorganization Act, S.B.C. 1976, c. 18, s. 4 [1976 Government Reorganization Act]. This department later absorbed the Department of Commercial Transport, becoming the Ministry of Transportation.

373 Department of Recreation and Conservation Act, S.B.C. 1957, c. 53. See section 5, below, for more on this Department and its relationship to parks and outdoor recreation. The Department’s role in overseeing recreation and commercial tourism in parks expanded with the 1965 Park Act.

374 This change recognized the growth of oil and gas exploration in the Province, which the government had first begun to encourage in 1910. Supra note 308. Margaret Ormsby’s History of B.C., supra note 66 at 484 describes the oil industry in the late 1950s as, “one hundred years after the first rush for gold to the Fraser River, another rush, this time for ‘black gold’ to the historic northland”. She also alludes to the complicated history of oil and gas laws in the 1940s and 1950s, which I am not including in this thesis. It is worth noting that oil engendered a renewed struggle between public control of land and private enterprise. In 1944, when the government replaced the Coal and Petroleum Act, R.S.B.C. 1936, c. 175 with the Coal Act, S.B.C. 1944, c. 26 and the Petroleum and Natural Gas Act, S.B.C. 1944, c. 40, the new statute “permit[ted] private development of the oil fields”. The result helps to explain the anomalous size of private landholdings in the north-east of the Province, around Fort St. John. By the late 1950s, the government was bringing petroleum back under its jurisdiction.

375 Department of Travel Industry Act, S.B.C. 1967, c. 18. This promotional department merged with the Department Recreation and Conservation in 1976, becoming the Department of Recreation and Travel Industry. 1976 Government Reorganization Act, supra note 372, ss. 5, 7.
economic development. The new Forest Act, as with the later Bennett government, gave a great deal of power to industry, in exchange for a famously minimal commitment. But it also took in exchange industry’s acceptance of a more managerial, regulatory state, and of the Province’s first formal conservation regime.

The story of forestry in the 1930s and 1940s is a complicated one, from which I wish only to draw a broad outline of the shift in British Columbia’s land law at the time. Jeremy Wilson has written a vivid political history of the changes in the forestry laws, which supports my analysis of the themes in the new forestry laws. His analysis differs in slight but interesting ways from the story told within the contemporary environmental movement, but in drawing on the historical record, Wilson does support the environmentalists’ depiction of the forest debates as the first environmentalist crisis in B.C. land law.

The debate was not framed as environmentalist at the time, of course. That term was not in use at all in its current sense. “Conservation,” a precursor to contemporary environmentalism, was the prevalent term. But conservation had much less to do with protecting ecological systems and wildlife than contemporary readers might assume. Conservation in the 1930s was a shift towards seeing land as a resource to be managed with care. This ethic, similar to today’s emphasis on sustainable development, envisioned a forestry economy continuing indefinitely, as long as the trees were carefully managed. Conservation was not the vision of groups outside government, calling for change. It was the goal of the executive of the Forest Service. Opposition parties also took up the cause of conservation, but put less emphasis on managing the resource than on the pursuit of social

377 See infra note 406 and accompanying text on the “appurtenance” clause.
379 Interview of Will Horter, supra note 269.
reforms. For them, conservation of the timber resource was secondary to the spreading of
the wealth among British Columbian workers and communities, rather than corporate
executives and shareholders. Both "sides" of the debate wanted to liquidate the forests; they
differed on how to divide these spoils.

But what sparked the controversy that brought about the conservationist and socialist-
conservationist debate? It was, in fact, the permanent forest reserve that started the chain of
events leading to the new forest licensing regime. The forest industry had begun to
dominate public perceptions of land use and the economy in the inter-war period. In the
1930s, the industry's practices began to receive public attention and censure, and it
became particularly important to British Columbians as a way out of the Great
Depression. As a result, the public responded strongly to news reports of the possibility of
timber shortages due to clearcutting, and of the poor "government forest management
practice[s]" that allowed over-cutting and were leaving the forest in a devastated state. The
resulting outcry about the future of the Province's timber supply led to calls for government
to regulate forestry practices.

__Notes__

381 Ibid, at 7-8.
382 One difference in the environmentalist narrative of this history is the emphasis on the particular abuse of
private land. In some accounts, the outcry was specifically about private land, rather than land under lease. This
supports arguments in favour of public control of land, and against the argument that private forest lands would
lead to more careful management of forests than occurs under public licence. Interview of Will Horter, supra note
269. Wilson does not contradict this story, but he does argue that the public has been slow to translate a zeal for
public ownership into "a landlord's perspective." Ibid, at 6. My reading of his comment is that, despite asserting
ownership of forests and instituting a more regulatory, managerial regime for forestry, the government failed to
achieve the goal of benefit to the public, vs. benefit to the industry, and that the public failed to recognize this.

This continues to be the case, in part (and ironically) due to the complexity of forestry law. Today there
continues to be strong support for public ownership of land in British Columbia. Will Horter and others cite the
forestry debate in the 1930s as the origin of this public sentiment. One example of this concern is the hostile
reaction to the "working forest" initiatives of the 2000s. See for example, Will Horter, "Plan to privatize public
lands draws protestors" (28 March 2004), Dogwood Initiative Bulletin, online:
<http://www.dogwoodinitiative.org/bulletins/plan_to_privatize_public_lands_draws_demonstrators/view?se
archterm=public%20lands>. Of more than 2,000 comments and reports from the public during the government's
consultation process, 97% opposed the proposal to increase private access to and, arguably, control of land. The
government withdrew the "working forest," appeasing public outcry, while proceeding with related
It is unlikely the public outcry would have arisen without the inventory analysis the Forest Branch had begun in 1927 under section 12 of the original Forest Act. One decade later the inventory work produced a report by F.D. Mulholland, a forester in the Forest Surveys and Working Plans Division of the Forest Branch. This report went beyond a mere catalogue of available timber: It stated that companies were overcutting at the rate of 100% on the coast—where “85 per cent. of our utilization is concentrated”—and rapidly depleting first-growth forest. The report also singled out the poor state of private forests, which, it noted, were largely the result of land grants to railways. The report proposed “working-circles containing both crown and privately owned timber” to prevent the denuding and discarding of private lands, and to hasten the expansion of the industry onto a larger portion of the land base. In a bold foreshadowing of the state-led economic-development era of the 1950s, Mulholland wrote:

amendments that deregulated the forest industry. The strength of support for “public” land did, in this case, distract attention from more nuanced questions of public control, reinforcing Wilson’s argument about the changes in the 1948 and through the 1970s.

383 Supra note 309. The reserve provisions became ss. 29, 30 in the new Act of 1923. Forest Act, R.S.B.C. 1924, c. 17. They did not change in substance, however; s. 30 merely replaced and elaborated the system for exchange of lands outside reserves for private land within, formerly s. 12(3).

384 F.D. Mulholland, The Forest Resources of British Columbia (Victoria: King’s Printer, 1937) [Mulholland, Forest Resources].

385 Ibid, at 45-46, 53; Wilson, “Forest Conservation, 1935-85”, supra note 378 at 8-9. The report’s standard for overcutting was based on an idea of “an ideally regulated forest [in which] the growing stock is in condition to produce a maximum annual yield”. The report, at 46, based the estimation of the ideal rate of cut on the rate of reforestation and “finding] out how long it will take the second-growth to grow to commercial size.”


387 Ibid, at 34. Mulholland notes the grants for the Canadian Pacific Railway of 17,100 square miles across the southern interior and 5,470 miles in the Peace River Valley, and separate grants “in aid of railway and road construction between 1884 and 1896, chiefly in the Kootenay region”, long before the government took charge of building roads. He also notes the importance of the grant for the E & N Railway, in which stood “some of the finest Douglas fir stands in the Province,” much of which logging companies acquired. As noted, Ibid, logging had particularly devastated these lands.

388 Ibid, at 55. Mulholland notes that “7 per cent. of productive forest land [was] in private ownership and on an additional 5 per cent. cutting rights have been granted.” (He points out at 36, however, that the figure on the coast, where the forest industry was concentrated, was 19%.) This private land “include[d] the most accessible areas, [yet] private owners usually consider the cost of denuded forest land too great.” So the goal was to
With an established [since 1896] policy of State ownership of permanent forests, the growing of commercial timber must be maintained as a State industry, combined with the protection of watersheds, administration of gazing, game, recreation, and other forest uses.\(^{389}\)

The report enabled Ernest C. Manning, the Chief Forester from 1935 through 1941, to advocate for the authority to regulate forest practices on all lands. As Wilson notes, "Manning campaigned against his favourite targets: wasteful logging practices, poor slash disposal, and underspending." He assailed the industry for leaving behind ghost towns, for example in the East Kootenays, as the logging companies denuded the landscape, then closed the local mills and moved on. Manning noted the acceleration on the south coast of "a wasteful system of logging, leaving behind over half the logged-over areas in a barren or semi-productive condition."\(^{390}\)

This was neither the development of a resource nor of a society. And the ghost towns were a violation of the colonial vision for British Columbia: this was the itinerant extract-it-and-leave vision that underlay the colonial government's antipathy towards logging.

Mulholland and Manning were calling for an overhaul of the forestry laws, which were largely laissez-faire, particularly towards forest practices, and especially on private lands.\(^{391}\)

Manning's successor, C.D. Orchard, was more predisposed to let private enterprise alone,

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\(^{389}\) Ibid. at 55.

\(^{390}\) Wilson, "Forest Conservation, 1935-85", supra note 378 at 9, quoting Manning.

\(^{391}\) There was some regulation, but it was limited and, apparently, ineffective. Mulholland, Forest Resources, supra note 384 at 36 notes the use "of both Crown and private forest is subject to inspection by the Forest Service and recent legislation has provided a penalty for failure to dispose satisfactorily of slash and debris; also the Government may impose regulations for ensuring the renewal of the forest crop". The latter regulations were new, and did not apply to private lands. See infra note 395. The government had also begun to regulate professional foresters in the British Columbia Foresters Act, S.B.C. 1947, c. 37. Despite the suggestive full title, An Act respecting the Practice of Forestry, the statute merely established a professional qualification process for foresters, and did not directly affect the practices of the logging companies that hired the foresters.
but he also recognized the problem, and in fact supported more aggressive reforms than Manning's.\textsuperscript{392} Orchard stated in 1942: 

\begin{quote}
British Columbia must formulate a long-term management policy\[.] \[A]fter a lapse of a short twenty-nine years [since the \textit{Forest Act, 1912}] our visible resources have shrunk from two hundred and fifty years' supply to thirty-three years' supply.\textsuperscript{393}
\end{quote}

The term “management” was relatively new to the dirt departments; the eventual forestry amendments in 1947 formally introduced the term to the land law in the Province, setting a precedent for the legal and institutional changes of the 1970s.\textsuperscript{394} The Forest Branch had already taken one managerial step, just before starting the inventory project. In 1925 the government added a reforestation program to the forest reserve regime in the Act. The new section established a “Forest Reserve Account” for “the planting of denuded areas and maintaining the growth of continuous crops of timber in forest reserves.”\textsuperscript{395} This step added tree planting to the government’s responsibilities, but did not address the industry’s practice of denuding the forests in the first place.

For that greater challenge, the government launched the second royal commission on forestry in 1943, appointing as commissioner the Province’s Chief Justice, Gordon McG. Sloan.\textsuperscript{396} The report of the Sloan Commission recommended major changes in forestry regulation, and three epochal changes for the forest sector: First, the creation of forest management licences for the major logging companies that comprised both their private lands and large areas of public land—Mulholland’s idea of “working circles.” These licences came with conditions, most notably an “appurtenance” requirement for local mills, intended to sustain rural communities and encourage economic growth. The second recommendation

\textsuperscript{392} Wilson, “Forest Conservation, 1935-85”, \textit{supra} note 378 at 10. 
\textsuperscript{393} C.D. Orchard quoted in Ormsby’s \textit{History of B.C., supra} note 66 at 485. 
\textsuperscript{394} \textit{Forest Act Amendment Act, 1947, supra} note 376, s. 12 created the forest management licensing system. 
\textsuperscript{395} \textit{Forest Act Amendment Act, 1925, S.B.C. 1925, c. 12, s. 3. The amendment expanded reserve provisions to three sections. Forest Act, R.S.B.C. 1936, c. 102, ss. 30-32.} 
\textsuperscript{396} Wilson, “Forest Conservation, 1935-85”, \textit{supra} note 378 at 11.
was a sustained yield system to determine the rate of cut within these licences. Sustained yield was to be a scientific approach to managing forestry and ensuring the forests would be available as a resource for generations to come. Third, Sloan prompted the restructuring in 1945 of the Ministry of Lands into the Ministry of Lands and Forests, with a Lands Service and a Forest Service, and a separate Deputy Minister for each.397

These changes pursued two goals that might at a glance seem contradictory: conservation and development. In fact, the two goals were compatible, since the conservation ethos of the time had little to do with protecting forests for their inherent value. Rather, the goal was to conserve an industrial resource. This view had been consistent among the leaders of the political debate about forestry in the 1940s. That debate was intense, and seemingly revealed a large divide in perspectives on forestry law. From the perspective of half a century later, however, I suggest that gap was not wide at all, or at least, the alternative visions under debate shared the same precept, that land and trees were resources to exploit for economic benefit. It is worth, therefore, considering the two visions. On one side were the Conservative and Liberal Parties. They supported the “reform conservationist model” championed by Chief Forester D.B. Orchard and endorsed in the Commission’s report. This proposal aimed “to avoid a ‘calamitous’ timber supply hiatus [through] a proposed concept of sustained yield [that] called for controlled or rationed liquidation of the remaining old growth.” This vision called for greater management authority for the government, especially over private lands, but still saw private industry as the best means to generate revenue from the forest and spearhead a new generation of

397 Department of Lands Amendment Act, 1945, S.B.C. 1945, c. 45. The terms “Lands Service” and “Forest Service” had been in use for some time, but this change formalized the division between them. It also established the two services as equals within the Department, ending the primacy of the Lands Branch. In fact, the Forest Service had already achieved greater power within government, and would continue to dominate land policy in the remainder of the century. Interview of Brian Moen, supra note 209.
prosperity. On the other side was the more socialist Co-operative Commonwealth Federation (CCF), one of the two main opposition parties in the Legislature.\(^{398}\) Colin Cameron, a CCF Member of the Legislative Assembly, voiced an alternative vision one might call the social conservationist model. His goal was not only a sustainable industry but “a more self-sufficient B.C. economy”.\(^{399}\) In a wartime pamphlet, Cameron called on government:

> to develop a socially-owned industry to supply our domestic requirements of every commodity that can be economically produced here, rather than to rely on the forests of the province to buy for us the [imported] cups, saucers, glass, boots and clothing we require. ... British Columbia has been conducting her affairs like an exiled Russian Grand Duchess who sells her jewels bit by bit to get the more prosaic but useful necessities of life. [...] We have to face the fact that within ten or fifteen years our major industry will be reduced to a fraction of its present size.\(^{400}\)

Cameron sought to upturn the “sacred cow of private property” by abolishing private forests or at least requiring “owners [...] to operate under the complete control and supervision of public officials in a comprehensive and integrated scheme.”\(^{401}\) Such a scheme would require a greater stream of revenue for the government, aggressive requirements for reforestation, and, most significantly, the use of the forest industry to establish secondary and tertiary industries in the Province, converting British Columbia from an export to a

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398 The CCF held considerable power from 1941 to 1945, but lost control of the Legislature during the crucial period after 1945, when the government amended the Forest Act. From 1937 to 1941, the Liberal Party held a majority of seats in the Legislature, winning 31 in 1937, compared to Conservative Party’s 8, the CCF’s 7, the Labour Party’s 1, and one independent. In 1941 a coalition government formed, after the Liberals won only 21 seats, while the CCF earned the most votes, 33%, electing 14 members, and the Conservatives won 12 (and there was one independent M.L.A.). In 1945, a Coalition Party, formed by the Liberal and Conservative Parties, won 37 seats, to the CCF’s 10 and Independent Labour’s 1. British Columbia, Elections B.C., “Electoral History of British Columbia, 1871-1986”, online: <http://elections.bc.ca/elections/electoral_history/toc.html>. On the 1941 election and aftermath, see Ormsby’s History of B.C., supra note 66 at 473-78.


production economy. Cameron’s vision went beyond regulation. He wanted “a provincially
owned and operated industry”.402

This idea, and Cameron’s other proposals, were more radical than those of Orchard and
the Sloan Commission, and too extreme for the public.403 The government chose to put its
faith not only in private enterprise, but in a substantially expanded private industry, one
induced by the large size of the forest management licences to accept greater regulation of
its volume and practices of logging. Yet the 1947 reforms did address many of Cameron’s
concerns. The amended Forest Act had as much potential to conserve the forests as did his
recommendations, since it established a system for the government to control the rate of cut.
The main difference was that the reforms put their faith in private industry under
government control, rather than in a government-run industry. This is no small difference,
and quite likely resulted in a greater rate of “liquidation” after 1948 than would have
occurred if the state had taken over the industry. Indeed, as Wilson and other commentators
detail, the resulting regime fell far short of its aims.404 But from a conceptual point of view,
Cameron’s reforms were no more conservationist than those the government adopted.405

Studying environmentalism in British Columbia, political scientist Kathryn Harrison cites

402 Ibid. at 16.
403 Ibid.
404 Wilson, “Forest Conservation, 1935-85”, supra note 378 at 18ff. Wilson notes that the reforestation regime,
forest management, and the sustained yield system all performed poorly.
405 The debate on this point is complicated and impossible to resolve certainly. There is no doubt the logging
companies used their political power and legal agility to manipulate the tenure system in the years since 1948.
Wilson, Talk and Log, supra note 6 provides a nuanced survey of this political history. It is unclear, however, how
much different forest practices would have been if Cameron had won through. Environmentalists today often
employ similar rhetoric about greater public control as the means to limit cutting and at the same time foster a
secondary industry—though they rarely go so far as to call for the removal of private enterprise from forestry.
As do some of the contemporary analyses of forestry politics.

My point here is not to question that the forest industry has cut too great a volume of trees and employed
damaging practices in doing so, but to note the argument that political pressure to generate jobs and wealth
might have caused a “Crown forester” to cut too much, just as these pressures caused the government to give too
much leeway to industry. The difference between the legal path chosen and the one rejected is a matter of
degree, rather than the difference between a utopian outcome and the actual result.
the work of sociologist Ronald Inglehart, who observed that both sides of the left-right spectrum “are preoccupied with economic growth and job creation.”406 Both the CCF and the Social Credit Party wanted the same growth and jobs from the resource laws. Their difference was not in the treatment of the land as a resource to exploit, but how to divide the benefits.

This summary of the three major changes resulting from the Sloan Commission leaves out much of the story and all of the details of the new licensing regime. Two particularly important provisions connected the new regime to British Columbia’s earlier land laws and demonstrated its orientation towards economic development, rather than merely resource development. The first, the appurtenance clause, struck a bargain with sawmill-owning logging companies.407 It gave them exclusive forest management licences, conferring over vast areas of public land at no charge, as long as they agreed to maintain their existing mills in the rural communities that relied on them. The purpose of this requirement was to spread the wealth of the forests throughout the Province, maintaining stable communities around forestry and halting the problem of ghost towns that Chief Forester Manning had lamented. The arrangement harks back to the 1860s, when the colonial Governor required lessees to maintain mills, except that early lessees did not obtain the leases at no charge.408 The other provision banned the export of raw logs. Although often associated with the changes to the


407 Forest Act Amendment Act, 1947, supra note 376, s. 12 creates a new s. 32A in the Forest Act. The appurtenance rules are in subsections 32A(32)-(34).

408 Supra note 148 and accompanying text. The forest management licensees did have to pay stumpage on the trees they cut, but the stumpage rates have been controversial for being low and easy to manipulate. And the forest companies did make one other exchange in return for the licences: they had to allow large tracts of private forest land to be included in the forest management licence, making private land subject to forestry regulations. In my interview with him, supra note 269 Will Horter identified this exchange—the exclusive right to log public lands in return for public oversight of logging on private lands—as the driving force behind the new regime, since it satisfied public concerns about forestry practices on the private land.
forestry laws in the mid-century, this prohibition had been in place since 1906 under An Act respecting the Use and Manufacture in British Columbia of Timber cut on Lands of the Crown.\textsuperscript{409} This statute, which the Forest Act, 1912 incorporated, required that: “All timber cut on Crown lands or on Crown lands granted since [12] March 1906 [...] shall be used in this Province, or manufactured in this Province into boards”.\textsuperscript{410} The provision was a clear attempt to foster value-added industry. It applied to private as well as public lands, albeit not to the lands granted before the government enacted the ban in 1906. And it is one of the early examples of government intervention into or regulation of private enterprise for the economic benefit of the Province. However, the limitation was a weak measure, especially compared to Cameron’s aggressive proposal to use forestry to create a self-sufficient Province that manufactured almost all of its own goods. And even on its modest terms, this export restriction was not well enforced. As with the sustained yield system, various factors caused practice to fall short of the law’s potential. These two provisions, designed with an eye to economic development but not really new ideas to the Province’s land laws, were, in fact, rather minimal. They have both been the subject of considerable controversy in later years, as successive governments have been reluctant to enforce them, or have used regulations to curtail the strength of these measures.\textsuperscript{411} In pursuing “big forestry” and

\textsuperscript{409} The short title was the Timber Manufacture Act, 1906, supra note 319.
\textsuperscript{410} Forest Act, 1912, supra note 309, s. 100.
\textsuperscript{411} Governments have incurred the wrath of environmentalists and logging towns by failing to enforce the penalties in the Forest Act for the closing of mills, making the deal in the 1947 statute meaningless. Finally, in 2003 the government passed a set of five statutes amending the Forest Act that effectively eliminated both the ban on raw log exports and the appurtenance requirement. For an outline of these changes and a critique of the package of amendments that year, see Jessica Clogg, “Provincial Forestry revitalization Plan – Forest Act Amendments” (Vancouver: West Coast Environmental Law, 2003), online: <http://www.wcel.org/wcelpub/2003/14073.html>. Impacts and implications for BC First Nations.
economic development, the Bennett government may have in fact abandoned one of the basic tenets of British Columbia's land law: the policy against accumulation of land.\textsuperscript{412}

On the other hand, the new forestry regime did accelerate the trend of the Forest Service and of other land agencies towards a managerial role over land use. The legislation and the debate that led to it ensconced three relatively new terms into the Province's land regime, terms that in the 1970s had come to seem so fundamental to B.C. land law that it is easy to imagine they were integral from the start. "Management" had not appeared often in the discourse of the land departments. Despite its importance in the forestry reforms of the 1940s, the idea of land management did not gain general currency in government in the 1950s and 1960s. But in 1947 the language of management and farming was woven into the core of the forest legislation. Section 32A(2) of the \textit{Forest Act} said:

\begin{quote}
The Minister may enter into [...] a forest \textit{management} licence [...] for the \textit{management} of Crown lands specified in the agreement and reserved to the \textit{sole use} of the licensee for the purpose of \textit{growing continuously and perpetually successive crops} of forest products to be \textit{harvested} in approximately equal annual or periodic cuts adjusted to the sustained-yield capacity of the lands [...] ."\textsuperscript{413}
\end{quote}

Forestry had become farming, in the eyes of the law, and of the government. Companies had exclusive rights to harvest and grow crops of trees, and to manage the forest lands as if they were a quarter-section plot of land. In fact, the licences covered, and still cover, enormous areas that are beyond the capacity of government and industry to manage as one might manage enclosed private property. And in later decades, alternative uses of and visions for these lands came into conflict not only with the legal rights of the forest industry, but with this legally entrenched vision of the lands as managed, and manageable, inventory.

\textsuperscript{412} I do not wish here to enter into the debate about the advisability of these protectionist measures. I am merely trying to locate them within the history of B.C. land law. As to the land laws' preference for a multitude of holders of small land interests, the government's rhetoric in support of small enterprise suggests it was not deliberately turning its back on the original vision for the colony.

\textsuperscript{413} \textit{Forest Act Amendment Act, 1947}, supra note 376, s. 12 [emphasis added].
The other words are “conservation” and “sustainable”. These words, along with the more recent coinage “sustainable development” are so commonplace today they verge on meaninglessness. The words and the ideas behind them did not figure significantly in B.C. land law until the 1940s. Conservation does have a history in North America going back to the mid-1800s, and had started to filter into the land discourse in British Columbia when the first parks were created early in the twentieth century. “Conservation” even appears in the long title of the original Forest Act, and was the impetus behind the permanent forest reserve.\(^4\) But, despite British Columbia’s appearance as the land of limitless plenty, the B.C. government had as early as the 1880s been somewhat conscious of scarcity and of the need to allocate the best lands for agriculture, forestry, and mining. It was, nevertheless, the forest reforms that first built conservation and sustainability into B.C. land law, through the sustained yield system. However, the conservation and sustainability built into the law was narrow: it aimed at sustaining industry, at maintaining an even rate of liquidation, and has often since been counted a failure even by that standard.\(^5\)

(5) **Provincial park reserves: recreating the vision for land?**

In addition to the discourses of conservation and sustainability, concerns about recreation and the preservation of certain landscapes became increasingly prevalent. This was reflected in the growing demands of British Columbians for parks. Strathcona Provincial Park, created in 1911, was the first of 13 “wilderness” parks the B.C. government


\(^5\) Among the treatises on this subject, a particularly useful study is M. Patricia Marchak, Scott L. Aycock & Deborah M. Herbert, *Falldown: Forest Policy in British Columbia* (Vancouver: David Suzuki Foundation & Ecotrust Canada, 1999). In addition to pointing out the failure of the sustained yield system to sustain a forestry yield over the long term, the book is a useful description of the forestry tenure system, deforestation, and trends in the industry since 1963.
created before 1930.\textsuperscript{416} It marked the beginning of the Province’s first parks era, and a step towards a tourism industry and a culture that valued outdoor recreation.\textsuperscript{417} It was also the first time that the B.C. government had protected a large area of land from development. The park did not, however, herald a new, preservationist vision for land use and land law. Strathcona Park and its successors fit comfortably within the developmental goals of B.C. land law. Just as much as the Quartz Act and other development statutes that came before, the parks legislation in the new century pursued economic and land-use goals. This section will explain how they did so, first by identifying the origins of the statutes in the land-use regime of the nineteenth century; second by demonstrating the pressure for and use of the parks was largely economic; and third by considering the developmental language of the statutes themselves, from the first Acts through their overhaul in 1957.

**Parks’ roots in the first land laws**

In 1876 the B.C. government passed a *Public Parks Act*,\textsuperscript{418} but did not provide any explicit authority to designate lands as a park. The Act merely authorized cabinet to appoint trustees “to hold any lands […] conveyed to them […] from the Crown [for] a public park or pleasure ground for the recreation and enjoyment of the public.”\textsuperscript{419} The Act appears, from its language of fences and ornaments, to have been intended for townsites. But whatever its

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\textsuperscript{416} *Strathcona Park Act* S.B.C. 1911, c. 49.

\textsuperscript{417} There are no generally accepted definitions of the eras of provincial parks in British Columbia, but I suggest that the period 1911-30 as the establishment era; the 1930s to 1951 as retrenchment (not in the sense of cuts, but in squeezing the parks as resources); 1951-61 as reductionist, and 1961 to 1985 as re-establishment. In 1985, and arguably as early as 1979 or 1980, the Province started an era of planning for parks that continued through the massive land and resource plans of the 1990s. This might be called the conflict era, in which parks became the big chips in a complex game of political bargaining. Since 2001 the government has been unwilling to create new parks, preferring to use the general term protected areas.

\textsuperscript{418} *Public Parks Act, 1876*, S.B.C. 1876, c. 6 [*Public Parks Act*].

\textsuperscript{419} *Ibid.*, s. 1. Under the Land Act, the government may have been able to transfer land in fee simple to such trustees, but the legislation of the time usually set out such authority explicitly. And later parks acts included the power to reserve lands.
function, the government never used the statute. The Provincial Parks Act, 1908 absorbed the Public Parks Act in a statute setting out both a mechanism to reserve lands “from pre-emption, sale, lease or licence” and to appoint local Provincial Park Boards to develop these lands as parks. This statute, too, was intended for community parks rather than for reserving remote areas of wilderness.

These statutes for reserving land as parks had deeper roots in British Columbia’s land regime than the incomplete Public Parks Act, 1876. The first land ordinance, in 1859, conferred on cabinet the power to reserve land from disposition, an authority that came to be an important mechanism in the twentieth century. To that general power the government added in 1888 a specific authority for reserving land “for the recreation and

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420 Leonard, Eric Michael. Parks and Resource Policy: The Role of British Columbia’s Provincial Parks, 1911-45 (M.A. Thesis, Simon Fraser University, 1974) [unpublished] at 21 [Leonard, Parks and Resource Policy, supra note 420 at ]. Section 3 of the Act, ibid., empowers the trustees to “enclose any [park] lands [...] with proper walls, rails, fences, or pallisades [sic], [...] and to lay out and ornament such park [...] and to embellish the same with walks, avenues, roads, and shrubs,” etc. to enhance public enjoyment.

421 S.B.C. 1908, c. 39, s. 2 [Provincial Parks Act].

422 Leonard, Parks and Resource Policy, supra note 420 at 21. The vision of community recreation is apparent in the statute. The Act, ibid., s. 14, gave park boards the power to license the use of vehicles and sale of refreshments in the parks. Under s. 17, the government could transfer land within the park in trust to the Board for “improvement or ornamentation of the park [...] or for [...] recreation grounds, museums, zoological gardens,” etc. This latter section echoes the Public Parks Act, 1876.

423 I am focusing here on laws to prohibit the development of specific lands. As noted in chapter 2, likely the earliest law for protection of land and resources was the Game Protection Act, first passed on Vancouver Island in 1858. Supra note 159 and accompanying text. The Game Act did not, however, protect land from development; it only restricted hunting and fishing in specific areas at specific times.

424 Land Proclamation, 1859, supra note 87, s. 3: “the Executive, at any time, [may] reserve such portions of the unoccupied Crown Lands, and for such purposes as the Executive shall deem advisable.” On reserves generally, see the discussion of s. 5 of the Land Ordinance, 1865 in the text following supra note 152. This provision had become, by the consolidated Land Act, 1884, supra note 247, s. 56, which gave two specific reasons for reserves — both to Canada, for Indian reserves and railways — as well as the general provision, “for such other purposes as may be deemed advisable.” The Land Act, 1884, s. 71 also set out a system for reserving “sections 16 and 27 in [...] every township hereafter surveyed [...] as an endowment for the purposes of education.” “Sections 16 and 27” meant survey sections. A section was equivalent to 640 acres, or 1 square mile.

425 The current Land Act contains three types of reserve mechanisms, one for the cabinet, which is most like the original reserve provision (s. 15), and two that are at the discretion of the minister (ss. 16, 17), but are in practice delegated to regional managers of the Lands Service. Land Act, R.S.B.C. 1996, c. 24. The common names for the powers are “cabinet reserves” (s. 15), “reserves” (s. 16, technically called a “withdrawal from disposition”), and “designation reserves” (s. 17, technically a “conditional withdrawal”). Both ss. 15 and 16 have been used to create UREPs.
enjoyment of the public,” among other public purposes.\footnote{An Act to Amend the Land Act, 1884, S.B.C. 1888, c. 16, s. 3. The other purposes included churches, cemeteries, and agricultural or municipal facilities.} This provision was the first law specifically for the protection of recreational spaces in British Columbia. Unlike the original Public Parks Act, the government did use it, and still does. In 1896 the municipal laws authorized the grant of such recreational reserves to municipalities to maintain as community parks.\footnote{Municipal Clauses Consolidation Act, 1896, S.B.C. 1896, c. 37, ss. 266-69.} But the main use of the provision has been to reserve small rural spaces from sale or tenure. By 1930 there were at least 50 sites reserved as recreational spaces—called “UREPs”, for “use, recreation, and enjoyment of the public”—and the designations now number in the hundreds.\footnote{British Columbia. Ministry of Environment. “The History of BC Parks” (Victoria: Province of British Columbia, n.d.), online: <http://www.env.gov.bc.ca/bcparks/facts/history.html> [History of BC Parks].} They are generally small, unmaintained sites, although in a few cases the reserves encircle entire lakes to protect the shore for non-commercial recreation.\footnote{Interview of Jon O’Riordan, Retired (2004) Deputy Minister, B.C. Ministry of Sustainable Resources Management, 2001-04; planner, B.C. Environment and Land Use Secretariat, 1973-1978; policy and environmental assessment manager, B.C. Ministry of Environment, 1980-89; Assistant Deputy Minister, Ministries of Lands, Parks and Housing & Environment, 1989-2001 (16 January 2007) [Interview of Jon O’Riordan].} Some of the reserves became “forest recreation sites” that the Forest Service began to maintain in the 1930s as campgrounds, trails, and boat-loading sites. These sites are now part of the Province’s tourism and recreation network.\footnote{The Forest Service’s assumption of forest recreation sites was related to its responsibility for provincial parks, as discussed below. In 2005 the Forest Service transferred responsibility for them to the Ministry of Tourism, Sport and the Arts. See British Columbia, Ministry of Tourism, Sport and the Arts, “Recreation Sites and Trails”, online: <http://www.tsa.gov.bc.ca/sites_trails/rec_site_trail_guide/sites_and_trails_description.htm>. Regarding UREPs and the recreational sites, see British Columbia, Legislative Assembly, Select Standing Committee on Finance and Government Services, “Minutes” in Official Report of Debates (Hansard) No. 7 (12 October 2005) at 175-76, online: <http://www.leg.bc.ca/cmt/38thparl/session-1/fgs/hansard/N51012p.htm#7:1800>.} Others, though undeveloped, unmarked, and unmaintained, have come to be seen by local communities as belonging to them.\footnote{I encountered this possessive attitude in my own work in the B.C. government in the late 1990s and early 2000s. One example is the anger of Atlin’s informal town council over a small cabin built “in trespass” on a UREP residents of Atlin sometimes used for picknicking.} None, however, are preserved wilderness areas.
Protective means to economic ends

Strathcona Provincial Park was the first park to cover a large area. Like the UREPs and municipal parks, however, the first provincial parks served economic and recreational purposes, rather than preservation. In fact, Strathcona had much more to do with land use and economic growth than did the UREPs. As researchers on B.C. parks have found, as with the first national parks in British Columbia, the main function of these first provincial parks was twofold: to herald British Columbia's natural wealth, thereby attracting resource developers and settlers, and to attract wealthy tourists, thereby creating a tourism industry. It was tourism-minded business groups such as the Vancouver Island Board of Trade, Vancouver Island Development League, railway companies in the Kootenays, and the boards of trade in Vancouver and Squamish that did the most to convince the government to create the first three provincial parks, Strathcona, Mount Robson, and Garibaldi. Public recreation appears to have been an ancillary reason for and function of the parks. Although the advocacy of local hunting, fishing, hiking, and naturalist groups did contribute to the creation of parks, such as Garibaldi Park in 1920, these recreationalists had less to with the parks than tourism and resource development.

432 Leonard, *Parks and Resource Policy*, supra note 420 at 24-25 notes that there were preservationist voices calling for parks, but that they had little influence.
435 Leonard, *Parks and Resource Policy*, supra note 420 at 17. The B.C. Mountaineering Club, founded in Vancouver in 1907 by the climbers who first reached the peak of Mount Garibaldi, set as one of its “major goals” the creation of a park enclosing this attractive hiking destination just north of the Province’s most populous area. The park reserve of 1920 comprised 200,000 acres, but despite the use of the * Provincial Parks Act*, it was not a provincial park. In 1927 the government passed the *Garibaldi Park Act*, S.B.C. 1927, c. 25, making it Garibaldi Provincial Park, and putting it under the administration of an independent board. Leonard, *ibid.* at 22. For more, see online: <http://www.garibaldipark.com>, a private site, and the government’s Website, <http://www.env.gov.bc.ca/bcparks/explore/parkpgs/garibald.html>.
Of the three functions of parks, it appears the symbolic advertisement of British Columbia’s wealth may have been the most successful. The public did not make significant use of provincial parks in the first half of the twentieth century. The large parks were inaccessible to most British Columbians, and for this reason also failed to meet the government’s expectations for a tourism industry. As the current government says:

throughout this period [1911–1930s], most visitation to parks was by the more affluent segment of society. The primary travel to most Parks was by rail, access within the parks by horses or foot and accommodation provided by private lodges or cabins. At that time administrative capability of Parks by provincial government agencies was for all practical purposes non-existent.436

When the Department of Lands and Forests published its first inventory of natural resources in 1949, the parks report emphasized the lack of development of parks:

While by 1930, 13 areas totalling 1,735,512 acres had been designated as provincial parks, no plans for their development had been formulated, no single agency had been organized to administer a park system, and no funds had been approved to make those park areas usable. One or two areas, such as Garibaldi Park, were controlled by inadequately financed Parks Boards, while others were simply reserved for undetermined future park uses.437

The same report lauded more recent efforts to develop parks and enable the tourism industry. Thus, although the report does start by characterizing the early parks as "manifestations of a growing appreciation of the need for recreational and inspirational areas", it is evident that the economic function of parks was predominant.

Wilderness parks had not become cherished spaces bound up in provincial identity. Few had access to them, and there was more interest in the continuation of the resource industries that provided their livelihood, directly or indirectly. Those who did use the parks wanted an experience of nature that came with the comforts of wheeled transportation and

436 History of BC Parks, supra note 428.
437 British Columbia, Department of Lands and Forests, Transactions of the Second Resources Conference (Victoria: Province of British Columbia, 1949) at 236 [British Columbia, Resources Inventory No. 1]. Although by 1949 the conference had formed its own organization, the government published the second transactions as well as the first. The conference organization published subsequent proceedings.
comfortable accommodation. The more remote portions of parks were not critical to the fledgling tourism industry. So during the Depression the government had no difficulty amending the Provincial Parks, Garibaldi, and Mount Robson Acts to explicitly authorize cabinet to modify park boundaries. And when the forestry and mining industries entered another boom period and began to put pressure on the government to reduce the protection of park lands, few objected to the removal of restrictions on industrial use of park lands. Thus “industrial pressure on the park, which had not developed into tourist assets as anticipated, led to [...] new legislation [that] established multiple-use as the rule for most of the large parks.” Multiple use, in this context, meant less protection, and more access for logging and mining.

**Parks as resources—for tourism, and other industries**

The new legislation was a 1939 amendment to the Forest Act that shifted the administration of parks to the Forest Service, and absorbed the Provincial Parks Act into a new part in the Forest Act. (Strathcona, Mount Robson, and Garibaldi were the exceptions, since they had their own statutes.) This part set out a new classification system for parks, with varying levels of protection for each. Class A had greater protection, whereas class B,

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438 Provincial Parks Act Amendment Act, 1933, c. 51, s. 2; Garibaldi Park Act Amendment Act, 1933, S.B.C. 1933, c. 25, s. 2; Mount Robson Park Act Amendment Act, 1933, S.B.C. 1933, c. 45, s. 2. And see Youds, B.C. Park System, supra note 433 at 60. Youds overstates the significance of this amendment to the Provincial Parks Act, suggesting that until 1933 cabinet did not have the power to amend park boundaries. In fact, the Provicial Parks Act authorized cabinet to create the parks by order in council, so cabinet could equally cancel or modify any parks reserved under the Act. The amendment is, however, significant for Garibaldi and Mount Robson Parks. Their statutes had set out their boundaries, so until 1933 only the Legislature could amend them. The bulk of the amending statutes were in fact about additions to the parks. They authorized cabinet to swap other crown lands for land or even resource rights within or adjacent to a park, a power that has remained in parks legislation since 1933. Provincial Parks Act Amendment Act, ibid., ss. 2, adding subsections (2)-(4) to s. 2 of the Act.

439 Forest Act Amendment Act, 1939, S.B.C. 1939, c. 20, s.16 inserted a new part 12 into the Act, in which it inserted ss. 127-42. Two of these sections were transitional, e.g. s. 134 converted the parks boards created under the Provincial Parks Act into advisory boards under the new regime.

440 Strathcona and Mount Robson Parks were under the authority of the Minister of Lands. Garibaldi Park had a park board specifically created for it in its 1927 statute. The other parks had been administered by a mix of local park boards, the Forest Service, and the Lands Service. As noted above, however, the administration had been under-funded and minimal.
which came to include the larger total area of park land, was less protected. Logging was
allowed on both, but only in class A if “not for the primary object of revenue” and if in the
Chief Forester’s opinion the cutting was “necessary or advantageous in developing or
improving the park […] for the enjoyment of the public.” 441 In class B the Act said “land
shall be available for [forestry] except where, in the opinion of the Chief Forester, disposal of
such timber or land would be detrimental to the recreational value of the area.”

The new regime appeared to reorient park land towards resource. The earlier statutes
had prohibited tenures under the Land Act, Forest Act, or mining legislation, giving lands
reserved under the Provincial Parks Act “a degree of protection unequalled in either the
national or other provincial systems.” 442 Those statutes were, nonetheless, economic tools, as
symbols and as resources for tourism. And although the tourism industry required nature in
all its beauty, “beauty” did not mean undeveloped. The Strathcona Park Act reserved
“tract[s] of land […] as a public park and pleasure-ground for the benefit, advantage, and
enjoyment of the people of British Columbia,” and charged the government with:

(a) The care, preservation, and management of the park and of its springs, water­
courses, lakes, trees, and shrubbery, minerals, natural curiosities, and the like
matters:

(b) The lease […] of land in the park […] for ordinary habitation and for the
accommodation of persons resorting to the park:

(c) The preservation and protection of game and fish and of wild birds generally:

(d) The removal and exclusion of trespassers:

(e) Generally, all purposes necessary to […] the true intent and meaning [of the
Act]. 443

441 Ibid., s. 131(1). Subsection (2) regulates the sale of timber cut in class A parks.
442 Leonard, Parks and Resource Policy, supra note 420 at 28-29. The protection was not as explicit in the legislation
as this comment suggests, since all the statutes “set aside” the land subject to the regulations. The purpose of the
regulations was, however, contrary to major resource extraction.
443 Strathcona Park Act, S.B.C. 1911, c. 49, ss. 3, 4. Similar language appears in the Provincial Parks Act, and in the
Mount Robson Provincial Park Act, S.B.C. 1913, c. 51.
These Acts were passed to create pleasure grounds, in keeping with the long history of parks as spaces for human use: The historical meaning of the word “park” traces a circuitous line from an “enclosed tract of land [...] for keeping beasts of the chase” to “ornamentally laid out [city parks] devoted to public recreation.” The B.C. legislation, despite its application to larger, remote areas, carried on the spirit of these original usages. Already holding the view of parks as spaces for human use and development, the new parks legislation after 1939 was not a departure at all: it merely broadened the uses of the park resource, in response to the failure of tourism to achieve sufficient public benefit.

The parks system continued to grow, in number of parks and total area covered, through the 1930s, reaching 49 parks by 1941, covering 3.7 million hectares, or nine million acres. The system maintained this total area over the next eight years, but the area in class A shrank from 1.1 million to 118,000 hectares, while class B grew from 1.9 to 2.9 million hectares. The government was retrenching the meaning of park status, but was not eliminating large parks, which still served the economic goal of a tourism industry, and which the government “boastfully viewed as symbols of [its] and the Province’s magnificence.” In the 1930s and 1940s, through the Young Men’s Forestry Training Plan, the government had finally found a way to make “labour, and to some extent, funds available for forest development and a start towards the development of various small parks”, leading to larger “appropriations [...] for park improvement [so] that many

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445 Wilson, Talk and Log, supra note 6 at 96. I will give area in hectares henceforth. One hectare equals 2.47 acres.
446 See Youds, B.C. Park System, supra note 433 at 61-64 on the creation of new class B parks. Youds at 69-70 gives 1948 as the peak year for area within provincial parks, with a total of 4.38 million hectares over 58 parks. Wilson’s figure for 1949 is 3.7 million hectares over 59 parks, suggesting a cut to one of the class B parks that year.
447 Youds, B.C. Park System, supra note 433 at 65.
previously unapproachable beauty spots were made accessible to the public.” In 1949 the government defined the “General Objective of Provincial Parks” thus:

> to make the forest recreation and aesthetic values of this Province available to the greatest practicable extent, consistent with an overall plan and policy of co-ordinated development and use of all natural resources to furnish maximum benefit.

Parks were multiple-use resources, and little more.

In the 1950s, the emphasis on industrial development caused the parks to yield even further to extraction industries. The concept of the remote wilderness park, still held in some esteem in the 1940s, was not consistent with the vision of the 1950s, whereas numerous government-owned spaces for tourism and recreation did fit that vision, as long as their location and size did not interfere with forestry and mining. The emergence of a culture of outdoor recreation, a byproduct of British Columbians’ growing affluence and leisure time, only supported this trend. Improved road access to less remote parks led to demand for more road access and more parks within an easy drive of urban centres. Thus the number of parks doubled by 1957, while their area shrank slightly. And in the next eight years the number doubled again, to a total of 239, while the area dropped to 2.6 million hectares, almost two million hectares below the 1948 peak. One reason for this precipitous drop was the removal in 1961 of almost one million hectares from Hamber Provincial Park. The government appears to have concluded the park was not serving an economic or

448 British Columbia, Resources Inventory No. 1, supra note 437 at 236.
449 Ibid. at 240.
450 Ibid. at 83-84. Parks attendance in 1955 was thirteen times that of 1948.
451 Ibid. The figure in 1957 was 3.4 million hectares, over a total of 117 parks. In 1965, there were 239 parks. Class A parks had, however, grown from their 1949 low, reaching 800,000 hectares in 1957, and fluctuating between 700,000 and 900,000 through the mid-1970s. It appears the growth of backcountry public recreation and tourism merited larger areas free of mining and logging, as long as they were strategically placed for industry’s convenience.
recreational function, due to its inaccessibility and government’s failure to develop it for recreation.  

Paradoxically, it was during the 1950s that conservationist voices prompted the government to remove parks from the purview of the Forest Service. Such advocates as Roderick Haig-Brown lamented that:

The Parks Division [of the Forest Service] must administer [parks] under some thirteen sections of the Forest Act, the first of which says that any park may be extended, reduced or cancelled by the stroke of a pen. British Columbia has not […] a single provincial park whose existence is assured beyond tomorrow.

Haig-Brown’s advocacy did help to bring about a new department for parks in 1957, but did not produce parks legislation that was “1) enabling and protective, and 2) regulatory.”

The Department of Recreation and Conservation Act incorporated the existing regime from the Forest Act, with virtually no changes.

So parks had their own department, but not a preservationist function. The new Department was focused on the tourist industry first, recreation second, and resource-extraction third. It had the authority to decide whether forestry and mining was permissible. The conservation role served these goals, just as conservation in the forestry debates was intended not to limit forestry, but to ensure maximum long-term benefit from

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452 Youds, B.C. Park System, supra note 433 at 86. Youds quotes a report of the Department of Recreation and Conservation that justified such cuts in “the light of proper recreational assessment and recommendation.”

453 From Roderick Haig-Brown’s paper to the 1956 British Columbia Natural Resources Conference, quoted ibid. at 82.

454 Ibid.

455 Department of Recreation and Conservation Act, S.B.C. 1957, c. 53, ss. 13-26 [Department of Recreation and Conservation Act]. The new Act had 14 sections, which was in fact the number in the Forest Act, despite Haig-Brown’s reference to 13 sections. Section 13 continued cabinet’s authority to “extend, reduce, or cancel any park”.

456 Ibid. The Act has three informal parts, titled: “British Columbia Government Travel Bureau”, “Tourist Council”, and “Parks”. It does not set out the structure of the Department, but the bureaucracy established a Parks Branch and a Fish and Game Branch. Wilson, Talk and Log, supra note 6 at 91-93.

457 In addition to this indirect allocative role, the Department directly allocated hunting and fishing licences for recreation and tourism, due to its responsibility for the Game and Fisheries Acts. The Department took over the latter statute from the Department of Fisheries, which it replaced, and the former from the Attorney General. Department of Recreation and Conservation Act, ibid., s. 5, 27; Wilson, Talk and Log, supra note 6 at 92.
the industry. "Conservation" continued to mean the husbandry of resources for the future use of industry. That meaning only began to change gradually, a decade later, when heightened concern about the environment as a whole began to draw conservation and recreational advocates together into a movement that more fundamentally challenged the land laws and their precepts.

Conclusion

These two studies of the forest conservation debate and provincial parks describe the two strands—conservation and recreation—that began to intertwine in the late 1960s and pull the land laws away from their focus on resource and economic development. The growth of a regulatory, interventionist function of government during the first half of the twentieth century also set the stage for the changes to the land laws in the 1970s. The catalyst for these changes, however, was the product of the Province's affluence. The economic and population growth of the post-war period began to produce conflict among industries over the use of specific lands. Environmentalism emerged along with these conflicts, and worked its way into the land laws in the 1970s. Chapter 4 examines the resulting new laws and institutions of land use. It considers the extent to which the organizing principle of the land laws, and of British Columbian society itself, changed during the period from 1965 to 1978, and speculates on the role the existing land regime played in shaping these changes.
We held a country in our minds
Which, unpossessed, allowed
The encroachment of our dreams ...
Until we moved in a prodigy of reckonings

Despite the government’s instrumental role in the post-war economy, the bureaucracy of land allocation was still quite small in the late 1960s. This was especially so in the Lands Service, which the expanding Forest Service had come overshadow. Even at the start of the 1970s, the process for authorizing land use was basic. For example, when an individual or business applied to the government for a licence or lease to use land, the Lands Service checked to ensure the land was not already tenured for a conflicting use. If the land was “unencumbered,” and if land inspectors confirmed that the site was suitable for the proposed use, then the government issued the tenure. There were virtually no policies governing the allocation of land, no guidelines for identifying its most suitable uses, and no rules for resolving conflicts between current and future uses. Alternative uses of land had begun to emerge in the 1950s and 1960s, along with growing interest in conservation, yet the departments of dirt remained fixed within their mandates of allocating land for the same basic economic uses. Even the Land Act, which was the statute for all land uses other than

459 Interviews of Tom Cockburn, supra note 293; Brian Moen, supra note 209.
460 Interview of Tom Cockburn, ibid.; Dave Havard, ibid. and at 71, 73, and, at 74, where land inspector Havard points out that even the Land Utilization, Research and Survey Division that operated from 1946-53 was held by the idee fixe of agriculture. He writes, the Division’s focus was the “identification of provincial land worthy of agricultural settlement [...] a well-intended goal but one that overlooked any emphasis to recognize other uses.”
forestry, mining, and water diversion, was geared to a particular industry, agriculture.\textsuperscript{461} Proposals for land that fit within the framework of each department were rarely turned down.\textsuperscript{462}

The dirt departments did not begin to create policy for land use until the 1970s. And the policies emerged slowly. In the words of Allan LeFevre, a land-use planner, “the notion of public policy for use of land was new” as late as 1978.\textsuperscript{463} Nor did the government have much information about land or the effects of human use of it. This was especially true of the Lands Service, but applied to varying degrees to all of the dirt departments. There had been surveys to identify suitable forest lands under the Forest Act,\textsuperscript{464} and some similar work by the Departments of Agriculture and of Mines. But the B.C. Land Inventory that began in 1964 was the first comprehensive effort to study land and identify its capacity for a range of uses. That work was dominated by forestry and agriculture, and was not co-ordinated across all departments.\textsuperscript{465} Moreover, there was almost no thought of preserving land for its

\textsuperscript{461} Economist and later forest resources commissioner Peter Pearse lamented the Lands Service’s single-minded focus on agriculture at this time. P.H. Pearse, “Natural Resource Policies in British Columbia: An Economist’s Critique” in R. Shearer, ed., Exploiting Our Economic Potential: Public Policy and the British Columbia Economy (Toronto: Holt, Rinehart and Winston, 1968): “Some uses are almost arbitrarily assigned preference [...] . The most obvious case in point is our treatment of agriculture. Our Lands Branch almost invariably gives preference to agricultural use of land. In fact, it is almost the only purpose for which rural Crown land can be purchased. Applications by farmers for the purchase of land have seldom been refused in the past, and the land has been sold at nominal prices. Little attempt has been made to weigh the potential productivity of land under agriculture against its potential yield in other uses.” Pearse was critiquing policies, but in fact he was pointing out the lack of policy.

\textsuperscript{462} Interview of Tom Cockburn, supra note 293. Within the Lands Service, for an account of the “yes” response to most land applications from the point of view of a land inspector in the 1950s and early 1960s, see Havard, Confessions of a land inspector, supra note 280 at 68-69.

\textsuperscript{463} Interview of Allan LeFevre, retired (2003) Director, Regional Operations, Ministry of Community, Aboriginal and Women’s Services; planner and policy manager, B.C. Lands Service, 1976-96; manager and director of municipal and regional planning, Ministries of Municipal Affairs and Community, Aboriginal and Women’s Services, 1996-2003 (2 April 2006 & 19 July 2006) [Interview of Allan LeFevre].

\textsuperscript{464} See supra note 321 on the permanent forest reserve.

\textsuperscript{465} The co-ordination came in the early 1970s, along with the beginnings of planning and policy. On the land inventory, see infra note 605 and accompanying text. The terms “capability” and “suitability” have specific meanings in the context of inventory and planning. The former is based on a scientific analysis of the land — how can the land be used? The latter is based on social and economic factors — how does society want to use the land, and what constraints are there on the options for use?
inherent value. Parks had primarily been economic tools until the 1960s, even the new, more protective Park Act in 1965 emphasized land use, not preservation.

By the end of the 1970s, this had all changed, at least on the surface. The land laws now encompassed a rapidly growing body of policy, as well as the new field of "environmental law." New laws for zoning and protecting land were in place and land capability studies were a routine part of the administrative functions of land. In addition, the government restructured the dirt departments, dividing and amalgamating them in response to new pressures from land-use conflict and environmentalism. These divisions produced a Ministry of Environment, and a separate Ministry of Forests with a new Forest Act. One result of the upheaval was that the Land Act, newly rewritten in 1970, had come to feel almost obsolete by the late 1970s, and certainly inadequate in the new political and policy environment. And land-use planning, suitability mapping, and conflict resolution had become significant functions of government. In only a few years, the government’s approach to land shifted from "land allocation" to "land management."

This chapter examines these changes. The first part focuses on the legislative changes, tracing the appearance of environmental law. Part 2 considers the corresponding changes in bureaucratic practice, acknowledging the divergence in the 1970s between the narrow rules in the statutes and the new "land management" practices of government, but questioning the extent to which the dirt departments were really altering the land regime. Part 3 considers how conflict and alternative visions of land use forced legal changes in the 1970s, but may not have in fact uprooted the colonial vision in British Columbia’s land laws.
Part 1—“Environmental Law”

Between 1965 and 1978, the Province transformed British Columbia’s land laws in ways that complicated the story this thesis has told of land law’s fixation on development. This part examines those most significant new or amended statutes of this period. It considers the extent to which they might be called “environmental law,” and how significantly they changed the existing regime.

(1) Parks, plans, and pollution: protecting the use of land

The year 1965 saw two landmark statutes. The first was an amendment to the *Municipal Act* that created “Regional Districts”. A new form of municipal government in British Columbia, regional districts were to have certain zoning and planning powers over lands outside incorporated municipalities. By 1968, the Province had created 28 regional districts covering almost all the lands of the Province. This new level of government was an important part of the transition from municipal community planning to land-use planning over larger rural areas. It was modelled on the Lower Mainland Regional Planning Board, which, after being founded in 1949, had begun to connect city planning with the functions of the provincial dirt departments that were responsible for the lands outside urban centres. Planning by regional district was a step towards the provincial government’s first efforts to plan land use, under the Environment and Land Use Committee Secretariat.

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466 Municipal Act Amendment Act, 1965, S.B.C. 1965, c. 28, s.22.
467 Interview of Norm Pearson, Deputy Minister, B.C. Lands Service, Ministry of Lands, Forests, and Water Resources, 1972-75; Planning consultant and instructor, 1969-72; Land-use planner, Lower Mainland Regional Planning Board, 1963-69 [Interview of Norm Pearson].
468 The colonial policy that determined the first land laws was a kind of plan. It was more a vision, however, different in most respects from what we now mean by “land use plan,” as part 2 of this chapter notes.
The government also adopted a provincial *Park Act* in 1965, followed in 1970 by a *Regional Park Act* and in 1971 by the *Accelerated Park Development Fund Act*. The *Park Act* itself was significant for three reasons. First, it formalized a system for the management of parks and gave control of that system to the Parks Branch. The Parks Branch would be responsible for determining economic activity in the parks through a permit system. This change was more than an administrative detail. The permits were to determine all economic use of parks, whether for tourism, forestry, or mining. Under the earlier regime, set out in the *Department of Recreation and Conservation Act*, parks had been subservient to forestry and mining, and the minister had only an incidental authority to grant “concessions for [recreational] service to the public”. The new, overarching park use permit system eliminated this subservience. The statutory recognition of the Parks Branch was significant, too, since it formalized the Branch and fostered the growth of the B.C. Parks Service as an institution within the B.C. government that would come to play an important role in later land-use conflicts.

Second, the Act laid the foundation for the creation of more substantial parks with stronger and more clearly defined protection from forestry and mining tenures. The Act also created two additional designations, enabling cabinet to “establish any area of Crown land

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469 *Park Act*, S.B.C. 1965, c. 31 (now R.S.B.C. 1996, c. 344) [Park Act]. The *Regional Parks Act*, S.B.C. 1971, c. 50 (repealed as spent in a regulation-reduction exercise by the *Water, Land and Air Protection Statutes Amendment Act*, 2003, S.B.C. 2003, c. 90, s. 20) was intended to facilitate the creation of parks by regional districts. And the *Accelerated Park Development Act*, S.B.C. 1971, c. 1 allocated up to fifteen million dollars for the creation or improvement of parks. The *Accelerated Park Development Fund Act*, S.B.C. 1972, c. 1 shifted the focus of funding to the enhancement of public recreation in the parks.

470 The 1957 statute had been almost silent on the management of parks, more so than the old parks statutes, which gave the Minister of Lands and provincial parks boards specific authorities to enhance recreation. By contrast the *Park Act*, supra note *Park Act*, supra note 469, s. 4 specifically stated the “Parks Branch shall have jurisdiction over, and shall manage and administer, all matters concerning parks and recreation areas and particularly (a) the rights, property, and interests of [the crown] in parks; (b) natural resources […]; (c) wildlife and its habitats […]; recreational uses and activities, and developments or improvements necessary thereto, in recreation areas”.

471 *Park Act*, ibid., ss. 24-27.

472 *Department of Recreation and Conservation Act*, supra note 455, s. 21.
as a park [...] , as a recreation area, or as a nature conservancy area". The Act gave the greatest level of protection to nature conservancy areas (areas within existing parks) and all parks of less than 5,000 acres. Under s. 9(1)(c), no natural resource in these areas could be disturbed, i.e. "granted, sold, removed, destroyed, damaged, disturbed, or exploited." Class A and C parks had the next level of protection. Sections 8 and 9 prohibited any disturbance of natural resources or the grant of legal interests in land in those parks, unless the disturbance or grant was "necessary to the preservation or maintenance of the recreational values of the park". For class B parks, the prohibition applied only to disturbances or grants that, in the opinion of the minister, were "detrimental to the recreational values" of the park. These rules were stricter than those under the previous parks legislation, which left mining in class A or C to the complete discretion of cabinet, only loosely enabled the Deputy Minister to limit forestry, allowed forestry in class B parks by default, and placed no restrictions on mining in class B parks. Recreation areas had the

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473 Park Act, ibid., s. 6; now s. 5 [emphasis added].
474 Youds notes that the nature conservancy areas tailored to resolve the controversy about Strathcona Park. Tellingly, the areas of most controversy—and most recreational use—became conservancies, while the government switched the rest of the park from class A to class B.
475 I use the present tense the, since the restriction and most of the restrictions on development in class A and C parks remain in the current Park Act, R.S.B.C. 1996, c. 344. Paragraph 9(1)(c), for example, is now subsection 9(5).
476 The difference between classes A and C is administrative. Section 10(1) provides that Class C parks fall "under the jurisdiction of a separate Park Board appointed by the minister." In this way they were similar to the original provincial parks, each with its own board. The government had added class C in 1940, the Forest Act Amendment Act, 1940, S.B.C. 13, ss. 11-15.
477 Park Act, supra note 469, ss. 8, 9 [emphasis added]. Section 8 limits the grant of interests in land; s. 9 limits the use of natural resources. Paragraph 9(1)(c) protects the natural resources in nature conservancy areas completely. Intriguingly, s. 8 is silent on nature conservancy areas. The context of ss. 8, 9 implies that, the minister may not grant any land interest in one of these areas, but the point is debatable.
478 Department of Recreation and Conservation Act, supra note 455, ss. 16(1), 17(1), 18. Section 17(1) said "Crown timber [...] on any Provincial park of Class ‘A’ or Class ‘C’ is reserved from cutting or sale, except as such cutting and incidental sale may in the opinion of the Deputy Minister of recreation and Conservation be necessary or advantageous in developing and improving the park or protecting and preserving the major forest values of the park for the enjoyment of the public." Given the development-minded culture of the day, this was a weak restriction, despite requirements in subsection (1) and (2) limiting the sale of such timber to "incidental" levels.
least protection—which is to say, none. They were more symbolic than legal, with no formal protection under the Act, and no camping facilities. 479

Finally, despite its heightened protection of park lands, the Park Act remained rooted in a land-use model, as well as an economic vision of land. The Act’s focus on land use—less intensive use, but use nonetheless—helped to set the tone of later environmental legislation, and to some extent, of environmental debates and negotiations. While the Park Act was a significant step towards a new era of wilderness parks and the establishment of environmentalism and ecological integrity as among British Columbians’ values, I suggest it was more important for what it revealed about the limited achievements of environmentalism in the 1960s and 1970s. The Act was not about environmental or ecological protection. It was about the human use of land for tourism and recreation. This orientation appears throughout the language and structure of the Act. “Nature” appears incidentally, in the form of “nature conservancy areas” but without any explanation of what “nature” meant or what was to be protected. And “ecology” appeared once, in s. 12(2)(a), and only in the context of appropriate “development and improvement of a park” for “public enjoyment”. 480 The Act also structured its protection differently, restricting resource extraction, but removing the “absolute” protection against “pre-emption, sale, lease, or licence under the ‘Land Act’”. The Park Act authorized the minister to allow such alienation

479 Bruce Sieffert, a manager of planning and policy, described recreation areas: “Essentially, in a Recreation Area, anything could happen, so long as you’ve got a Park Use Permit for it. Whereas, [for] parks, [...] the legislation is quite a lot more restrictive.” Interview of Bruce Sieffert, Director, Strategic Support and Marine Planning Branch, Ministry of Agriculture & Lands since 2005; planning and policy analyst and manager, Ministry of Forests, 1979-2001; policy and planning manager, Ministry of Sustainable Resource Management, 2001-05 (18 January 2007) [Interview of Bruce Sieffert].

480 The full text of this paragraph is: “(2) The development and improvement of a park specified as of (a) category one shall be directed towards and limited to that necessary to the preservation, for public enjoyment, of the atmosphere, environment, and ecology of the park.” Section 12 defines six categories of park for informal designation, stating in paragraph (1)(a) that a park shall be “category one if the main purpose of its designation is the preservation of its particular atmosphere, environment, or ecology;” but subsection (2) suggests that these goals still serve the over-arching goal of recreation: preservation as a form of land use.
of park land, as long as the minister issued a park use permit and the alienation was, in the language quoted above, necessary for preservation or recreation, or, for class B parks, would not be detrimental to recreational values. These park use permits, in other words, were for the improvement of the park for tourism and recreation.

This treatment of parks—as space for use and development—grounded the Park Act in the existing land regime more than in a new framework of preservation. And that grounding played an instrumental role in the 1970s, when the Park Act became a mechanism for the government to appease demands for the protection of wilderness. Those demands had taken on a different purpose from the recreational activism that had helped to establish some of the earlier parks, but the parks statute itself was not so different. The statute was oriented towards a less intrusive type of land use and an industry that was finally starting its early promise—tourism. But it was still a statute for the use of land. In becoming the legal framework for environmental protection, the Park Act may have encouraged the government to view environmentalism as another form of land use. It also shifted debates about protection and environmentalism onto a small portion of the landscape designated as parks. The land-use orientation of parks legislation, and the vulnerability of parks as protected wilderness, became strikingly apparent when in 2002 the B.C. government began to curtail the protections in the Park Act, to allow more flexible arrangements within parks, and then stopped creating parks altogether, instead creating new conservancies.

481 In the 1970s that portion was less than 5% of the Province, and it remains relatively small, at only 12%. What is more, as the former Minister of Sustainable Resource Management once admitted, a large proportion of the area protected in the 1980s and 1990s is “rock and ice”: remote mountains of no use to industry, even, in most cases, for tourism. “Environmentalists dress like Tolkien’s tree creatures for protest” Canadian Press (1 May 2003).

482 The Park Act, R.S.B.C. 1996, c. 344 has opened parks to oil and gas extraction, and created a new class of park that appears to have no more protection than a recreation area. Section 33(1) allows “exploration for, or development or production of, petroleum or natural gas in or from the subsurface of land within a park or recreation area.” This section applies to class A parks; only the small nature conservancy areas are exempt. The section does not require a park use permit, so the B.C. Parks Service has no authority over petroleum and natural gas extraction in parks. Sections 30-31 establish, in effect, a new class of parks (simply identified as parks listed
that have more in common with the 1965 Act's recreation areas than with parks, whether class A or B.483

Another new statute, the 1966 Wildlife Act, also shifted the orientation from development under the Game Act towards a somewhat more protective framework.484 The change of title suggests the nature of the shift: from the legal treatment of non-human animals and fish as "wild mammals or birds hunted for sport or food"485 to a vision of animals as having intrinsic value. Moreover, the language of conservation entered the statute in the form of "conservation officers" and in the restructuring of the regime for hunting and fishing licences under the heading, "Game Conservation".486 But "conservation" was not the same as "protection." The Wildlife Act still provided for a licensing regime that treated wildlife as game. Animals were to be conserved for the use of, fishers, trappers, taxidermists, zoos, and fur traders. Nonetheless, the Act does reveal a shift in orientation towards the protection and study of wildlife. Whereas the Game Act authorized regulations "To set apart for the purpose of a game reserve under this Act any area of lands in the Province," the Wildlife Act defined this as a "wildlife sanctuary".487 This change reflected a struggle within the Fish and Wildlife Branch (formerly Fish and Game Branch) that had begun more than a decade earlier, between the biologists and the hunting
That conflict was continued into the 1970s, with the Branch’s bias in favour of its hunting and guide-outfitter licensees receiving judicial censure in 1977.489

The Pollution Control Act of 1967 was another law that rewrote a previous statute and appeared to protect land but was predominantly a licensing regime for its use: the.490 This Act replaced the original Pollution-control Act of 1956 with a revised system for licensing pollution, under a director of pollution in the Water Resources Service of the Department of Lands, Forests, and Water Resources. Whereas the 1956 Act was a toothless statute limited to water pollution, the new statute was an equally toothless statute superficially broadened to include “water, land or air”.491 A close reading of the Act suggests its goal was not to protect or improve the environment, but to ensure water and land continued to be available for industrial use. This limited scope is apparent in the Act’s language and structure, and in the experience under the Act until its repeal in 1982.492 The Act did not include words such as “environment” or “ecosystem.” Rather, it defined “pollution” as “the introduction [of substances that] substantially alter or impair the usefulness of the land or waters”.493 The rest of the statute made it clear that the criterion for usefulness was use by industry. Section 5, the core of the statute, created a permitting regime for the “discharge [of] sewage or other waste materials”. The Director’s authority, under s. 10, included the power to “survey the

488 Part 3 of this chapter returns to this topic. See infra note 713 and accompanying text.
489 Infra note 734 and accompanying text.
490 S.B.C. 1967, c. 34 [Pollution Control Act]. This Act replaced the 1956 Pollution-control Act, S.B.C. 1956, c. 36.
491 Ibid., s. 3(3). See Martin Robin, Pillars of Profit: The Company Province, 1934–1972 (Toronto: McClelland and Stewart, 1973) at 292-93 [Robin, Pillars of Profit]. The 1967 Act seems to have the same deficiencies of its predecessor from 1956, which are analysed in Alastair Richard Lucas, Pollution Control Law in British Columbia: The Administrative Approach [L.L.M. Thesis, University of British Columbia Law School, 1967] [unpublished]. The superficial aspect of the addition of land and air is apparent in the omission of “air” from most sections, including the definition of “pollution” and in the emphasis on “effluent” and “waters” throughout the statute. The words “land” and “air” appear to have been inserted almost haphazardly. This is particularly evident in s. 10, which sets out nine powers of the Director. Several refer to water and effluent, e.g. 10(c) “to conduct tests and surveys to determine the extent of pollution of any waters;” only one power, (g), adds a reference to land.
492 Waste Management Act, S.B.C. 1981, c. 41, s. 47.
493 Pollution Control Act, supra note 490, s. 2, s.v. “pollution.”
extent of pollution of any waters", to order polluters to “increase the degree of treatment of
the effluent or to alter the manner or point of discharge”, and to “cease discharging”.\footnote{494} But
the Director and the Director’s staff of engineers had no explicit power to clean up pollution
or otherwise protect specific water bodies or lands.\footnote{495} Most significantly, the Act contained
no penalties for polluting without a permit or for ignoring an order of the Director. Instead,
s. 8 granted cabinet the power to exclude classes of operations or particular areas from the
Act, a power that the government used frequently.\footnote{496}

A former land-use policy director acknowledged that the Act “was a mistake” and
related that staff in the 1970s the staff overseeing the Act “termed it the engineers’ Act.”\footnote{497}
The historical record supports the conclusion that the statute failed to change individual
behaviour or the land-use ethos. In his political history of the Province, Martin Robin relates
that not only did the Act confer no power to interfere with industrial pollution, but it:

was amended several times to reduce the number of people who could object to a
pollution application or appear at a public hearing. Outside groups had no
representation on the Pollution Control Board which consisted of civil servants
placed in a weak position by the Act’s procedures which required, in many
instances, the Board to rule on permanent applications of companies which had
already sunk millions in a project and committed their resources to one method of
waste disposal.\footnote{498}

Robin relates the allegation that in 1972 less than 10 per cent of the “major polluters in the
province” had obtained a permit.\footnote{499} Despite growing public concern and political rhetoric
about public health and about, in the words of Premier W.A.C. Bennett, “our trees and our

\footnote{494}{Ibid., s. 10(c), (f), (g), respectively.}
\footnote{495}{The Act allowed for the appointment of engineers with, under s. 11, the power to “determine what constitutes
a substantial alteration or impairment of the usefullness of land or water;” and to inspect industrial operations and
order (unenforceable) alterations.}
\footnote{496}{Robin, \textit{Pillars of Profit}, supra note 491 at 292-93.}
\footnote{497}{Interview of Jon O’Riordan, supra note 429. O’Riordan, who went on to be a deputy minister responsible for
land-use planning and analysis, was the first director of the Special Projects Unit in the Environment and Land
Use Committee Secretariat, discussed in part 2, below.}
\footnote{498}{Robin, \textit{Pillars of Profit}, supra note 491 at 292.}
\footnote{499}{Ibid. at 292-93.}
flowers and so forth," the 1967 Act did little or nothing to correct the weaknesses of the 1956 statute. The Pollution Control Act was consistent with the resource-development legislation of the Province's first hundred years: it was very much in the service of land development. It also set a template for much of the "environmental" legislation to come and for the government's response to environmental pressure: the creation of a legal instrument that seems to fulfil demands for change, but that is designed in harmony with the existing development regime.

(2) Land Act, 1970: updating the allocation statute

In 1970 the Lands Service brought in a new Land Act. It was the first completely rewritten Land Act since 1884, though as noted in chapter 3 there had been many changes to the statute in the interim. The biggest change was the elimination of the pre-emption process. Although pre-emption had been winding down by the end of the 1950s, it had remained an important means of obtaining land in fee simple within the structure of the Act. In the place of pre-emption the new Act established a lease-and-improve regime that allowed farmers and certain other users of land to obtain a lease, improve the land according to the terms of the lease, and, after a discretionary period of time, buy the land. The requirements for improvement and continuous use—still in effect today for agricultural and recreational (cottage) leases—were similar to the pre-emption system. The difference

501 Robin, Pillars of Profit, supra note 491 at 292 cites the Pollution Control Act as an example of the Social Credit party "adorn[ing] the books with cosmetic legislation but [doing] little to halt the old spoliation."
503 The Land Act, 1908, S.B.C. 1908, c. 36 repealed and replaced the existing Act, but did not alter its substance significantly. History of the Lands Service, 1858-1971, supra note 71 at 22.
was that a potential user of crown land now required prior approval of the government before making any use of the land.\textsuperscript{504}

The end of pre-emption may be seen as a relatively minor change. The practical effect of the change was insignificant. The pre-emption system had run its course. The number of pre-emptions had dwindled to less than 100 per year from the start of the 1950s onward, while the number of leases of land rose sharply in the 1960s.\textsuperscript{505} The pre-emption system had been a necessity in the 1860s and well into the twentieth century. Without it the lack of surveys would have interfered with settlement and opened British Columbia to squatters and the apparent loss of crown sovereignty. However, once the major survey work was complete, in the 1910s, there was less need for pre-emption. Hence the government's first restriction of pre-emption in 1918, limiting it to already surveyed lands.\textsuperscript{506} The Land Inspection Branch of 1947 might have justified the elimination of pre-emption, since the Lands Service finally had employees dedicated to the task of examining lands before the Service granted interests in them. But with settlement still the primary goal of B.C. land law, the government appeared to have chosen not to hinder the existing process for settling land. However, as the pre-emption numbers dwindled, and the land inspectors established better practices, it began to make sense to remove the right of settlers to occupy land without prior approval.\textsuperscript{507}

\textsuperscript{504} See History of the Lands Service, 1858-1971, supra note 71 at 22-23. The Lands Service at the time grouped the major changes into four categories: (1) land sales: pre-emption eliminated, since "no longer a practical approach to settlement"; (2) Survey: replaced the requirement of fixed areas and shapes "so that the size and shape of the parcel could be more closely related to its intended use"; (3) Classification: the "earlier [1891] classifications of land for forestry and other uses were redescribed so that the process of determining the highest economic use would be more flexible"; and (4) Process: "streamlined application and advertising procedures for unsurveyed and surveyed land."

\textsuperscript{505} History of the Lands Service, 1858-1971, supra note 71 at 22. The exceptions were 1961 and 1962.

\textsuperscript{506} Land Act Amendment Act, 1918, c. 41, s. 3. See also History of the Lands Service, 1858-1971, supra note 71 at 13.

\textsuperscript{507} Havard, Confessions of a Land Inspector, supra note 280 at 72ff. describes his efforts to encourage more proactive analysis of land's potential, to guide the most effective allocation of land.
Although an increasingly insignificant mechanism for acquiring tenure, the formal end of pre-emption was symbolically significant. First, it recognized British Columbia as a modern, developed province—the frontier was now legally closed. Second, the change implied a coming of age of the Lands Service with its increased capacity to inspect land and approve uses. Third, and most importantly for what follows in this chapter, the change responded to the new era of land-use conflict by bolstering the government’s authority to decide in advance whether a particular use of land is suitable. In practice, this change did not occur for several more years. Indeed, the Lands Service’s decision-making practices did not change in response to the new Land Act: if one wanted to use land, the government would approve it unless the land was obviously unsuitable, or there was a directly conflicting use on the land. But the capacity to determine suitability was a harbinger of things to come.

Despite the overhaul of the Land Act in 1970, the events of the following decade made the changes to the Act seem insignificant. The government had rewritten the statute to better describe its existing practices, but it had failed to adapt the Act to the new era of land-use conflict or to anticipate the changes to come. Despite the legislative change, the substance and the approach of the Lands Service remained the same. In a bulletin from 1973, the Department of Lands, Forests and Water Resources stated that the “new Act attempts to simplify procedures, correct deficiencies, delete outmoded provisions, and improve the management of Crown lands.” And the Lands Service wrote in 1971:

The new Act streamlined these methods and procedures and brought them into line with current needs. Basically, the 1970 Act underlines the evolutionary aspect of land management in British Columbia. It is an adjustment to suit current

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508 An alternative date for the closing of the B.C. “frontier” is 1918, when the government disallowed pre-emptions on unsurveyed land, ending the era of agricultural pioneers going out and staking their own ground.
concerns, not a radical or revolutionary departure from former acts. By being a flexible yet stable base on which to build land policies, the 1970 Act continues the tradition of its predecessors.\textsuperscript{510}

These statements are interesting for what they reveal—the continuity of the statute—and for what they conceal: the lack of "management" of land or, more precisely, management of land use. The Act gave the Lands Service the authority to allocate land for settlement and economic use. There was almost nothing that conferred managerial authority on the Lands Service. But there was also nothing in the statute that prohibited these managerial functions. Moreover, the Act implied the need for certain policies. But there were almost no policies in 1970, something that would change in the coming decade.\textsuperscript{511}

(3) "Environment" enters the lexicon

The new political and social environment the 1960s—increasingly frequent and intense conflicts over land use, a rising tide of public concern about the health of the environment, greater demand for recreation—helped to prompt government to rewrite some of its land statutes, but did not really alter the substance of these statutes or the way the dirt departments operated. Significant change in how government "does business" did not begin until 1969, with the creation of the Land Use Committee, and 1971, with the arrival of the Environment and Land Use Act and the Ecological Reserves Act.

The Social Credit government created the Land Use Committee to increase co-

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{510} History of the Lands Service, 1858-1971, supra note 71 at 23
\item \textsuperscript{511} In 1982 a major internal review sought to redress the gap that emerged between the statute and the Service’s operations by truly reinventing the Act, but the Act continues today in its 1970 form. British Columbia, Ministry of Lands, Parks and Housing, The 1982 Land Act Review (Victoria: Province of British Columbia, 1982) [unpublished] at i says: “In comparison with contemporary provincial resource statutes such as the Forest Act and the Environment Management Act, the existing Land Act is outdated. These other statutes incorporate modern resource management principles and procedures, whereas the Land Act does not. It is generally recognized today that the land base is finite and that there are an increasing number of conflicts between competing uses. Land use decisions have a significant social, economic and environmental impacts and the Land Act should reflect contemporary principles and procedures of land use planning and decision making.”
\end{itemize}
\end{footnotesize}
for recommendation to the government."\textsuperscript{512} The Committee comprised the ministers of Lands, Forests, and Water Resources; Agriculture; Recreation and Conservation; Mines and Petroleum Resources; and Municipal Affairs.\textsuperscript{513} This Committee was a more direct response to the new politics of land in British Columbia, and to the tensions and rivalries growing among the dirt departments. Political scientist Jeremy Wilson describes the goal, origins, and minimal bureaucratic structure of the Land Use Committee:

\begin{quote}
Its goal was to improve communications among five resource departments [...] . According to [Minister of Lands, Forests, and Water Resources Ray] Williston, who was the committee's first chair, increased interest in the environment convinced key ministers of the need to reorient their thinking: "The officials had to have a common goal and we all had to have a forum in which we could iron out the difficulties between us ... The main objective of our group ... was to set guidelines."
The committee was assisted by a civil servant coordinator, and by a parallel committee of deputy ministers, the Land Use Technical Committee.\textsuperscript{514}
\end{quote}

It appears that the most significant result of this committee's work was to formalize itself in 1971 through a potentially transformative new statute.

This statute, the \textit{Environment and Land Use Act},\textsuperscript{515} was, with the concurrent \textit{Ecological Reserves Act},\textsuperscript{516} the first of British Columbia's environmental laws. They were definitely the first to suggest that the government viewed the "environment" in the contemporary sense of the interconnected natural world, and the cradle of human life. The \textit{Ecological Reserves Act} began by stating, "British Columbia is favoured with [...] a multiplicity of biogeoclimatic zones" and heralding a plan to "set aside [100] distinctive ecosystems for present and future scientific study" by 1975.\textsuperscript{517} The Act's definitions section included the terms "ecology,"

\begin{itemize}
\item \textsuperscript{512} History of the Lands Service, 1858-1971, supra note 71 at 26.
\item \textsuperscript{513} Ibid.
\item \textsuperscript{514} Wilson, \textit{Talk and Log}, supra note 6 at 107 [emphasis added].
\item \textsuperscript{515} S.B.C. 1971, c. 17 (now R.S.B.C. 1996, c. 117) [\textit{Environment and Land Use Act}].
\item \textsuperscript{516} S.B.C. 1971, c. 16 (now the \textit{Ecological Reserve Act}, R.S.B.C. 1996, c. 103 [\textit{Ecological Reserves Act}].
\item \textsuperscript{517} \textit{Ecological Reserves Act}, supra note 516, Preamble. Less than nine months after the Act received royal assent, the Department of Lands, Forests, and Water Resources had created 29 reserves. British Columbia Ministry of Forests and Lands. \textit{A History of the British Columbia Lands Service – An Update (1971-1986)} (Victoria: Province of British Columbia, 1992) at 138.
\end{itemize}
“ecosystem,” “environment,” and “habitat.” Both statutes defined “environment” as “all the external conditions or influences under which humans, animals and plants live or are developed.” 518 This definition reversed the portrayal of the relationship between humans and nature in the previous century of B.C. land law. Here, instead of the humans developing nature, it is nature developing humans. 519

These statutes did more than cosmetically inject “environment” into the law of British Columbia. The Environment and Land Use Act, in particular, had the potential to be a springboard for a radical revision of land policy in the Province. This statute was the first in British Columbia to acknowledge the widespread harm humans cause the natural world and the need to seek a balance between human use of the land and the resulting damage. Although brief—only seven sections long 520—the Act promised a sweeping transformation of British Columbia’s laws for land use, and hence the Province’s economy. The Act formalized the Land Use Committee—now named the Environment and Land Use Committee—charged in s. 3(b):

> to ensure that all the aspects of preservation and maintenance of the natural environment are fully considered in the administration of land use and resource development commensurate with a maximum beneficial land use, and [to] minimize and prevent waste of those resources, and despoliation of the environment occasioned by that use […] 521

This broad mandate came with the power of Cabinet, under section 7, to make orders that override all other legislation and the powers of any “minister, ministry or agent of the

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518 Ibid., s. 1(d); Environment and Land Use Act, supra note 515, s. 1(b).
519 On the other hand, the definition separates humans from the other animals. This is one of several indications of the Act’s less
520 The Act originally comprised seven sections, but a minor amendment inserted a minor procedural section. Environment and Land Use Act, R.S.B.C. 1996, c. 117, s. 5.
521 Environment and Land Use Act, supra note 515, s. 2(b).
Crown”. In a foreshadowing of most of the new environmental laws and institutions that expanded British Columbia’s land laws in the 1970s and 1980s, however, the experience of the Act and the Committee did not live up to the Act’s breadth of scope. As part 2 explains, below, the Environment and Land Use Committee and the policy secretariat it created in 1973 did play an important role in moving the B.C. government to a more complex, managerial land regime. But the Committee did not fulfil the Act’s more radical environmentalist potential. It focused on creating a more sophisticated system for arbitrating conflicts over land use, and for assessing and planning the potential of land for economic uses. Environmentalists’ pressure to protect land became, to the Committee, just another land-use demand. But the language and structure of the Province’s land laws, starting with the Environment and Land Use Act, appear to have contributed to this land-use effect.

(4) Language of environment, context of development

Although the Environment and Land Use Act was a departure from the land legislation and policy to that time, its language reveals a limited version of environmentalism: the conservation ethic of ensuring that resources remain available for future use. As with the even more limited conservationism behind the Pollution Control Act and the forest management debate of the 1940s, this ethic did not give primacy to the ecological integrity of the environment. The Environment and Land Use Committee’s charge under s. 3(b) revolved around “maximum beneficial land use”. In the context of B.C. land law, this term could only mean maximum benefit to humans, not to the environment, since “use” in British Columbia’s land law had always meant human exploitation ranging from industrial resource extraction to relatively benign forms of recreation. Context is critical with this
statute. It appeared in 1971 within a long-established frame of laws that promoted
development, and treated the environment as a resource. Despite the implications of the
Act’s definition of “environment” and the breadth of phrases such as “all aspects of
preservation”, the Act’s deeper roots were in the traditional context of development.
Likewise, the statute’s several calls for public consultation were out of place within an
institution lacking policy or a history of involving the public. On the surface, paragraphs
3(a) and 4(a) of the Act seem to envision a collaborative reinvention of land laws. Instead,
the agencies of government focused more on the provisions compatible with the
government’s traditional methods of internal problem-solving: internal recommendations
“relating to the environment and the development and uses of land” (s. 3(c)); inquiries into
such matters (s. 3(d)); preparing reports (s. 3(e)); forming technical committees (s. 4(b)); and
creating a supporting bureaucracy (s. 4(c)). All of these provisions could fit in neatly with
the existing land allocation regime.

The political debates about the Environment and Land Use Act and the Ecological Reserves
Act recognized the significance of the Acts’ context. Under the new statutes, the Department
of Lands, Forests, and Water Resources was to have (and did obtain) jurisdiction over
ecological reserves. Ernest Hall, a Member of the Legislative Assembly from the New
Democratic Party (NDP), thought this problematic:

We see [the Ecological Reserves Act] as perhaps the beginnings of a living laboratory
[...] and that it should be tied, in some way, to the whole question of land use and
the environment and indeed with pollution. If it’s a laboratory as indeed I think it’s
fair to say it is, a living laboratory, then, that information, of course, has got to flow
through to the other departments and to the committee that is the subject of
another bill [the Environment and Land Use Act].

[...]. I want to suggest that, whilst this is the kind of administrative bill that the
Minister [of Land, Forests, and Water Resources] is famous for, [...] it’s not really
doing very much in terms of promoting and exciting people about our battle
against pollution. [...]
I think one of the ways we can do it is to look at what other jurisdictions are doing. For instance, in Washington, [...] they're enlisting aid and support on the principle of what this bill is simply saying. When they set up an ecology commission and environmental committee, they don't just leave it to those very efficient but somewhat faceless technical people [...] but, instead, they give it some political pizzazz, some meaningful swing, so the people know what's going on [...].

I notice [...] that when the State of Washington sets up one of these environmental control programmes, they say, for instance, that there shall be one member who is a representative of organized labour that has something to do with this thing, that one member shall be a representative of the business community, that there should be one member who is a representative of the agricultural community and that there be four ordinary people involved in the kind of decision-making that so often we find in [the proposed Environment and Land Use Act and Ecological Reserves Act] are reserved simply and solely to the Minister. One thing we've noticed is that the Minister has an incredible amount of responsibility and I think that that responsibility can be shared. Not only that, but they go further and they say that, true, there should be technical people [implementing the legislation] [...] .

[But they also] make sure ... these boards and reserves and areas together with their pollution control mechanisms [are] open to public scrutiny, to public change, to public pressure. ... [W]e're suggesting [...] that the people in the Province should be concerned and involved in the decision-making process.

Let's go on to the actual main principle of the [Ecological Reserves] bill which, simply, as the Minister says is explained in the note, is to set up a minimum of a hundred, hopefully, by 1975, ecological reserves which, as I say, could well be described as living laboratories. The one thing that I feel is missing in the act, Mr. Speaker, in closing the remarks on second reading, is that we feel that these ecological reserves are so important that, once established, they should only be changed by an act of the Legislature and not by ministerial decree.522

NDP M.L.A. David Brousson picked up this institutional point, and argued:

The subject matter here is obviously very closely associated with another department [...] - Recreation and Conservation and Parks523 - where there is a Minister who is specifically charged with the responsibility for conservation. So it seems strange [...] that this particular subject is put into the responsibility of the Minister of Lands and Forests, whose primary responsibility [is] managing the forests and cutting down the trees to the greatest profit of British Columbia. That is not the purpose of this bill. It's an ecological reserve. It's to separate certain specific areas from the forests and the other areas of the Province. I would like to see very much the Minister responsible for this whose major responsibility is conservation.

522 British Columbia, Legislative Assembly, Official Report of Debates (Hansard), 29(2) (23 March 1971) at 749-50 (Hon. E. Hall), online: <http://www.leg.bc.ca/hansard/29th2nd/29p_02s_710323p.htm#00749>.

523 The proper name is the Department of Recreation and Conservation. The addition of Parks reflects the growth in profile of the Parks Branch since its inception in 1965.
and that, I think, is the great weakness of the principle of this bill. It would appear that we have, in effect, another conflict of interest within this department.

[...]

Finally, Mr. Speaker, I am agreeing with my predecessor in this debate. I note with disappointment the ease with which an ecological reserve can be destroyed just by a scratch of the pen. "The Lord giveth and the Lord taketh away," with no reference to anyone else. I would wish it were very difficult to cancel or destroy such a reserve once it were established. Perhaps reference to the Legislative Assembly, at the very least, to some sort of public hearing, a public board, perhaps, a public hearing under the auspices of the Land Use and Environment Committee, which is to be established [...]. I think all of us, knowing the past record of the Government and, particularly, of this department, would feel a great deal more confident if this kind of safeguard were included. 524

The remarks of these two opposition members are representative of the debates about the new statutes. They offer several insights to the context of these statutes including the political saliency of environmental protection and the extent to which forestry had come to dominate the debate about the economy and ecology. Perhaps most insightful is the concern about placing environmental statutes in the control of a department focused on development. Similarly, the criticisms of the Ecological Reserves Act and, later in the debate, the Environment and Land Use Act reflect an awareness of the development focus of the language of the statutes, or at least of their limitations as tools for protecting the ecosystem.

But how strongly did the NDP question the Environment and Land Use Act's roots in development? Turning to the Environment and Land Use Act, Mr Hall argued for a preamble setting out the vision of the statute, pointing out that the Ecological Reserves Act had:

a preamble dealing with the setting up of some ecological reserves and, yet, [the Environment and Land Use Committee], which could and should and, hopefully, will be the most important committee, decision-making body and future-effect sort of situation we've got in the Province, there is no preamble. If ever a bill needed a preamble, it is this one. [...].

524 Ibid., 750-51 (D.M. Brousson), online: <http://www.leg.bc.ca/hansard/29th2nd/29p_02s_710323p.htm#00750>.
If you had a preamble that said that we recognize and declare it to be the policy of this Province that it's a fundamental and inalienable right of the people to live in a healthful and pleasant environment and to benefit from the proper development and use of natural resources, [...] you would have put this bill and your committee on page 1 instead of page 27 [of the newspapers]. [...] If we'd have said and spelled out, as you did in Bill 80 [Ecological Reserves Act], in the preamble thereto, that it is considered to be highly desirable that we want to regulate this and we want to look after our natural resources in some manner.525

These remarks are perhaps more telling, since they reveal the limitations of the alternative vision from the NDP opposition. Mr Hall called for a stronger statement of purpose that would galvanize public interest in the bill and the Environment and Land Use Committee, but placed the focus on human health and a more efficient, productive use of land. This conservationism is only one step removed from the CCF criticisms of the forestry reforms of the 1940s. Concerns about human health are a new part of the debate, drawing on increased recognition of ecology and the place of humans in the ecosystem. But Mr Hall's emphasis is still on the environment as an amenity to and a resource for human activity. In the context of these remarks, his description of the Ecological Reserves Act as the "living laboratories act," a moniker Minister Williston endorsed, seems to reinforce a vision of the environment as a resource to be used for human benefit. As with the CCF in the 1940s, the NDP's alternative vision, while more environmentalist than its earlier conservationism, still treated land as a resource.

In the debate on the second reading of the Environment and Land Use Act, Lands Minister Williston emphasized the intent of the Act "to bring about public interest and a degree of public involvement, because [...] if we are going to have an environment in British Columbia of which we'll all be proud, it's going to involve the act of participation of just about everyone who lives in the Province of British Columbia." The Minister then added:

525 Ibid., 754 (E. Hall), online: <http://www.leg.bc.ca/hansard/29th2nd/29p_02s_710323p.htm#00754> [emphasis added].
We have taken the tack that everyone who is directly associated with the
development of resources, the development of the physical nature of the country,
should be involved as a member of the Environment Committee and that the
attitudes, the principles and, actually, the activities of the various departments
should reflect the basic policies of environment and land use in their day-to-day
operation.\footnote{British Columbia, Legislative Assembly, Official Report of Debates (Hansard), 29(2) (23 March 1971) at 754 (Hon.
R.G. Williston et al.), online: <http://www.leg.bc.ca/hansard/29th2nd/29p_02s_710323p.htm#00754>.
}{526}

The Minister’s emphasis on public involvement was based on paragraphs 3(a) and 4(a) of
the Act, which allowed the Environment and Land Use Committee to “establish and
recommend programmes designed to foster increased public concern and awareness of the
environment;” and “to hold a public inquiry whenever […] the proper determination of any
matter within its jurisdiction necessitates an inquiry”. As it turned out, the government
never exercised either of these paragraphs.\footnote{See part 2, below. The government did, however, launch public processes for the identification of parks in the
mid-1980s, such as the Wilderness Committee in 1985 and 1986. Wilson, Talk and Log, supra note 6 at 183. This
commitee, however, was not formed under the Environment and Land Use Act.
}{527} By contrast, experience did bear out the latter
portion of the Minister’s remarks. The five dirt ministers who comprised the Committee,
along with a new member, the Minister of Health, advocated for the forms of land
development their departments licensed and promoted. The Committee tended to focus on
resolving conflicts among the departments, balancing one use of land against another, one
department’s project against another’s. As the preceding chapter explains, even the
Department of Recreation and Conservation was a promoter of land use and tourism
development. And Minister Williston’s promise to involve “everyone who is directly
associated with the development of resources” proved accurate, as well. Representatives of
the Province’s major land industries had long had direct access to decision-making, even in
later eras of public, comprehensive land-use planning.\footnote{Who has had how much access to ministers and senior bureaucrats is a hotly debated topic. Certainly,
environmental campaigners have at times had the government’s ear—for example, through membership on the
Wilderness Advisory Committee and through land and resource plans during the 1990s—but such participation
is different from the role the industries, who are typically referred to as “clients,” have played in crucial
}{528} But the public and those with
alternative visions for land, such as environmentalists and First Nations, lacked such access. The limited access they have gained required political leverage around specific controversies. The Environment and Land Use Committee interpreted its mandate narrowly, continuing to be an internal body for bureaucratic co-ordination and problem-solving.

(5) "orders respecting the environment"

Section 6 of the Act gave cabinet the power to:

make such orders respecting the environment, or land use, as [...] necessary [...] and no Minister, department of Government, or agent of the Crown specified in the order shall exercise any power granted under any other Act or regulation except in accordance with the order.

It was powerful, since it overrode any other statutory authority, and virtually unlimited in scope. The first major use of the section both demonstrated this scope, and, perhaps paradoxically, acted as a template for the limited use the government made of the section. Barely two months after taking office, the NDP government prohibited "all subdivisions of farm land [as defined in the] Taxation Act, [...] including all lands deemed by the Committee to be suitable for cultivation of agricultural crops". The Act proved to be a useful stopgap decisions of government. And in recent years, government has often shut out environmentalists and other opponents and critics of industrial development. A prominent recent example of this exclusion is the first term of the Liberal government, from 2001 through 2005. The rewritten forestry laws the government passed in 2003 were well known to have been negotiated with leaders of the forest industries, behind closed doors. Interview of Will Horter, supra note 269. Among many accounts of private negotiations between forestry companies and the government during this period is Justin Calof, "Weyerhaeuser deal goes against public interest" Victoria Times Colonist (19 July 2004).

529 Interview of Will Horter, ibid. There are exceptional periods, such as the Wilderness Advisory Committee, in which government met with environmentalists and even involved them in decision-making, but the government has tended to treat environmentalists as outsiders and opponents.

530 Cabinet sometimes supplemented orders under s. 6 with regulations prescribing certain actions such as plans or dispute-resolution processes, using the similarly broad power under s. 7 to pass regulations for "carrying out the provisions of [the] Act according to their intent".

531 This appears to have been the second order made under the Act. The first use of s. 6 was a prohibition of subdivision on a flood plain in the District of Brocklehurst, pending plans for flood control. O.I.C. 2583/72 (5 July 1972); B.C. Reg. 153/72 (10 July 1972).

532 O.I.C. 4483/72 (21 December 1972); B.C. Reg. 4/73.
for a public-relations gaffe: the government needed to stop a run on the sale of farmland pending the creation of the Agricultural Land Reserve (known as the ALR). This use of section 6 as a placeholder pending new legislation may not have been its intended use, but given the potential of the Act hinted in paragraphs 3(a), (b), and 4(a), it was a sign that the statute would be relegated to a behind-the-scenes role. The Environment and Land Use Act promised the reinvention of land law and rethinking of land use. In practice it became a mere protection mechanism, falling far short of the potential suggested in its language.

On occasion the government did, however, use s. 6 for significant, if not precedent-setting, purposes, which anticipated much of the response to environmental pressure in the 1980s and 1990s. Indeed, since 1980, s. 6 is the only provision in the Act that remained meaningful. In addition to the interim ALR, the government used s. 6 as a flexible tool to freeze land uses on particular sites while it negotiated the resolution of conflicts over those lands and, in some cases, established plans for their use. Three representative examples of its use demonstrate both its potential as a mechanism for transforming the way the government allocated land, and how its actual use did not move outside the frame of the century-old land regime. They are the Purcell Wilderness Conservancy, the Whistler Mountain project, and the Fraser River estuary environmental assessment.

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533 Garrish, “Unscrambling the Omelette”, supra note 78 at 36. And see John G. Ince, Environmental Law: A Study of Legislation Affecting the Environment of British Columbia, rev. ed. (Vancouver: West Coast Environmental Law Research Foundation, 1979) at 56-58 [Ince, Environmental Law] notes at 56 that one of the Act’s first uses was to “freeze farm land development prior to the enactment of the Land Commission Act.” On this use of the Act and on the ALR, see infra note 564 and accompanying text.

534 John Ince’s 1979 text on environmental law said the Environment and Land Use had been “employed more to control land use than [to deal with] environmental matters such as air, land or water pollution.” Ince, Environmental Law, supra note 533 at 56-67.
In 1974 the government created Purcell Wilderness Conservancy, a “recreational wilderness” in the mountainous Kootenay region of British Columbia. The government protected the area, which it deemed “uninfluenced by the activities of man,” in response to local lobbying that the Invermere Rod and Gun Club initiated in the 1960s and that grew to include “conservationists, outdoor clubs and individuals.” The B.C. government described the recreation area as “one of the first large scale wilderness areas in Canada to be set aside as a result of local citizen action.” This is a debatable claim, since recreationalist advocacy contributed at least to the choice of areas for provincial and federal parks in the past, and the Sierra Club of British Columbia claims the Pacific Rim National Park as its founding achievement. But the Purcell appears to be the first area the B.C. government protected in response to local advocacy for conservation in the “environmental” era of the 1970s.

535 O.I.C. 1199/74 (4 April 1974); B.C. Reg. 221/74 (8 April 1974). The order includes a preamble describing this as one of the Province’s “wilderness regions of great scenic beauty which are of notable inspirational value to the public and which offer splendid opportunities for primitive recreational use.” The order was amended in 1980 to permit “within the lands described in [the 1974] order the commercial activity of non-motorized recreational guiding and trapping, and guide outfitting” provided the Parks Branch permits the activity B.C. Reg. 163/80 (45 May 1980). Note due to a technical change in the definition of regulations, starting in 1980 all orders under s. 6 of the Environment and Land Use Act were passed as regulations, rather than as Orders in Council first and regulations later.

536 Ibid. Although the area has not been logged and has not seen large-scale, mechanized industry, one might debate how “uninfluenced” it is. The B.C. government’s own history of the Purcell Wilderness Area notes Governor General Earl Grey’s trek across the Purcell Mountains in 1909. The narrative continues: “A cabin built in 1909 for Earl Grey and his family remains in deteriorating condition above the Toby Creek trail about twenty minutes walk from the Toby Creek trailhead. The trail Grey followed by horseback and foot was well known by First Nations people and the West Kootenay mining boom of the 1890’s and early 1900’s made the trail into an important access and supply route from the east, with even cattle being driven over it from Invermere on occasion.” British Columbia, Ministry of Environment, “Purcell Wilderness Conservancy Provincial Park and Protected Area” (Victoria: Province of British Columbia, n.d.), online: <http://www.env.gov.bc.ca/bcparks/explore/parkpgs/purcell/nat_cul.html> [“Purcell Wilderness Conservancy” Website.]

537 “Purcell Wilderness Conservancy” Website, ibid.

538 In 1995 the area became the Purcell Wilderness Conservancy Park. Protected Areas of British Columbia Act, S.B.C. 2000, c. 17, Schedule D, lists the park and sets out its boundaries. The Park is now approximately 200,000 hectares in size (the schedule to the Act gives a figure 4,600 hectares lower than that on the BC Parks Website for the park, online: <http://www.env.gov.bc.ca/bcparks/explore/parkpgs/purcell.html>.

539 See infra note 724 and accompanying text.
In another example, in 1974 the government used section 6 to protect Whistler Mountain from development pending an overall plan for a ski resort.\textsuperscript{540} A special government company, the Whistler Land Corporation, eventually carried out that plan in the 1980s. This is one of several instances in the 1970s of controversial or complex development proposals being put on hold pending a better plan and the settlement of disputes.

Another use of the section lay between the conservation of Purcell Mountain and the development planning of Whistler Mountain. In 1977, cabinet froze development in a defined portion of “the Fraser River Estuary and adjacent submerged lands” pending a “mandatory environmental impact assessment prepared by the proponent”. The proponent had been seeking to develop “the foreshores and land covered by water [...] outside the dyking system and known generally as Roberts banks and Boundary and Semiahmoo Bays”. This order appears to be the first legal instrument for an environmental assessment by the B.C. government.\textsuperscript{541} Unlike the Whistler order, this suspension of development directly addressed concerns about “despoliation of the environment” that helped bring about the \textit{Environment and Land Use Act}.\textsuperscript{542} This order appears to have been the only use of section 6 to require an environmental assessment, but the government conducted other assessments less formally, as part of the Committee’s co-ordinating function in the 1970s.\textsuperscript{543}

\textsuperscript{540} OIC 2183/74 (4 July 74), B.C. Reg. 437/74 (9 July 74).
\textsuperscript{541} By this time the federal government was requiring environmental impact studies for certain projects under federal jurisdiction, e.g. under legislation governing gas pipelines and fisheries. See Ince, \textit{Environmental Law}, supra note 533 at 46 (general assessment authority), 78 (pipelines), 89 (fisheries).
\textsuperscript{542} \textit{Environment and Land Use Act}, supra note 515, s. 3(b).
\textsuperscript{543} Interview of Jon O’Riordan, supra note 429. British Columbia did not have a formal law for environmental assessments until the \textit{Environment Management Act}, S.B.C. 1981, c. 14, s. 3.
These three examples are representative of the orders under s. 6 of the Act from 1974 through the early 1980s. These examples illustrate three observations about the Act. First, almost none of the orders during this period were for the preservation of lands or designation of recreational areas. In fact, it appears that the Purcell Wilderness Conservancy was the only such order. This use of the Act did, however, set a precedent that became important in the land and resource planning era of the 1990s, when s. 6 (now s. 7) became a tool for interim protection of lands pending the creation of parks. The flexibility of the Act’s power to designate lands for recreation or conservation took on greater importance in 2001, when the new provincial government established a policy of creating no more “parks”, only “protected areas” with more flexible levels of protection. Second, many of the orders, including the one for Whistler, had nothing to do with protection. Rather, they were meant to ensure a more co-ordinated, and economically enriching, approach to development. These orders reflected the more limited co-ordinating function of the Act and the Committee. Third, orders under s. 6 of the Environment and Land Use Act helped to introduce environmental assessments, which remain a significant feature of environmental and land-

544 Indeed, they represent a substantial portion of the limited total number of orders, if one excludes the series of orders deleting specific lands from protection, due to their addition to the Agricultural Land Reserve. In 1974, the busiest year for the use of s. 6, there were two orders about the Purcell conservancy, five other orders, mostly technical matters such as the addition of a minister to the Environment and Land Use Committee, and three related to site-specific public hearings.

545 This use of the Environment and Land Use Act, and possibly the Act itself, is now superfluous, since the creation in 2006 of “conservancies” that provide flexible protection to land — i.e. protection that leaves government ministries the flexibility to authorize mining, forestry, and other commercial uses without prior approval of cabinet or the Legislature. Park (Conservancy Enabling) Amendment Act, 2006, S.B.C. 2006, c. 25.

546 The Whistler order is unusual since the site was relatively undeveloped, but there were a few orders of a similar nature in the 1970s, including a temporary prohibition on a B.C. Hydro development project in the Vancouver suburb of Richmond. The Richmond instance is an example of the Environment and Land Use Committee and its staff becoming directly involved in settling conflicts over development. After the original order prohibiting development (O.I.C. 3453/74), cabinet allowed development to proceed according to terms worked out by the Committee, with areas for municipal parks, public access, and commercial development. O.I.C. 986/75 (26 February 1975); B.C. Reg. 238/75 (17 March 1975). The Committee carried out similar projects in other urban areas, including a strip of waterfront in downtown Victoria along Wharf Street.
use law in British Columbia. The other feature the Act helped to introduce was land-use planning, as discussed in part 2, below.

Beyond these observations, the orders under section 6 of the Environment and Land Use Act reveal how limited a potentially transformative statute can be within a long-established regime that is so completely oriented towards development of land. The statute did not bring about a fundamental rethinking of the Province’s land laws. Rather, the Act became an ancillary tool of the existing land-use regime, used primarily to temporarily protect certain lands, sometimes to become a park, but usually to enable the planning of their development. Although the statute is still on the Legislature’s books, by the 2000s it had fallen into disuse, since it was “generally viewed as a placeholder”.

(6) Land protection statutes: the belt and reserves approach

Until 1971, the only instruments for protecting land from development were under the Land Act and Park Act. Protection under the Land Act was weak, however, since its reserves were mere map notations that only restricted tenures or crown grants under that statute. The Wildlife Act enabled wildlife sanctuaries and made it an offence to destroy habitat in them, but since the Act did not refer to other legislation, land and resource tenures could probably override it. The Park Act afforded the greatest protection, but even a Class A park was potentially open to mining and forestry. Only a nature conservancy had absolute protection against disturbance to natural resources.

547 Electronic mail communication from John Bones, Assistant Deputy Minister, Strategic Initiatives Division, Ministry of Agriculture and Lands (18 January 2007).
548 As discussed in chapter 3, the Act had also since the 1980s prohibited the sale of land useful primarily as forest land. This prohibition becomes more significant with the Forest Act in 1978, as discussed below.
549 Wildlife Act, supra note 484, s. 78(e); Ince, Environmental Law, supra note 533 at 186.
550 The Park Act also gave parks with a total area of less than 5,000 the same level of protection as a nature conservancy area. This protection was limited to natural resources, however, not to recreational development of the park. The B.C. Parks Service could, under s. 8, grant park use permits for commercial and non-commercial
In 1971 the government passed two statutes for protecting land, the *Environment and Land Use Act, Ecological Reserves Act*, which I discussed above. Between 1972 and 1973 it passed two more, the *Green Belt Protection Fund Act*, and the *Land Commission Act*.\(^{551}\) In practice or in intent, none of these statutes had much more to do with environmental protection than did the *Land Act*.\(^ {552}\) In 1972 the government passed the *Green Belt Protection Fund Act*.\(^ {553}\) The name is misleading. The Act did not in fact empower government to protect land, but rather to buy private lands to protect under other legislation. The Act appropriated $25 million from the government’s general revenues for, in the words of the preamble, “the establishment and preservation in perpetuity of areas of lands, commonly known as ‘green belts,’ throughout the Province.” Responsibility for the Act fell to the Minister of Finance, who could, under section 3, appoint “a person or persons […] to make recommendations respecting the acquisition […] and establishment of […] lands as green belt areas to be used for park lands without camping, for forestry reserve, for lease for farming purposes, or for any other purpose”. The Act was, in fact, not for the preservation of the environment. Indeed, its original impetus was the protection of farmland.\(^ {554}\) The Act was Premier W.A.C. Bennett’s response to more aggressive proposals for checking the urban sprawl that was consuming farmland and fomenting political pressure. The Act identified the purpose of green belts as “areas to be used for park lands without camping, activities, as long as they did not do any harm to the area’s natural resources. See *supra* note 473 and accompanying text, and see John G. Ince, *Land Use Law: A Study of Legislation Governing Land Use in British Columbia* (Vancouver: Continuing Legal Education Society of British Columbia, 1977) at 242.

\(^{551}\) The government also passed the *Archaeological and Historic Sites Protection Act*, S.B.C. 1972, c. 4, which replaced the previous statute of the same name, and had little to do with the land-use conflicts and environmentalism that prompted the statutes considered here.

\(^{552}\) The previous sections describe the *Environment and Land Use Act;* I return to the *Ecological Reserves Act*, infra note 673 and accompanying text.


for forestry reserve, for lease for farming proposals, or for any other proposed designated by" cabinet. The Green Belt Protection Fund Act never fulfilled these purposes.

The funding function of the Act was, however, potentially useful. In 1977 the government replaced the Green Belt Protection Fund Act with a Greenbelt Act more focused on protecting lands. The new Act, which remains in force, empowered the minister responsible for the Act to not only acquire lands from private owners and other agencies but, under paragraph 2(a), to "reserve Crown land [newly acquired or otherwise] as greenbelt land". Section 10 protected greenbelt lands from disposition under the Land Act, Forest Act, and mining legislation, subject to the minister's right under sections 5 and 8 to dispose of greenbelt lands through the Land Act. But this Act, too, has been used more for community amenities—literally, green belts in cities—than for larger projects to protect ecosystems.

The fourth new land-protection statute in a two-year period, the Land Commission Act was specifically designed to protect land not from development but for it. The Act arrived less than one year after the Green Belt Protection Fund Act, making the latter irrelevant. This Act, perhaps the most famous, and infamous, B.C. statute of the 1970s, has been thoroughly analysed. Rather than examine its text as I have done with the statutes above, I will consider the political history and policy debates that led to its creation. That history

555 Green Belt Protection Fund Act, supra note 553, s. 3.
556 The government did use the fund, but in relatively minor ways, for community amenities. Its primary use was to acquire land for trails and parks in cities. The 1975 speech from the throne, for example, announced the government's use of the fund to purchase "692 acres, representing four key wildlife management areas". British Columbia. Legislative Assembly. Official Report of Debates (Hansard), 30(5) (18 February 1975) at 3 (Hon. W.S. Owen (Lieutenant-Governor), online: <http://www.leg.bc.ca/hansard/30th5th/30p_05s_750218p.htm#00003>.
557 Ibid.
559 In this thesis I rely on Andrew Petter's definitive account of the creation of the Act, supra note 554, and on my interview of Norm Pearson, supra note 467. I also refer to Christopher Garrish's relatively recent article, supra note 78 at which usefully studies the current controversies over the Agricultural Land Reserve by examining its origins. A study for the B.C. government by the former Dean of Agricultural Sciences at the University of British Columbia also offers an interesting perspective from her discipline's point of view. Moura Quayle, Stakes in the Ground: Provincial Interest in the Agricultural Land Commission Act (Victoria: British Columbia Ministry of Agriculture & Food, 1998).
provides useful insights into the way the government was thinking about land law and the policies underlying in the early 1970s.

Farmland had become one of the most significant issues in the provincial election of 1972, although there is debate about whether it was the defining issue of the election. All four of the major political parties set out solutions to the problem of the loss of farmland, ranging from the ruling Social Credit Party’s “token” plan to buy certain lands under the Green Belt Protection Fund Act, to the New Democratic Party’s proposal to zone for farming and buy lands for an agricultural land bank. The NDP won the election on 30 August 1972. Barely one month later, the Minister of Agriculture, David Stupich, began to publicly commit the government to passing a statute to protect farmland. His plan, which became front-page news on 30 November, was to prevent “agricultural land from being rezoned to residential or industrial use.” The immediate result of the minister’s announcements was twofold: First, the government was, for practical political reasons, locked into creating legislation, and quickly. Second, owners of farmland reportedly began to rush to sell any of their land with “development potential.”

The government responded with the first significant use of section 6 of the Environment and Land Use Act, passing a rushed order on 21 December prohibiting, “from December 11, 1972 and henceforth [...] all subdivisions of farmland, including all lands deemed by the Committee to be mutable for the cultivation of agricultural crops”. The order used the definition of “farmland” in the Taxation Act rather than a more scientific definition, likely due to the need for haste, but also due to the lack of a clear definition and record of

560 Petter, “Sausage Making”, supra note 554 at 32; Garrish, “Unscrambling the Omelette”, supra note 78 at 36, the urban sprawl controversy dominated the election.
561 Petter, ibid. at 7-8. The “token” reference is in Garrish, ibid. at 36, n. 39.
562 Ibid. at 11
563 Ibid. at 12
564 O.I.C. 4483/72 (21 December 1972); B.C. Reg. 4/73.
farmland, under the Canada Land Inventory program. The brevity and breadth of the order in council caused cabinet to pass another O.I.C. in January, setting out a more detailed definition of farmland, including land outside municipalities and "classified as farmland [under] the Taxation Act;" or currently so zoned by a municipality; or "designated as Class 1, 2, 3, or 4 in soil capability [in] the Canada Land Inventory".

These orders are interesting for two reasons. First, they reveal the difficulty of defining and designating lands according to their capabilities at a time when the government was just starting to study land and consider the best use of it. Second, they hint at the struggle within the NDP government over the response to urban sprawl. There are numerous marked up drafts of this order in the O.I.C. registry, from at least 12 January 1973 through the order's approval on 18 January. As legal scholar Andrew Petter notes in his study of the creation of the Agricultural Land Reserve, Minister Stupich clashed with Bob Williams, a former community planner and the new Minister of both Lands, Forests, and Water Resources, and Recreation and Conservation. Minister Stupich pushed his vision through cabinet on 21 December, but thereafter had to reach agreement with Minister Williams on the legislation. The second, more expansive order to freeze land—noted by legislative counsel as "really a new order", not an amendment—came in the middle of competing struggles to draft the Land Commission Act.

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565 There continues to be controversy about the designation of agricultural land as with similar designations of forest land. The Canada Land Inventory classified land according to its arability, i.e. soil conditions, than to other critical factors such as climate and geographic accessibility. Petter, "Sausage Making", supra note 554 at 25 and at 16, 22.
566 Supra note 564.
567 See infra note 605 and accompanying text.
569 Memorandum from J.P. Harrington, Deputy Legislative Counsel to Mr. Wilkinson, 12 January 1973, attached to B.C. Reg. 19/73.
Andrew Petter analyses in detail the five drafts of the statute, then the amendments in the Legislature. Of most relevance to the history of B.C. land law are the competing ideas about land and property that underlie the struggle to draft the Act. On one side were Minister Stupich and Agriculture Deputy Minister Sigurd Peterson, and on the other Minister Williams and Norm Pearson, the Deputy Minister of the Lands Service, both former planners. Their differences came down to compensation for the farmers who would be unable to subdivide their land and sell it for industrial or residential use. Petter captures the ideological difference as follows:

Stupich, [...] more the traditional socialist, believ[ed] that government has a right to control the means of production and should play a strong central role in directing the economy. At the same time, Stupich [felt] that government acquisition requires government compensation, whether [by] capital, land or the development value of land. Williams, on the other hand, had been strongly influenced by the political philosophy of nineteenth-century American economist Henry George. Like George, he placed a great deal of faith in the value of a free, competitive market; however, as did George, he also believed that land (i.e., including resources) was a public resource which did not form a part of that market. Indeed, the basis of George’s philosophy was that monopolization of land by private interests is the thing that undermines the effectiveness of the market to fairly allocate labour and capital. [...] For Williams, then, unlike Stupich, [...] the development value of raw land, like its other values, is a public asset not requiring compensation. This view was reinforced by Williams’ experience as a municipal planner where he had come to accept zoning as a right of government.

Williams’s belief in zoning without compensation was not only consistent with the Municipal Act, it was consistent with the original basis of British Columbia’s land laws. Those laws presumed an instrumental role for the government in determining how land

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570 Peterson had worked his way up within the Department of Agriculture, and had written a report recommending a farmland preservation program less than a year before becoming Deputy Minister on the eve of the 1972 election. Petter, “Sausage Making”, supra note 554 at 7, 8. Minister Williams and Pearson had both been planners, and had been jointly teaching at the University of British Columbia school of planning when Williams, already an M.L.A. since 1966, became the Minister of Lands, Forests, and Water Resources and the Minister of Recreation and Conservation. Williams immediately recruited Pearson as his deputy for the Lands portfolio. Interview of Norm Pearson, supra note 467.


572 Petter, Ibid. at 24 notes that a late draft of the Land Commission Act borrowed from the Municipal Act the explicit rejection of liability on compensation for zoning land as a reserve.
would be used as a means to determine the structure of society. They also relied on private property and the free market to organize society, within the parameters of the government’s initial allocation of land. The government granted land not on an absolute ideological principle in favour of private ownership, but as the means to an end: settling the Province as an agrarian society with a capitalist economy and upward social—i.e. class—mobility. Now that the goals of agriculture and settlement were colliding over the same, most desirable areas of land, it logically followed that government ought to reaffirm the importance of agriculture and to explicitly direct that lands obtained for agricultural purposes had to be used for those purposes. Minister Williams based his conception of the Agricultural Land Reserve on his background in municipal zoning and on the theories of a nineteenth-century economist, not on the colonial policies of British Columbia in the 1800s and 1860s. The zoning system, however, had emerged within the provincial land regime conceived in the 1800s, and the theories of Henry George had their roots in the work of political economists of his century, whose work influenced and was influenced by the vision of Edward Gibbon Wakefield. Indeed, George’s famous dictum was that “this, then, is the remedy for the unjust and unequal distribution of wealth apparent in modern civilization, and for all the evils which flow from it: We must make land common property.” For George, as for Locke, monopolization of land by individuals was the greatest evil. Like Wakefield, George saw government control as the solution. He saw land as the means by which government could engineer prosperity for all members of society, without eliminating private enterprise or, perhaps paradoxically, private ownership. It is the nature of that ownership that was at issue in the debate over the Agricultural Land Reserve.

Minister Williams won through with his vision of zoning without compensation.\(^5^7^4\) Had Minister Stupich's vision prevailed, the government might have had to pay farmers more than $1 billion—half of the 1972-73 provincial budget—in compensation for lost development rights.\(^5^7^5\) With the matter of zoning settled, the government had to decide how the Commission should operate. Andrew Petter writes of the “strong managerial function which Stupich foresaw for the [Land reserve Commission]” and for all the dirt departments. The Agriculture Minister felt that not only should government have a determining role in overseeing appropriate types of land use, it should be “an active instrument [and] take control over agricultural land in order to maximize and rationalize its use,” including subsidizing appropriate farming operations.\(^5^7^6\) This vision connects to the more interventionist role of government in the twentieth century, but went beyond the previous level of intervention, overriding private enterprise. Minister Williams’s vision was for a more “hands off” Commission: instrumental in legally defining appropriate uses of land, but laissez-faire in leaving individuals to use land within that framework. That vision prevailed for the Commission, but as the next part describes, the dirt departments of the 1970s wound up adopting a role somewhere between these two visions.

(7) Foreshadowing the 1980s: making the Province a forest

The most important aspect of the last major statutory change I will consider was the least noted at the time. Forestry, as the largest resource industry and the most noticeable in its effect on landscapes, had become the focus of most environmental activism. In 1975 and

\(^{5^7^4}\) Petter, “Sausage Making”, supra note 554 at 21-22.

\(^{5^7^5}\) Petter, “Sausage Making”, ibid. at 16. Williams relied on Pearson, with his background as a planner in the agriculturally intensive lower mainland region, to calculate this figure, of which over 700 million was for that region alone. Pearson also took charge of mapping out the first draft of Williams’s version of the Act, working closely with the Minister and with Bill Lane, an expert on planning law who was also the solicitor for the Municipality of Richmond.

\(^{5^7^6}\) Ibid. at 19.
1976 the Pearse Commission into forestry became a lightning rod for advocacy about the future of the forest, and so did the subsequent rewriting of the Forest Act. As in the 1940s, there was much debate about the future of the industry, but this time there were strong voices for preservation of the wilderness for its own sake, not merely as a resource for future harvest. Among the environmental groups were environmental lawyers, including West Coast Environmental Law Association, British Columbia’s the first non-profit group of lawyers devoted to environmental issues. These groups commented on the content and mechanics of drafts of the new Forest Act, generating political attention and recognition in the Legislature. Yet the provision that probably played the most significant role in reinforcing the economic use of land and limiting environmental victories to “big green blobs” of disconnected parks received little attention from environmental lawyers, and only one tangential reference in the Legislature.

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577 Forest Act, S.B.C. 1978, c. 23 [1978 Forest Act]. See Wilson, Talk and Log, supra note 6, especially c. 7, on environmentalists, the Commission and the Act. The government commissioned Peter Pearse to write a report on forest policy in June 1975, and he produced the report in September the next year. Peter Pearse, Timber Rights and Forest Policy in British Columbia: Report of the Royal Commission on Forest Resources (Victoria: Province of British Columbia, 1976) [Pearse, Forest Policy Commission Report]. Wilson, Talk and Log, supra note 6 at 44 comments on the environmentalist and recreational advocacy groups emerging at the time, and lists the seventeen at 349. One decade letter, 54 such groups made formal submissions to the Wilderness Advisory Committee during its two-year tour of the Province.

578 West Coast Environmental Law first opened in 1974, and continues to operate from the same address. Among its first publications is the first edition, in 1976, of Ince, Environmental Law, supra note 533.

579 British Columbia, Legislative Assembly, Official Report of Debates (Hansard), 31(3) (16 June 1978) at 2319 (Mr W.S. King), online: <http://www.leg.bc.ca/hansard/31st3rd/31p_03s_780614p.htm#02318>, referring to amendments proposed by West Coast Environmental Law.

580 Ince, Environmental Law, supra note 533 does not mention the provincial forest at all in his 1979 revision. His references to the Forest Act at 144, 163 are limited to the new regime for preventing forest fires, and for prohibiting the destruction of young trees on Crown land—measures to protect harvestable resources, not the environment for its own sake. “Green blobs” is a common term among current environmentalists who are dissatisfied with the emphasis on parks as the environmental “win” (a win many groups pursue, and many foundations fund) rather than broader and deeper change. Interview of Will Horter, supra note 269.

581 British Columbia, Legislative Assembly, Official Report of Debates (Hansard), 31(3) (16 June 1978) at 2369 (Mr A.B. MacDonald), online: <http://www.leg.bc.ca/hansard/31st3rd/31p_03s_780615p.htm#02369>. M.L.A. Alexander Barrett MacDonald does not explicitly refer to the Provincial forest, but he does capture the effect of the designation:

- Environmental protection and multi-use of forest land are important, including recreation, which is ... also one of our industries in terms of tourists, and yet under this bill almost all the power has been given to the chief forester, and the multi-use of land ... is going to have second
The change was the transformation of the old “permanent forest reserve” to a more restrictive “provincial forest.” The provincial forest strengthened the protection of the original reserves, which had designated lands to be used for timber harvesting and had prohibited crown grants and restricted other tenures. Land in the “provincial forest” could not be tenured at all under the Land Act without the approval of the Chief Forester, or under mining legislation except as allowed by Forest Act regulations. Section 5 of the Act also added an explicit code for the use of these lands: “a provincial forest shall be managed and used only for (a) timber production, utilization [...] (b) forage production and grazing by livestock and wildlife, (c) forest oriented recreation [i.e. the recreation sites the Forest Service still manages], and water, fisheries and wildlife resource purposes.” Deciding whether a particular land use fit these categories was up to the Chief Forester and the regulations under the Act. The forest reserve had become a forest-industry preserve.

It is the designation’s effect on land-use planning that made it particularly significant. The designation shifted control of planning processes to the Forest Service, and the Forest Service used the plans to enlarge the provincial forest, until most of the Province was designated. In 1978 the Lands Service was developing its first comprehensive planning process, the Crown Land Planning Program. The Forest Service initiated its own plan, the Deferred Areas Planning Program, with the goal of augmenting the provincial forest. The place under this bill to timber harvesting by the companies whose rights are being entrenched under the bill.

See supra note 321 and accompanying text.

1978 Forest Act, supra note 577, s. 5(5). Section 5(6) allowed rights of way under the Land Act, but disallowed tenure “for any other purpose [unless] the chief forester considers [the tenure] compatible with the uses described in subsection (4)”. The forest reserve was originally less restrictive, but it appears that cabinet subsequently increased the limits on other forms of tenure, so s. 5 may have been codifying cabinet practice. Pearse, Forest Policy Commission Report, supra note 577 at 28, 339.

Ibid., s. 5(4).

Cabinet designated provincial forest lands under the Provincial Forest Regulation, B.C. Reg. 562/78.

Interview of Brian Moen, supra note 209; interview of Greg Roberts, Retired Executive Director, Crown Land Registry Services; Director, Land Policy Branch; Planning Manager, B.C. Lands Service, 1978-2001 [Interview of Greg Roberts].
plans seem to have intertwined, and while the “CLaPP” did produce suitability maps to guide the regional Lands offices in making tenure decisions, the planning process wound up being dominated by Forest Service’s more concrete legal output, and the Forest Service won a commanding position in an internal struggle for control over planning among Lands, Forests, and Municipal Affairs. Even more importantly, the output itself ensured the dominance of the forest industry and the Forest Service in future land-use plans. Between 1978 and 1983 the provincial forest grew from 33% of all provincial lands—the amount that had been designed in forest reserves since 1927—to 74%. By the early 1990s, the figure was almost 85%. Enlarging the provincial forest, of course, did not enlarge the forest itself; it merely enlarged the area effectively zoned for forestry use. And that area was much larger than the real forest. Although agriculture, the industry that defined the original colonial vision and remained the lodestar of the Lands Service for more than one hundred years, had achieved zoning status first, the forest industry, which had in many ways come to define the Province, achieved the greater legal victory. The Agricultural Land Reserve was and remains a stricter zoning measure, but its location and relatively small size—barely 5% of the Province—made it a relatively minor measure in the conflict over wilderness preservation that was just getting started in the late 1970s. While developers and other opponents of the Agricultural Land Reserve complain that it is larger than the area of land

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587 The Ministry of Municipal Affairs, under Bill Vander Zalm, even drafted a provincial planning statute, the Land Use Act, that did not make it through the Legislature. Interview of Greg Roberts, ibid. As many of my interview subjects told me, Premier Bill Bennett cancelled all land-use planning programs in 1983, and planning and regional co-ordination went “underground” for several years.

588 Interviews of Brian Moen, supra note 209; Greg Roberts, ibid.; Bruce Sieffert, supra note 479. Pearse, Forest Policy Commission Report, supra note 577 at 28 says the 94 reserves in 1975 covered 75 million acres.

589 Crown Land Statistics, supra note 3 at 19, giving a total figure of 78.6 million hectares. With a total land base of 92.97 million hectares (excluding the 1.8 million hectares of freshwater area), the proportion is 84.5%.

590 Crown Land Statistics, supra note 3 at 11-13, citing a total of 4.7 million hectares. And see online: <http://www.alc.gov.bc.ca/air/air_main.htm>. The ALR is more than symbolic in environmental debates about urban sprawl, but it is the “war in the woods” that defines environmentalism in British Columbia.
truly suitable for agriculture, the gap is debatable and relatively small. By contrast, the provincial forest is more than triple the size of the land base practical for forestry. The B.C. government in 1994 estimated the "mature, productive" forest at 31% of B.C. land, and identified the area that is "productive, available and suitable for timber production" at only 22%. In the internal struggle for jurisdiction and influence among the land allocation agencies, the provincial forest was the capstone of the Forest Service's rise to power and autonomy. Indeed, the gap between harvestable forest and provincial forest is one measure of the power the Forest Act gave the Forest Service. The government describes the "[p]rovincial forests [as] multiple use lands," subsequent planning processes reveal that the multiple uses revolve around what is good for forestry and the Forest Service.

This part began with the Park Act and ended with a section of the Forest Act. They both became the two most significant instruments of the land-use plans that began after 1978. Of the statutes passed from 1965-1978, it was the Park Act that became the most significant legal mechanism for the environmental movement, despite the potential of the 1971 statutes I identified as the first "environmental" laws. However, the Park Act was a limited

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591 According to the government, on a 7-point scale for soil capability for agriculture, classes 1 to 3 are "capable of growing a wide range of crops" while class 4 requires "special management practices". Classes 1 to 3 comprise 1.6% of B.C. land. Class 4 adds 2.3%, but only 53% of the ALR is in one of these classes. Class 5, which includes 32% of the ALR, is rated as having "limitations that restrict its capability to produce perennial forage crops or other specially adapted crops" and covers 6.6% of the land base. Classes 6 and 7 are considered non-arable. Class 7, rated as "no capability for arable culture or sustained grazing", covering 67% of B.C. Source: Crown Land Statistics, supra note 3 at 11-13.

592 Crown Land Statistics, supra note 3 at 19-20. These figures include freshwater area; excluding it increases the percentage by one. The parks created in the 1990s will have changed these figures, but not by too much, since much of the new park land covered areas taken into account in the determination of "available and suitable".

593 Jurisdictionally, the Agricultural Land Reserve merely pits two functions of the Lands Service against each other: leases and crown grants for settlement and industrial development against agricultural tenures and sales.

594 A practical effect of that power at the planning table is that the Ministry of Forests had to agree to reduce the provincial forest to make room for new parks. The designation gave the Ministry leverage at the planning table.

595 Ibid. Protocols do allow licences of use for tourism and other relatively low-impact activities without explicit permission of the Ministry of Forests, but more substantial tenures require the Ministry's consent. I had a personal experience with the provincial forest in 2001, when as a manager in the B.C. Lands Service I applied to the Ministry of Forests to delete a parcel of land (treeless and long developed as a fish hatchery) from the provincial forest so the Lands Service could lease it to the Uchucklesaht First Nation.
mechanism. It protected a small proportion of the Province for recreation and tourism in the 1970s and 1980s.\textsuperscript{596} When the government more radically increased the total area under park designation in the 1990s, the process was rancorous and public, and while the total area reached 12\%, much of that is mountainous land unsuitable for forestry or mining.\textsuperscript{597} By contrast, the “provincial forest” designation, quietly grew through the 1980s to cover as much as 85\% of British Columbia, and gave the Ministry of Forests substantial leverage in negotiating any changes to land use, including the location of new parks.

These two statutes exemplify how limited was the transformation of land legislation in the 1970s. The gains, from a preservationist perspective, were small, and the legislation continued to reinforce its founding vision of land development. The analysis in this part, however, also reveals that much of the change taking place in the dirt departments was procedural rather than statutory. Part 2 will consider those changes, the emergence of a “land management” role in the B.C. government, and how transformative this new role was.

Part 2—From Administration to Management

The Environment and Land Use Act and the Committee it created were the catalyst for significant changes to the bureaucracy in the 1970s. While these changes began to separate the operations and decision-making processes of the dirt departments from the statutes under which they operated, the departments continued to operate within a legal framework that favoured development and use of land. Land allocation became much more complex between 1969–1978, but the land regime did not change substantially. This part explores

\textsuperscript{596} Wilson, \textit{Talk and Log}, supra note 6 at 184 cites the proportion of the Province under park protection as 4.77\% in 1976, 4.81\% in 1981, 5.06\% in 1986, after the Wilderness Advisory Committee’s work, and 5.63\% in 1991.

how the bureaucracy changed, starting with the ministerial co-ordination committees that initiated the changes, and continuing through the creation of the Ministry of Environment.

(1) Committing to co-ordination

It was land-use conflicts, not environmental advocacy, that initially steered the government towards a land-management bureaucracy. In fact, it was a conflict involving urban development and agriculture—the original goals of colonial policy—that led to the first initiative to co-ordinate the work of the various dirt departments.

Agricultural conflict and the need for co-ordination and policy

The following event in 1969 was one of two conflicts that led the government to create the Land Use Committee:

The Lands Branch had approved several applications for Crown Land in the Vanderhoof area for the purpose of clearing for agriculture. The [forest] land was [found to be] not suited for agricultural purposes and was beginning to be overrun by development.\(^\text{598}\)

The conflict was over the appropriate allocation of the land, which several of the agencies represented on the Land Use Committee felt should have fallen into their jurisdiction. The Land Use Committee concluded that the land should have been allocated to forestry. But it was not this after-the-fact decision that made this dispute important, it was the effect the dispute had on the bureaucracy. First, the dispute led the government to create the first formal inter-agency committee of dirt departments. Second, the Committee established the first inter-agency study, which produced a "resource overlay package for the Vanderhoof area, believed to be the [B.C. government's] first [...] resource management tool of this

type". The package’s maps showed the area’s “resource capabilities [...] for agriculture, forestry, wildlife, fish, mining, recreation, and water resources.”599 Third, the Committee used the Land Act to impose a moratorium on the “further alienation of the cleared land for development purposes” that set an early precedent for the later use of section 6 of the Environment and Land Use Act and the for Agricultural Land Reserve, of which these lands became a part.600

The Committee also established a set of premises for the study that reveal both the state of land allocation policy at the time, and the vision that was starting to emerge:

(1) The aim of the public lands policy is to enable the development of land to be carried out for social betterment and economic growth in the Province, giving attention to the protection of the ecological balance of the environment.

(2) That while it is recognized that ecological processes and many land-management problems are governed by geographic considerations and are not confined to legal land boundaries, the guidelines and procedures being followed in the studies deal at present with Crown land only.

(3) That, while wise development and management of land should be based on long-term socio-economic plans of the Province and nation, until such plans are available the decisions will have to depend largely on human judgement formulated through co-operation between the various interested parties in any local planning.

(4) That land use decisions must be based on proper and complete information, and when the necessary information is incomplete, co-operation and consultation between the various agencies involved is essential.601

The first premise indicates that the government had begun to be sensitive to concerns about ecology, but it is misleading in implying there were coherent land policies in place at the time. In fact, there was practically no policy for land disposition at the end of the 1960s, aside from general support for the economic use of land and for certain industries.602 By

599 Ibid.
600 Ibid. at 7. Approved in 1969, the moratorium took effect on 8 January 1970, as a reserve under the Land Act.
601 Ibid. at 6.
602 Interview of Tom Cockburn, supra note 293.
1969, government agencies were trying to cope with the growing scarcity of land and the resulting conflicts, but these were new developments, and were resolved, as the study suggests, through “human judgement” and “co-operation”.603 The new ministerial committee began to shift the agencies’ approach from ad hoc to planned and policy-based.

The fourth premise reflects the growing awareness of the need for information about land, without which plans and policies would be impossible.604 By 1969, British Columbia was several years into the Canada Land Inventory, a major project to assess and catalogue “land capability for agriculture, forestry, recreation, wildlife, present land use, and [to] pilot land use planning projects in each province.”605 The Department of Agriculture established the B.C. Land Inventory program in 1962, the year after the federal initiative began, and started the work in 1964.606 However, while the Forest Service and Department of Agriculture contributed to the federal project, the initiative was not a co-ordinated program across the lands departments.607 Not until the establishment of the Environment and Land Use Committee did the B.C. government begin to centrally manage the B.C. Land Inventory and ensure co-ordination of its efforts and sharing of its results.

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603 Ibid.; Havard, Confessions of a Land Inspector, supra note 280 at 70-75 implicitly acknowledges the lack of direct conflicts among land users, other than the loss of land with agricultural value. But in the 1950s and early 1960s, this loss appeared to be due more to the lack of agricultural use of those lands, especially in the north, than to the development of existing farmland or competing proposals for the same parcel of land.

604 Land agencies in British Columbia still see both the lack of detailed information about land and of the sharing of the information that is available as a significant hindrance in fulfilling their mandates. Interview of Phil Christie, Director, Land Management, Ministry of Transportation 2000-2007; Manager, Aboriginal Relations; Soil Specialist, B.C. Lands Service, 1990-2000 [Interview of Phil Christie].

605 The Canada Land Inventory Report No. 1 – 1965: the Objectives, Scope and Organization, 2d ed. (Ottawa: Canada. Department of Regional Economic Expansion, 1970) at 1. The report notes the origins of the project in a “Resources for Tomorrow” conference in 1961 that recommended a survey of land capabilities. As with so many land-use issues in British Columbia in the 1960s and 1970s, the impetus for the national study was the future of farming in the country.

606 Crook, Environment and Land Use Policies and Practices, supra note 598 vol. 1 at 21; vol. 4, Appendix to c. 4 at 17.

607 Canada’s leadership of the inventory is apparent in early reports on the project. For example, R.J. McCormack, The Canada Land Inventory Report No. 4 – 1967: Land Capability Classification for Forestry, 2d ed. (Ottawa: Canada. Department of Regional Economic Expansion, 1970) at 10-14 includes a report on regional class descriptions in British Columbia. Its lead authors are from the federal Departments of Forests and of Rural Development, working collaboratively with two B.C. government employees from Forests and Agriculture.
The Land Use Committee had no staff save one co-ordinator, but relied for support on a
Land Use Technical Committee of deputy ministers. Its role was to co-ordinate
information-gathering and decision-making among the departments. Some of its actions
suggested the potential for a broader mandate and more sweeping change. In 1970 it
recommended new legislation, including the Ecological Reserves Act and Environment and
Land Use Act. And in 1971, responding to concerns about excessive development of
lakefront properties, the Committee directed the Lands Service to reserve all land within 200
metres of lakes from lease or licence under the Land Act. This reserve extended the Lands
Service’s prohibition, in 1958, of the sale in fee simple of waterfront land, so it was not a
significant departure from past practice. What was different was the process: the Land
Use Committee approved a set of guidelines for the Lands Service to follow.

While these guidelines augured a new era of land-use policy, they were not typical of
the Committee’s work. In her review of decisions by the Land Use Committee and
Environment and Land Use Committee from 1969 to 1972, consultant Christianna
Stachelrodt Crook says they:

reflect a project-oriented approach to problems. This may well have been
perceived as the primary purpose of ELUC since it was dealing with specific
interdepartmental resource conflicts. [...] There are relatively few indications that
ELUC was beginning to develop a broad land management-oriented philosophy
[...].

608 History of the Lands Service, 1858-1971, supra note 71 at 26. The initial departments were Agriculture; Industrial
Development, Trade and Commerce; Lands, Forests, and Water Resources; Mines and Petroleum Resources; and
Municipal Affairs.
609 Crook, Environment and Land Use Policies and Practices, supra note 598 vol. 4, Appendix to c. 4 at 8.
610 Ibid. at 10; History of B.C. Land Service – 1986 Update, supra note 517 at 4. Since the metric system had not yet
come into effect, the reserve specified “10 chains” rather than 200 metres.
611 History of the Lands Service, 1858-1971, supra note 71 at 22. However, the new reserve applied only to lakes, in
response to political pressure in the Province’s interior, whereas the 1958 reserve of land sales applied to land
beside lakes, rivers, and oceans.
612 Crook, Environment and Land Use Policies and Practices, supra note 598 vol. 4, Appendix to c. 4 at 11.
The guidelines for lakeshore reserves were the closest the Committee went, in Crook’s view, to “policy-making on a fairly broad scale” rather “than the more typical project-by-project action.”

Adding environment to the Land Use Committee

From 1971 the Environment and Land Use Committee continued the work of the 1969 committee. The first change was a new member, the Minister of Health, possibly reflecting growing awareness of the link between environmental harm and human health. As Crook notes above, the new Committee remained largely a co-ordinating body, rooted in the existing legal and institutional regime in which the Land Use Committee had formed. This project-by-project approach continued throughout the 1970s, despite the broad scope of the Committee’s powers under the Environment and Land Use Act. The Environment and Land Use Committee neglected the Act’s powers to review land laws and hold public hearings. It did hold public hearings, but they were site- and issue-specific, responding to concerns about pollution and environmental damage, such as a seaside gravel operation in the rural community of Metchosin, and to competing claims for the use of land, as in the fledgling ski resort of Whistler.613

However, Crook does suggest that the NDP government allowed the Environment and Land Use Act greater scope, and invested the Committee with “broad sweeping powers [...] regarding both environmental protection and enhancement, and integrated resource management.”614 On the surface, this would appear to have been the case, as the political debate suggests. But in practice, the NDP did not substantially change the thrust or style of the Committee’s work, preferring to manage conflict rather than to overhaul the land-

613 Ibid. at 10-11.
614 Ibid. at 11.
allocation regime. In the 1930s the party—then the Co-operative Commonwealth Federation—had criticized the division and destination of the revenue from development, not the status quo of land development and resource extraction. In the early 1970s the party likewise focused more on reforming the social aspects of the forest industry rather than on the environmental effects of that and other resource industries. When it formed the government, the party did not reintroduce the Environmental Bill of Rights Act that one of its members had submitted as a private member’s bill in 1971 while in opposition. Instead it embellished but did not rethink the institutions, and it encouraged policy and planning within the legislative framework, but did not alter the frame. The land-use bureaucracy grew, and the government became more policy-driven, proactive, and interventionist in authorizing land use, but the intervention was not of the detailed, managerial nature apparently envisioned by Minister Stupich early in the government’s tenure. What is more, these changes were already under way in the late 1960s, and seem likely to have been similar regardless of the party in power from 1972 to 1975. Indeed, the most radical change—the creation of a Department of Environment—occurred in 1976, under the new Social Credit government.

615 See supra note 398 and accompanying text.
616 Wilson, Talk and Log, supra note 6 at 145-48 summarizes Minister Williams’s pursuit of structural reform of the forest industry. His account makes it clear that these reforms were not of an environmental, or environmentalist, nature. Seen within the overall framework of British Columbia’s land laws, the reforms, in both their aims and their more modest results, did not substantially alter the allocation regime.
617 Bill 101, the Environmental Bill of Rights Act, was a private member’s bill from New Democratic Party (NDP) M.L.A. Alexander Barrett MacDonald that was dropped from order paper in 1971 due to a legal technicality, but is unlikely to have reached third reading in any event, since private members’ bills rarely receive the support of the party in control of the Legislature. See British Columbia, Legislative Assembly, Official Report of Debates (Hansard), 29(2) (2 April 1971) at 858-59 (Mr A.B. MacDonald), online: <http://www.leg.bc.ca/hansard/29th2nd/29p_02s_710402p.htm#00858>. One year later, when the NDP controlled the Legislature, no one reintroduced the Bill.
618 Wilson, Talk and Log, supra note 6 at 113.
However, the structure of the land institutions did begin to shift more quickly and substantially during the NDP years, likely due to the party's more supportive view of governmental intervention. The remainder of this part briefly outlines these changes.

**Decentralizing government to manage land**

Regionalization is a complicated subject, with a history that receives scant attention in the secondary literature. Government agents were the first field staff of the government, and as collectors of applications for mining rights and pre-emptions, they were part of the lands administration. They also projected crown authority across the landscape, even before British Columbia became a colony. But they were not employees of the early Lands Service, and their work was more focused on collecting taxes, enforcing the law, and even selling liquor. As the government's land regime created officers such as gold commissioners, mining recorders, and magistrates, these other officers began to take on the agents' land allocation roles, and in 1863 the government first established formal district offices to enable quicker licensing of miners. Even after the government incorporated districts into the *Land Ordinance, 1865*, however, the Lands Service did not take on its own staff of regional officials. Instead, mining officials, government agents, and, primarily, magistrates received applications for pre-emptions. Such district officials as there were did not have any discretionary authority. It was the handful of lands staff in Victoria who formally authorized land uses.

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619 The B.C. government's current Website for the government agents describes them as "among the first officers of the Crown" who "played important roles in the formation of a spectacular province." British Columbia, Ministry of Labour and Children's Services, "Service BC: Our History", online: <http://www.governmentagents.gov.bc.ca/about/index.htm>.

620 On the Mining Districts Act, 1863 and its absorption into the Land Ordinance, 1865, see *supra* notes 131 173 and accompanying text.

621 For forestry, the decision-making was especially centralized during the colonial years, since lumber companies had to negotiate leases directly with the Governor. *Supra*, note 172 and accompanying text.
It is difficult to trace exactly the growth of district and regional offices in the twentieth century. The Forest Service established a greater regional presence in the twentieth century, as did Mines and Agriculture, with their research and dissemination functions. The Lands Service did not have any field staff of its own until 1947. Before then it relied on the Forest Service’s staff to check on applications for pre-emption and other forms of tenure. Until 1971 the Lands Service’s field component was limited to inspectors. Other agencies had a more substantial complement of staff in district and regional offices, but those employees had little authority over land tenure. The field offices were the domain of researchers, inspectors, measurers, and enforcement officers, such as the conservation officers and biologists in the Fish and Wildlife Branch. Under almost all of the land laws it was the ministers who had the authority to grant land rights, and while in practice they delegated their authority, they did so to officials in Victoria. The licensors and grantors of land and resource rights were not “in the field.”

One of the first steps towards regional offices with authority to grant land interests was taken by the agency with the most modest regional presence. The district offices of the Lands Service occupied borrowed space in the offices of the Forest Service and government agents until 1971. That year, Lands created three regional land inspection division offices in

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622 History of the Lands Service, 1858–1971, supra note 71 at 21. The Lands Inspection Division, under a Chief Inspector in Victoria, grew to include 17 district offices by 1971, but most of these were shared with other lands departments.

623 For a summary of the structures—but not, regrettably, of the specific licensing authorities—of the dirt departments in 1974-75, see Pearse, Forest Policy Commission Report, supra note 577 at 337-43; and see Crook, Environment and Land Use Policies and Practices, supra note 598 vol. 1.

624 Supra note 484 and accompanying text.

625 For example, the hunting, trapping, fishing, taxidermy, fur-trading, and guiding licences under the Wildlife Act were the minister’s to grant (s. 21), but s. 26 allowed the Director of the Fish and Wildlife Branch to grant permits for keeping “in captivity wildlife or mammals” and other matters set out by regulation under s. 79. Supra note 484, and see ss. 3, 4, 6, 31, 38, 39, 41 for the activities requiring licences.

626 The Fish and Wildlife Branch also had field offices with similar administrative boundaries to those of the Forest Service and other dirt departments, but called them regional offices. These offices held field staff who issued licences to hunt and fish and acted as conservation officers, but lacked discretionary authority under their statutes.
Kamloops (for the “Southern Interior” east of the lower mainland), Prince George (for the Province’s northern half), and Nanaimo (for the lower mainland including Vancouver, the south coast, and Vancouver Island). Then in 1973 the Forest Service and Fish and Wildlife Branch wrote a memorandum called *A Co-operative Approach to Total Resource Planning by the British Columbia Forest Service and Fish and Wildlife Branch*. The document, a joint project of the two agencies, was the most formal proposal within the government for advance planning of land use, and for a managerial regional structure for dirt departments. Less formal recommendations for regional planning had been made earlier, e.g., from land inspectors who found it frustrating to sign off on unsuitable uses of land because of the lack of prior analysis of the best use of those lands, and the lack of policy for allocating the land to that use. The bulk of the document, however, set out a proposal for the harmonization of the regional boundaries into which the two agencies had organized their district and regional offices.

While the focus of the memorandum itself on basic logistics such as travel, the push to harmonize administrative boundaries was about much more. The joint initiative behind this memorandum reflects the emerging need for co-operation among agencies, which stemmed from a growing awareness within government of the effects of development on, for example, habitat and water quality. The Fish and Wildlife Branch was becoming a

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629 The memorandum emerged from a seminar in Prince George to review a system of planning that the Forests district and Fish and Wildlife region had developed. *Ibid.* at 1; interview of Tom Cockburn, supra note 293.
631 The document spends surprising space on very specific concerns. For example, the memorandum bases the outline of the northern boundary between the Nelson and Prince George districts on considerations such as the “versatility of the deep-V inboard/outboard boats negating the need for a ‘marine fleet’ to cover the entire Mica Pond.”
champion of recreational use of land and began to promote greater co-operation as well as planning as a means of promoting land-use interests other than those of the dominant forest industry.\textsuperscript{632}

The proposal to create common regional boundaries percolated to the Environment and Land Use Committee. The result was a 1975 order to create standard "Resource Management Regions" for "all Provincial resource agencies to ensure [co-ordinated] management responsibility for the same geographic area."\textsuperscript{633} The order established seven regions, with "regional centres" in the cities recommended in the 1973 memorandum: Nanaimo (Vancouver Island region); Vancouver (Lower Mainland); Nelson (Kootenay); Kamloops (Thompson-Okanagan); Williams Lake (Cariboo); Prince George (Omineca-Peace); and Smithers (Skeena).\textsuperscript{634}

This new regional structure remained in place with relatively few changes for the next thirty years, despite discontentment among many regional staff about the inadequacy of the boundaries for their department's purposes.\textsuperscript{635} More importantly, the purposes in the order's preamble shaped the practices and policies of governmental institutions in the remainder of the 1970s. These purposes included:

\begin{itemize}
\item \textsuperscript{632} This championship did not initially create alliances with environmentalists, but rather with guide-outfitters and the hunters and fishers the Branch licensed. Even in the 1970s, the Fish and Wildlife Branch was focused more on protecting habitat for recreation and for commercial tourism than on preserving wilderness. Wilson, Talk and Log, supra note 6 at 91-93 outlines the gradual emergence of an ecological perspective within the old-school "hunting and fishing" ethos of the branch. Part 3 of this chapter returns to this topic.
\item \textsuperscript{633} O.I.C. 205/75 (23 January 1975), B.C. Reg. 32/75. The insertion of "co-ordinated" is speculative; it is not clear what the phrase "ensure management responsibility" meant, but elsewhere the order emphasizes co-ordination.
\item \textsuperscript{634} The order also harmonized the terminology of "district" (Forests, Lands, Agriculture, etc.) and "region" (Fish and Wildlife). The regional centres became the headquarters of the district offices, which continued to operate. Many of these offices were later consolidated into the regional centres, through the Forest Service continues to operate district offices. In 2007, after a few years of revision to the regional structures of the dirt ministries, there were 29 Forest district offices within a new structure of three regions. Interview of Tom Cockburn, supra note 293. For a list and maps of the current Forest districts, see online: <http://www.for.gov.bc.ca/mof/regdis.htm>.
\item \textsuperscript{635} Interviews of Tom Cockburn, ibid.; Allan LeFevre, supra note 463; Bruce Sieffert, supra note 479. There have, inevitably, been changes, such as the creation of a "sub-regional" office in Fort St. John due to the oil and gas boom in that area, and the move of the Kootenay office of several agencies, including the Lands Service, from Nelson to Cranbrook. But given the instability in ministerial structures starting in the later 1970s, the regional boundaries were something of a still point in a turning bureaucracy for three decades.
\end{itemize}
WHEREAS coordinated resource district boundaries should improve communications among resource managers, thus facilitating integrated management,

AND WHEREAS achieving effective integrated use and management of resources is a major policy objective of the Environment and Land Use Committee.636

The terminology is significant: an emphasis on co-ordination among departments, the repeated invocation of "management," and the goal of "integrated use." The latter term played an important part in debates about provincial land and resource planning in the 1980s and through 1990s, when conflicts among land agencies grew more divisive, usually over the dominance of forestry and the relatively modest space allotted to other uses. In this context, the term is important as a harbinger of both the planned allocation of land and the goal of enabling overlapping uses of this resource, which the government now recognized as increasingly scarce.637 The emphasis on co-ordination reflected the mandate of the Environment and Land Use Committee. In addition to this Secretariat, and the Technical Committee of deputy ministers, the growing Environment and Land Use Committee had established a supporting group of Regional Resource Management Committees.638 In 1973 the Committee created a Secretariat that grew by 1975 to more than 90 employees.639

(2) The Secretariat: "Junior, youthful" zeal amid the dirt departments

The Secretariat was initially a small group of experts in community and regional land-use planning, agrology, and biology. These experts came, in many cases, straight from

636 B.C. Reg. 32/75.
637 Consideration of the differences among the "dominant use," "multiple use," and "integrated use" planning models is outside the focus of this thesis. This thesis does note some use of this language in the 1970s and earlier—see for example the section on the provincial forest, above—but I am deferring a close study of their debatable meaning and value to a separate project on law in the land-use planning era.
638 By this time the Environment and Land Use Committee had nine members. Crook, Environment and Land Use Policies and Practices, supra note 598 vol. 4, Appendix to c. 4 at 11-12. The new ministers were those of the new Departments of Highways and of Economic Development, plus a "Minister without Portfolio" (i.e. without a department), who was responsible for Northern Affairs.
639 Wilson, Talk and Log, supra note 6 at 118.
university programs. Some had been planning students of Bob Williams and of his deputy, Norm Pearson. The organization began in May 1973 as a technical research support staff of 25 to assist the Environment and Land Use Committee. It was initially divided into a Resource Planning Unit and a Special Projects Unit. The addition in January 1974 of a Resources Analysis Unit comprised of the staff of the B.C. Land Inventory doubled the size of the Secretariat to 50 employees, and created the B.C. government’s first central office for land inventory work.

The names of the first two units were slightly misleading. The Special Projects Unit was to help the Committee “to deal with problems associated with specific forms of development,” but as Jon O’Riordan, the unit’s first director, says, “it was policy [creation], really.” The Resource Planning Unit took on the role of problem-solving and co-ordination, rather than the type of land- and resource-use planning that came later. With few exceptions, the unit’s function was that of a co-ordinator rather than a planner.

There were exceptions to this generalization, however. One was the first task force the Environment and Land Use Committee Secretariat formed, the North West Study. This project was the first of the provincial government’s land-use plans, and is significant for two other reasons. First, it reveals the limited scope of the later plans to alter the use of land in a given area. Second, the study demonstrates the secondary function of planning as a mediation exercise to assuage conflicts among land users and between government agencies. The Secretariat listed the goals of the project as “regional resource planning:

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640 Interview of Jon O’Riordan, supra note 429; interview of Norm Pearson, supra note 570.
641 Crook, Environment and Land Use Policies and Practices, supra note 598 vol. 4, Appendix to c. 4 at 15.
642 Interview of Jon O’Riordan supra note 429; Wilson, Talk and Log, supra note 6 at 118.
643 Crook, Environment and Land Use Policies and Practices, supra note 598 vol. 1 at 157, vol. 4, Appendix to c. 1 at 17. Unlike the other two units, the Resources Analysis Unit staff were existing government employees.
644 Ibid. vol. 1 at 157.
identifying objectives and available resource data.” Crook comments that the study “has often been criticized because of its enormous scope.” The new unit may have met resistance within government because of its ambition, which was closest in scale and purpose to the later land and resource planning projects of the 1990s, but was, in 1973, well outside the more site-specific and sectoral problem-solving the departments were accustomed to handling without the interference of a central agency. The process of the study was uncomfortable for the bureaucracies, but its goals for land use fit their development mandate. The Secretariat’s task group had to “identify [...] areas of conflict between forest exploitation and recreational and environmental concerns so that zones of exploitable timber may be recognized.” The second half of this statement is the pivotal part. The overriding goal of identifying zones for forestry, and identifying other areas for other economic activity, flowed from the origins of the study: “the economic malaise of the North West [due to] the faltering forest industry” drove the need for a plan. The new Regional District of Kitimat-Stikine had indirectly advocated for the government’s assistance by commissioning a study on the area’s economic development prospects in 1971. This sort of advocacy led to the government’s creation in 1973 not only of the task group but the B.C. Cellulose Company, through which it purchased several threatened sawmills in northwestern British Columbia and the Kootenays. Before the plan began, then, the provincial government was both literally and, in its relations with the regional district, politically invested in the region. So the plan’s primary goal was to support the dominant economic use of land, forestry. In a preview of later plans, the secondary goal was to find space for

645 Crook, Environment and Land Use Policies and Practices, supra note 598 vol. 4, Appendix to c. 1 at 28.
646 Ibid. vol. 1 at 163.
other economic activities, such as tourism.\textsuperscript{649} Environmental protection was not really part of the mandate, except as it created space for recreation and tourism.\textsuperscript{650}

The second significant aspect of the study, its mediation function, was apparent in the task group's terms of reference, which cited conflicts between forestry and recreation. The conflicts referred to inter-agency squabbling as much as to land users. In this case, the plan was partly a response to the rivalry between the Parks Branch and its former parent organization, the Forest Service. As economically useful land became scarce and the bureaucracy divided into more departments, such rivalries began to emerge more frequently in the late 1960s.\textsuperscript{651} Conflicts in the bureaucracy mirrored conflicts on the land, and created the need for more co-ordination. Land-use plans, as a result, became exercises in mediation within as well as outside government.

The two other exceptions to the lack of land-use planning were the Williston Lake and Valhalla plans.\textsuperscript{652} The first responded to problems resulting from the Williston dam, which in 1968 created British Columbia's largest lake. The second arose from recreationalist and

\textsuperscript{649} The emphasis on development and assuaging conflict to enable development is apparent in the study's five sub-groups: "(i) the Socio-Economic and Community Planning Study [...] to meet the changing resource development priorities; (ii) the Smithers study which has concentrated on resource and development potentials and conflicts in the Smithers hinterland; (iii) [an] Environmental Impact Assessment [on] a proposed logging road improvement [...] needed south of Houston; (iv) the Stewart-Cassiar Highway group [to help establish] a new link with the Yukon; (v) the Overview Study of the Power Potentials of the North West". \textit{Ibid.}

\textsuperscript{650} A later report of the government suggests how deeply entrenched the vision of development was. British Columbia, Cabinet Committee on Economic Development, \textit{The New Frontier: A Policy Approach to Economic Development in North West British Columbia} (Victoria: Province of British Columbia, 1982). Unsurprisingly, given the title of the committee that produced it, the document speaks only of development. It does refer to constraints, but does not name them, and at no point comments on intrinsic environmental values. "The Potential of the North West", at 10, enthuses about oil and gas production, ports for exporting coal, railway upgrades, the "massive expansion of the general mining industry." Its list of prospects tapers off with "Tourism and manufacturing as well as service industries can expect substantial growth and forestry and fishing will continue to be stable." The report is not a marketing document, not a plan, but its single-minded vision of development is startling after all the apparent changes in the 1970s. It is also ironic in retrospect, since most of the opportunities it extols did not come to pass, for both economic and environmental reasons.

\textsuperscript{651} By 1972, the tension between forestry and recreation (public and commercial) had become acute. Fifteen years after the parks branch had moved from its already isolated position within the Forest Service, the Branch's relationship with its former parent organization had moved from begrudging resistance to outright rivalry. Crook, \textit{Environment and Land Use Policies and Practices}, \textit{supra} note 598 vol. I at 52-54, citing Ric Careless's 1972 study in "Intra-governamental conflict" and recreation.

\textsuperscript{652} Interview of Jon O'Riordan, \textit{supra} note 429.
environmentalist opposition to logging in relatively “intact” part of the Kootenay region. These plans were more site-specific than the North West Plan, and Williston was also project-specific. They did, however, cover larger areas and involve more thorough analysis of the landscape and its uses than most of the Secretariat’s tasks. In the case of Williston dam, the analysis encompassed flooding damage, water use plans, and downstream effects on habitat and communities. And the Valhalla plan, although it responded to a specific controversy, took into account various uses, existing and proposed, of the land, and resulted in maps designating areas for protection, recreation, tourism, logging, mining, and other uses. Valhalla was different from the others, however, since it was less driven by and towards economic goals. It began as an economic as much as an environmental issue, but it led to one of the most significant environmentalist successes of the decade. As Jon O’Riordan says its source was “conflicts between wilderness, forestry, mining, and tourism in the Valhalla area. That [dispute and plan] later led to the Valhalla protection decision, which was one of the first protected area decisions made by the government” in the 1970s.

The Valhalla task group, and some preliminary work on logging on the Queen Charlotte Islands, foreshadowed the planning era that followed, with plans used to mediate conflicts and parks used to appease activists.

In her 1975 summary of the Secretariat’s structure, Crook offers two insightful observations about the lands bureaucracies. The first was flexible internal organization of the Secretariat, particularly its first two units, with overlapping roles and shared work. This structure stood in contrast to the less co-operative relationships among the dirt departments. She also notes the Environment and Land Use Committee’s choice of a

653 Interview of Jon O’Riordan, supra note 429.
654 Crook, Environment and Land Use Policies and Practices, supra note 598 vol. 4, Appendix to c. 4 at 17.
secretariat instead of a “provincial ‘super-department’ for the environment, or the assigning of special responsibilities to any one existing agency, or [...] to private consultants.”

Crook adds that in 1973 there had been a strong prospect of a Department of the Environment, containing “most of the interested disciplines,” with loyalties undivided among agencies and “a single set of priorities.” She then notes the disadvantage of such a department: Line agencies might view it “as absolving them of responsibility.” This last point implies the agencies were already entrenched in their allocation mandates, captured, not necessarily by a particular industry, but by the idea that the use they enabled through licensing was the best use of land. One might term this phenomenon, which B.C. government staff later referred to as the “silo effect”, as “legislative capture” or “mandate capture.”

Crook’s remarks in 1975 were prescient, since many of the interviews for this thesis outlined a power struggle in the 1920s and 1980s, in which the ministries fought for turf by becoming advocates for “their” land uses. The Secretariat was the first in a series of efforts to curb this silo mentality. It was seeking to spread its cross-disciplinary, cross-unit collaborative approach throughout the government. Crook quotes Minister Williams in a speech to the Planning Institute of British Columbia at the inception of the Secretariat (“ELUCS”):

ELUCS [writes Crook] was intended to aid ELUC in its role of “… co-ordinating major regional development … and broad land management … decisions on an

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655 Ibid. at 16.
656 I offer these terms in place of the term “regulatory capture,” which likely describes some of the entrenchment, but does not seem to fit. For the historical survey in this thesis, however, I have not engaged the literature on regulatory capture. Two (conservative) examples are: William A. Niskanen, Jr. Bureaucracy and Public Economics (Brookefield, Vt.: Edward Elgar Publishing Company, 1994); and a study more relevant to this thesis, but not as specifically about regulatory capture, Richard L. Stroup & John A. Baden, Natural Resources: Bureaucratic Myths and Environmental Management (San Francisco: Pacific Institute for Public Policy Research, 1983).
657 This power struggle was apparent throughout my own experience in the B.C. Lands Service in 1993 and from 1998 through 2002.
inter-Departmental basis and with the Regional Districts throughout the Province.” Further to this, ELUCS would “… act as a catalyst in drawing appropriate resource people from the Provincial Departments and Regional Districts into special task groups”.\footnote{Crook, Environment and Land Use Policies and Practices, supra note 598 vol. 4, Appendix to c. 4 at 15. Minister Williams addressed the Institute on 4 May 1973.}

Rather than being a super-agency with power over other departments or staff and powers pulled from those departments, the Secretariat was to co-ordinate teamwork among the departments. The goal was a collaborative approach to land analysis, allocation, and policy. The major change the New Democratic Party brought to the government’s land institutions was likely this approach, rather than an environmental agenda.

The collaborative, more analytical approach did change those institutions, despite their resistance. Crook lists 42 multi-agency task forces that the Secretariat co-ordinated under the aegis of the Environment and Land Use Committee between spring 1973 and July 1974.\footnote{Ibid, at 28-33.} These task forces usually amounted to problem-solving exercises for specific projects. They were also often very technical, such as one formed to set benchmarks for three disparate activities: the monitoring of vegetation in ecological reserves, regional input to the Agricultural Land Reserve, and the standardization of map work among all dirt departments. But others helped to foreshadow the land- and resource-use plans to come. These included the work of three project committees focused on forestry in the Nahmint watershed. Their work ran from April 1974 through May 1975, and produced an “integrated resource study.” Although the Forest Service published the study, Crook’s report notes that five government agencies worked on it, along with the federal Department of Environment, the University of British Columbia, and logging company MacMillan-Bloedel.\footnote{Ibid. at 33, task force number 38.} The study
was precedent-setting, but for environmentalists it was not an encouraging precedent. They saw the product of the study as a mere technical report dominated by the Forest Service.661

The Secretariat and institutional resistance to change

The task forces involved not only governmental departments, licence-holders, and universities, but newly formed Regional Resource Management Committees. These groups of directors and managers became a prominent feature of inter-agency co-ordination of land-use issues for a decade before the Premier disbanded them in 1983. They were, along with the task forces, the major component of the Secretariat’s effort to break through the mandate capture of the individual agencies.662

These committees were one of the few improvements that the dirt departments perceived under the new regime. It appears that many bureaucrats supported the Secretariat in principle, but their reservations were so numerous as to amount to a rejection of the concept. In her 1975 report, Crooks interviewed officials at 50 “line agencies” (including branches and services) within and outside the dirt departments. She starts her summary by noting “that the ELUC-ELUCS monitoring system for environment and land use matters presents a highly preferable alternative to the ‘laissez faire’ resource and land use decisionmaking of pre-ELUC times.”663 Among the named improvements were the emergence of “land use planning and resource management”, monitoring of the quality of decisions, increased contacts and compatibility among agencies, education (by the

661 Wilson, *Talk and Log*, supra note 6 at 170 cites the Nahmint study as a failure, partly due to later political intervention at the behest of MacMillan-Bloedel. The forestry focus of the study, I suggest, made it easier for forestry interests to override other uses the study ostensibly tried to integrate. See supra note 585 and accompanying text regarding the Forest Service’s use of legislation to control the first comprehensive planning initiative.

662 Wilson, *Talk and Log*, supra note 6 at 156 cites the “RRMCs” as “one of the secretariat’s proudest accomplishments.”

Secretariat) of the politicians, better liaison with Canada and private groups on environmental issues, and “due recognition” for the land.664

Despite these improvements, however, the dirt departments resisted the Environment and Land Use Committee Secretariat, starting a narrative of struggle between the attempts to centralize land-use control and the desire of individual agencies for autonomy that continues today.665 The intractability of this struggle reveals, I suggest, the deep cultural roots the early lands legislation put down in the dirt departments. Crook puts many of the criticisms of the Secretariat down to miscommunication.666 Communication may have been the problem, but there was more to the resistance than inadequate co-ordination. The subsequent history of land-use agencies in British Columbia reveals a constant tension between central policy-oriented or co-ordinating agencies and the so-called line agencies. Indeed, Crook’s list of complaints was uncannily familiar to me, echoing my own experience working for the Lands Service in the 1990s and early 2000s. The list of complaints is almost identical to complaints the dirt departments, and particularly their regional offices, throughout the 1980s, 1990s, and 2000s, have voiced about various central organizations, from ministerial policy branches to planning commissions to treaty negotiation teams.667 The complaints included: “uncertainty and concern over the role, objectives, priorities and jurisdiction” of the Secretariat; the Secretariat “does not communicate effectively with the line agencies”; it consults but then does not keep agencies in the loop; it (contradictorily) needs to have “a stronger decisionmaking position in its own right”; its “activities […] go beyond passive co-ordination into direct infringements of the line agency jurisdictions”; it is

664 Ibid. at 168-69.
665 Interview of Greg Roberts, supra note 586.
666 Crook, Environment and Land Use Policies and Practices, supra note 598 vol. 1 at 170.
667 Variations on this observation arose in almost all my interviews.
“assuming for itself some of the duties [of] line agencies”; it ignores the regional districts; line agency managers are perplexed by “divided loyalties [between the] demands of ELUCS and [those of their] own agencies; the Secretariat is “placing a work burden upon the line agencies for which they are unprepared” and under-funded the Secretariat; “it is difficult to relate to because its internal organizational structure is not readily apparent; its staff are “relatively junior or youthful”; those staff don’t understand “the internal workings, goals and problems of agencies [...] they are attempting to co-ordinate; and the Environment and Land Use Committee Secretariat “has not reached expectations.”  

It is easy, in retrospect, to regard these objections as rationalizations of a basic protection of bureaucratic “turf.” The truth is likely a combination of genuine practical difficulties with the co-ordinating agency and resistance to change. A more philosophical perspective on the role of the Secretariat comes from one of its first three directors. Jon O’Riordan is a land-use planner who went on from the Secretariat to work on environmental policy and assessment in the 1980s, then oversaw field operations for the Ministry of Environment in the 1990s before assuming command of a new Ministry in 2001 that served a similar central function to that of the Secretariat. From the vantage point of 2007 he says:

A lot of these [line] agencies were not used to having someone else guide their hands. If you look into these public administration journals, there is always a timeline to these administrative agencies [such as the Secretariat]. They usually last between five and seven years. That’s what happened. The line agencies become more uncomfortable with cross-cutting staff agencies. And at some point in time they rear up and change things, and that happened in 1980 [when the government disbanded the Secretariat].

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668 Ibid, at 170-84.
669 O’Riordan became an Assistant Deputy Minister in the Ministry of Environment from 1989 to 2001. From 2001 through 2004 he was the Deputy Minister of the Ministry of Sustainable Resource Management, a body that met with similar resistance from the line agencies whose planning and analysis (inventory) functions it tried to centralize. The government disbanded the ministry in 2005, dividing its functions and staff among the “dirt ministries” as the government did with the Secretariat in 1980. Interview of Jon O’Riordan, supra note 429.
670 Ibid.
In this view, the Environment and Land Use Committee Secretariat played the role of a catalyst for change, and its importance was not so much in its own work or how long it lasted as an institution, but in its effect on the practices and structures of the institutions it co-ordinated.

From one perspective the members of the Secretariat were merely "political firefighters"\textsuperscript{671}, issue-based and reactive more than prescriptive or proactive. However, by initiating plans in response to conflicts and working with the dirt departments to create policy to deal with similar situations in the future, the Environment and Land Use Committee Secretariat enabled the transition from the era of land allocation to the era of policy and planning—the era of "land management" that still governs the line agencies responsible for land and resources today. This change had been seeping into the government, most notably in the Forest Service after the 1940s, but it was still a change for all the dirt departments. The shift was the most dramatic in the Lands Service, on which I will focus in the remainder of this section.

Managing land—or complicating development?

What does land management comprise? Generally, the new "land management" approach involves more direct involvement of the land agencies in proposals for land use, including oversight of "management plans" for tenured areas, and requirements for the specific practices of the tenure holder. With advance land-use planning to identify the best uses of specific areas, this involvement begins before individuals apply for tenure, making land management a "proactive" process. Today the main components of management are analysis, planning, and policy. Analysis starts with a focus on the physical "capability" of

\begin{footnotesize}
\footnote{671 Interview of Allan LeFevre, supra note 463.}
\end{footnotesize}
the land, determined by scientific analysis, and moves on to consider the land's "suitability" for particular uses. Social and economic factors determine suitability, and the government determines them through research and consultation, ideally through a land-use planning process. The policies are based on a combination of the statutory responsibilities and the results of the plans, and guide the land managers in making discretionary decisions within their statutory authority. Policy, and the land management role, also involves the government in the plans for and progress of development of the lands.

In the 1970s most of this work was new to the provincial dirt departments. While there had been some analysis of lands, by various branches, there had been little co-ordination and standardization of analysis until the 1960s. The Environment and Land Use Committee Secretariat changed that. It organized a more coherent inventory of land and drew the departments into land-use planning. However, the operations and decisions of the agencies were not changing that much. Although planning led agencies into questions of public policy into which they had not explicitly ventured in the past, they continued to operate within laws that gave simple answers to those questions, driven by the goal of developing land. So the plans tended to become exercises in enabling development by balancing the interests of those who wanted to use land and assuaging the concerns of those opposed to development. The policy questions and concerns that received the least support from the new managerial approach were those of environmentalists.

The power of the original statutory framework for allocation is apparent in some specific examples of the shift to land management. The Lands Service, in a 1986 historical review, describes the period 1971-80 as a period of "expansion." The word fits, in describing the increase in staff, the creation of regions with, by the end of the decade, authority to make land-use decisions, and in the addition of such new projects as ecological reserves to its
portfolio. The decade was also one of turmoil for the Service, and was, perhaps, its final step down from the prominence of being the lead agency in one of the Province’s original bureaucracies to being, after 1975, obscured within a ministry with a different public mandate.\textsuperscript{672} The first change was an expansion of jurisdiction: the \textit{Ecological Reserves Act}, which built on the Lands Service’s existing powers to protect lands from development.\textsuperscript{673} But this Act was not much of an environmentalist milestone, nor was it a significant deviation from the Lands Service’s operations. Many of the reserves were in place under the \textit{Land Act} before the new statute came into force, enabling the Service to have 29 areas protected by the end of 1971, almost one third of the target for the end of 1975.\textsuperscript{674} While the Act provided greater protection, its emphasis on scientific research—and the Lands Service’s authority over it—made it almost inevitable that the protected sites would have more to do with local needs—recreation, research, and general “public space” amenity—than with protection. Many of the sites under protection have been developed or are surrounded by development,\textsuperscript{675} and in the 1970s there were accusations that those with political clout manipulated the location and boundaries of reserves to enhance their private lands or businesses.\textsuperscript{676} Although more significant than the greenbelt legislation, the \textit{Ecological Reserves Act} was trivial as an instrument of change; it had more to do with

\textsuperscript{672} The next section describes the transfer of the Lands Service into the Department of Environment.

\textsuperscript{673} The Lands Service had, as noted above, exercised this authority to protect land, not only with UREPS, but with reserves of lakeshore land from sale. See supra, note _ and accompanying text.

\textsuperscript{674} \textit{History of B.C. Land Service - 1986 Update}, supra note 517 at 4.

\textsuperscript{675} Of the 122 ecological reserves in effect today—63 of which were created by the end of 1975—almost all are less than 1,000 hectares in size, and most are less than 200. There are some large ones, such as the UBC Endowment Lands, but these are usually either \textit{de facto} community parks or cover foreshore used for recreation.

\textsuperscript{676} One such accusation appears in British Columbia, Legislative Assembly, \textit{Official Report of Debates (Hansard)}, 30(5) (25 April 1975) at 1745-46 (Mr. Chabot), online: <http://www.leg.bc.ca/hansard/30th5th/30p_05s_750425a.htm#01745>. Mr Chabot quoted from a newspaper article: “‘Vancouver environmentalist Howard Paish is the owner of the [hunting] camp and was one of four men involved in proposing’—he proposed his own private territory; can you imagine?—‘the establishment of the reserve and the conservancy [around his camp] to the provincial government.’” Although this accusation may have been more political than accurate, it reveals the apparent fact that ecological reserves had little to do with preserving ecological systems.
community amenities for an industrial society than protection of important ecological spaces. A recent news article’s comment on Camosun Bog in Vancouver applies to many of the ecological reserves: “It’s not about ecology—it’s about gardening.”677 And gardening was very much at the root of the Lands Service, in the colonial vision of British Columbia.678

There were several other changes in 1971 that mark a more managerial and policy-oriented approach to land allocation. First was the creation of three Regional Land Inspection district offices, preparing for the regionalization to come.679 Then two policies restricting sale and tenure: a moratorium on agricultural land sales, with the agency substituting a policy of leasing land for agriculture, with an option to purchase after sufficient improvements (i.e. farming); and, at the behest of the Land Use Committee, a reserve on any form of tenure on the shores of lakes.680 The former only reinforced the colonial vision of ensuring the proper use of land, and requiring applicants to earn it. The latter had more to do with the growth of tourism as an industry to encourage than with environmental protection, and in subsequent years, once plans identified areas suitable for recreation and tourism, the Lands Service opened up particular lakes to development and sale, though usually on a lease-improve-purchase basis. In 1972, policy continued to extend its reach and replace the Land Act as the source of specific rules for allocation. Taking what the agency described as “additional steps toward a management approach to land

677 Timothy Taylor, “It’s not about ecology—it’s about gardening” The Globe and Mail (27 August 2007) L5. The subtitle of the article is, “Restoring Camosun Bog has about as much to do with wilderness as a Victorian hedge maze”. It notes the restoration work begun in 2005 includes pruning pine trees “using bonsai techniques in order to stunt and gnarl them down to the boggy look desired.” Camosun Bog happens to be part of a park, not an ecological reserve, but the commentary applies to many of the reserves. Conversely, not all ecological reserves are treated this way, but comments in the Legislature in the 1970s suggest that many of them were created as community amenities, often at the behest of individuals or groups with political sway.

678 I refer to gardening both in the sense of the colonial vision of land as something to cultivate (for pleasure and profit), and of the actual British gardens in the early town lots as a means of stamping British society on the landscape. On the colonial functions of gardens, see Patricia Seed, Ceremonies of Possession in Europe’s Conquest of the New World, 1492-1640 (Cambridge, England: Cambridge University Press, 1995) at 25-31.

679 Ibid.

680 Ibid.
administration", Lands deleted the option to purchase land from all commercial and industrial leases. With the same goal, the Service began to require “security bonding for major developments on Crown land [...] to ensure that activities would be carried out in accordance with the approved proposal.” In the words of the bonds and the tenure agreements, the bonds gave tenure holders an incentive to leave lands “in a clean, safe and sanitary condition.” While one might interpret these bonds as a means of protecting the environment, that was not their purpose. The bonds’ function was to maintain the usefulness of the land—to prevent waste.

These steps towards policy and land management continued with the creation of a Special Services Division in 1973. This group, to become the Environmental Services Unit two years later, included a planner, ecologist, and engineer, responsible for “preparation of development plans for Crown land” and “review of project and land use proposals.” At the same time, the regional land inspectors appointed in 1971 began to participate in the Environment and Land Use Committee’s new Regional Inter-sector Resource Committees (renamed Regional Resource Management Committees in 1974), and to formally refer land-use applications to other agencies for comment. Land-use decision-making was rapidly becoming a more complicated process. In 1974, in anticipation of the Cabinet or other January 1975 creating regional offices, the lands service began to expand its three regional offices into a network of seven Resource Management Regions. These offices also gained a first measure of decision-making authority: they were able to license short-term uses of land and to disallow “applications for reasons other than conflicting status (e.g. applicant

681 Ibid.
682 Ibid. at 4-5.
683 Ibid. at 7.
684 Ibid. at 5.
685 Ibid. The history records at 7 the change of name of the co-ordinating committees.
ineligibility or inappropriate land uses) [without] referral to Victoria." The next year, the first full year of regional operations, also brought significant changes in Victoria. An emblem of these changes was the renaming of the Lands Branch to Land Management Branch, and its expansion to encompass five divisions. One of these was the Lands Service’s first Policy Division. It included an:

Environmental Services Unit [...] which provided advice regarding planning and biophysical aspects of Crown land management [and] Administered the Ecological Reserve[s] Act and the Green Belt Protection Fund Act, the latter formerly the responsibility of the Department of Finance.

Other divisions included a Land Status Unit, charged with carrying on longstanding efforts within the Lands Service to improve its status and survey information, as well as liaison with the land-capability analysis of the Environment and Land Use Committee Secretariat.

This “management” of land, however, did not deviate much in its outcomes from the status quo of the land regime. And as it created policy rules, the Lands Service continued to privilege agriculture, as in the 1975 policy that lands leased for agriculture “could be incorporated [into the Agricultural Land Reserve] at any time [...] at the discretion of the Agricultural Land Commission. The purpose of this policy rule was to discourage the inappropriate use of arable Crown land.” What lay behind this purpose was the misuse of

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686 Ibid, at 6. Formerly, land inspectors only had authority to turn down applications when the land in question was already licensed for a clearly conflicting use, or was privately owned. See generally Havard, Confessions of a Land Inspector, supra note 280. This new authority was the beginning of discretionary decision-making power for the regions. The Service’s executive planned to transfer this authority to the regions once they were established with a full complement of staff, and upon “modernization and centralization of the existing methods of record keeping and status map maintenance” within the Lands Service.

687 Ibid, at 8. The History of the Lands Service, 1858–1971, supra note 71 cites numerous milestones in the management of land-survey information, as does the 1986 Update to that history at 5.

agricultural leases for forestry, a concern that recalls the government's struggle to reconcile forestry with its vision of a settled, agrarian society.

By the mid-1970s, the Lands Service was immersed in reinventing itself as a land manager. However, none of the new policies or structures questioned the fundamental premise of the Lands Service as the developer of land. Rather, land management and regionalization reinforced the presumptions built into the first land laws: the earth is the property of humankind, and it is our duty to develop that land in the image of the society we want to create. It had never occurred to the colonial government to question whether humans were capable of managing land. And 120 years later, despite the emergence of ecological science (a science born at the same time as the Province), despite the problems encountered in developing British Columbia, and despite the consciousness-raising efforts, or at least rhetoric, of the environmental movement, the Lands Service founded its new conception of itself on the same premise. "Land management" only made that premise more explicit. The origins of the term in Roman seigneurial systems of estate management emphasizes the point that the government did not see the natural world as a complex environment with which to negotiate a relationship. Indeed, the creation of regions only

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689 The government continues to deal with this problem of misused agricultural leases, and is still fine-tuning its requirements for agricultural leases and sales to ensure the lessees are genuinely farming, rather than obtaining access to timber. Kockx, Electronic mail, supra note 222.

690 And behind this concern was the growing "turf war" between the Lands Service and the Forest Service. Land in the Agricultural Land Reserve was land not reserved for forestry. As noted, above, this internal struggle for jurisdiction grew more marked, and significant, in the late 1970s, when the "provincial forest" designation enabled the Forest Service to use land-use plans to more than double the lands over which it had effective control.

691 The government was not, however, oblivious to the difficulty of managing land. A report for the government emphasized the gap between the "present reality" in the government and the "theoretical ideal" of "monitor[ing] the entire biophysical system as a total of known resource for resource management purposes." Raymond L. Crook & Christianna K. Stachelrodt Crook, Towards a land use management philosophy in British Columbia (Vancouver: British Columbia Environment and Land Use Committee Secretariat, 1976).

692 "Land management" comes from Roman landholders' legal rules for allocating their property to others for cultivation or other economic use, in return for rent. This practice became known as land management, and the owner-occupier usually appointed a manager or steward to oversee the property. David Johnston, Roman Law in Context (New York: Cambridge University Press, 1999) at 61. The term entered English law in the manorial
increased this identification with development. The land officers and managers in the Lands Service, as in other dirt departments, referred to the applicants for tenure as "clients," rather than the broader public, let alone the land. However much the individuals in the government in the 1970s thought otherwise, the institution, its policies, and, most of all, its legislation treated land as a blank slate on which we were fully capable of drawing the society we envisioned. As Tom Cockburn, a land policy analyst since the early 1970s, said, the era of the Environment and Land Use Committee Secretariat did much to establish policy guidelines and "one process" for land-use decision-making, but "in reality few applications were turned down." The language and bureaucratic procedures had changed in the 1970s, just as in previous decades the relationship between government as allocator and private sector as developer had changed. Resource development had shifted into economic development, which had now become land management. But the relationship between the government and the environment remained the same, even when, the next year, the government of land became the government of environment.

A Department of (not for) the Environment

These words from the Legislature in 1973 finally bore fruit in 1976:

systems of landholdings inherited from the Romans. Frederic Seebohm, Tribal Custom in Anglo-Saxon Law, Being an Essay Supplemental to (1) "The English Village Community" (2) "The Tribal System in Wales" (London: Longmans Green, 1911) (reprinted South Hackensack, N.J.: Rothman Reprints, 1972) at 435 and 518-21. See also Oxford English Dictionary Online, s.v. "land", online: <http://dictionary.oed.com>. The roots of "steward" are in "ward" of the "house." Chantrell, Oxford Word Histories, supra note 10, s.v. "steward". As I noted at the start of chapter 2, many argue today that the First Nations in what is now British Columbia practised a form of land management that was more attuned to the land itself, rather than to the management (and encouragement) of land use. The more modest point I am making is that the land management of the 1970s was embedded in development of, not care for, the environment.

The "mandate capture" I refer to supra note 656 and accompanying text also reflects this identification of shared goals with the land users. The view of applicants for land as clients is consistent with colonial policy in which users of land were the instruments for developing a society. But the new regional offices fostered an even closer relationship with the land users, one that the government reinforces today each time it promotes an ethic of client service. In the contemporary context of consultation with First Nations over land use, at least one First Nations litigant has impugned the objectivity of a licensing agency that refers to an applicant as "the client": Blaney v. British Columbia (Minister of Agriculture Food and Fisheries), 2005 BCSC 283, 39 B.C.L.R. (4th) 263.

Interview of Tom Cockburn, supra note 293.
We need a department—I don't know if you'd call it the Department of the Environment, but that was one name that many of us have given it—a department that is basically responsible for the preservation of the environment, for all the matters to do with the wildlife, the recreation and the conservation areas; quite a separate department from that which is responsible only for the well-being of the forest industry.\textsuperscript{695}

The result, however, was less a department of environmental protection than a department of environmental allocation.

In 1976 the newly elected Social Credit government split the Department of Lands, Forests, and Water Resources into two departments: Forests and Environment. The Forest Service, already the dominant land institution in government, became its own department. And the Lands and Water Resources Services moved under a new banner: Environment.\textsuperscript{696}

The Environment and Land Use Committee Secretariat also moved into the new Department, operating as "a semi-independent wing" of it.\textsuperscript{697} The change was part of a general shake-up of the dirt departments.\textsuperscript{698} The Water Resources Service and the Lands Service became the Department of Environment. Meanwhile the Department of Recreation and Conservation merged with the Department of Travel Industry to become the Department of Recreation and Travel Industry.

\textsuperscript{695} British Columbia, Legislative Assembly, \textit{Official Report of Debates (Hansard)}, 30(2) (29 March 1973) at 1916 (Mr D.M. Brousson), online: <http://www.leg.bc.ca/hansard/30th2nd/30p_02s_730329p.htm#01916>. The speaker, David Maurice Brousson, was a one-term Liberal M.L.A., not part of the Social Credit government that enacted British Columbia's first environmental laws in 1971, nor of the New Democratic Party government that won the Legislature in 1972, less than one year after those laws had been passed.

\textsuperscript{696} History of B.C. Land Service – 1986 Update, supra note 517 at 9-10. This history says Lands and Water Resources became part of a Land and Water Management Division within the new department, alongside an Environmental and Engineering Services Division, which included the Surveys and Mapping Branch from Lands Service.

\textsuperscript{697} Wilson, \textit{Talk and Log}, supra note 6 at 156. A chronology on the BC government's Website, online: <http://srmwww.gov.bc.ca/clrs/about_clrs/bc_lands_chronology.html>, also describes the Secretariat as a part of the Department of Environment. The chronology is not precise in its details—for example, it describes the Department as having "branches": Lands Service, Water Resources Service, and the Secretariat, without acknowledging the partial merger of the two services, at least at the policy level.

\textsuperscript{698} The \textit{Government Reorganization Act}, S.B.C. 1976, c. 18 rearranged the bureaucracies of land, water, forests, parks, fish and wildlife, transportation, and tourism ("travel industry").
“Conservation” left the department’s name just as environmentalism was becoming a viable movement and was seeking champions within government.

The irony of these ministry names should be apparent. The Department of Environment contained the agencies responsible for promoting economic use of land and water. And the agencies with a mandate to protect land and conserve habitat remained in a department that, at least in the symbol of its name, was leaning further towards promoting the tourism industry. So while the Department of Environment may have signalled more environmental protection, the signal was misleading. Political scientists tend to see the creation of the Department of Environment as part of a concerted “containment strategy” of the new, more conservative Social Credit government that replaced the NDP. Jeremy Wilson suggests that the government “moved to bring more forest land under MOF [Ministry/Department of Forests] control, and starved or killed agencies that might have led a shift to the broader, multiagency conception of land use planning.” Although he argues that any strategy to contain environmentalism was at most semi-coherent, he convincingly describes the Social Credit government’s resistance to environmentalists and its eagerness to support development and the forest industry in particular, noting as an example the government’s decision to compensate forest companies for forest lands moved into parks.

699 The Water Resources Branch did not merely license water use; it was also responsible for the Pollution Control Act. But as part 1, above, explains, this statute was designed to enable land use. It was a regime for licensing the right to pollute — and a weak one at that.

700 The Parks Branch and the Wildlife Branch were, however, still tenure-granting agencies, in the form of park use permits, and hunting and fishing licences.

701 Ibid. at 150.

702 Ibid. The government “codified the rules on compensation to tenure holders losing timber when new parks were created.” This type of compensation continues in the 2000s to be a source of contention between environmentalists and the government. It stands in direct contrast to the attitude of Bob Williams, when he opposed compensation of farmers affected by the Agricultural Land Reserve (supra note 572), and contradicts not only the government’s instrumental role in land law, but the basis of the forest management licence agreements the government negotiated in the 1940s and 1950s (supra note 407).
Although social containment may have been a factor in the changes in 1976, and the government's leeriness of planning and environmental concerns no doubt caused it to "starve" the agencies with mandates that were not focused on development, I suggest that the land laws themselves played a greater role in containing a potential environmentalist transformation of government. First, the Department of Environment did not in fact contain the land-protection bureaucracy; it did the opposite. This change intersected logically with the new emphasis on "land management." Government now saw land as something to be managed, not merely allocated. Environmentalists were demanding greater care and analysis of land, emphasizing the complex ecosystem, the "environment." It makes a certain sense to give charge of this "environment" to the land managers, and to link them more directly to inventory keepers and co-ordinators in the Secretariat. The Department of Environment was, then, wholly consistent with the history of the Lands Service, the dirt departments, and the land laws.

Second and more specifically, the restructuring was not significant break from the land regime under the NDP government. It seems likely the New Democratic Party would have carried out a similar restructuring, had it stayed in power, just as it is likely the Social Credit party would have expanded the co-ordination, inventory, and planning work of the dirt departments, had it won the 1972 election—since, after all, the Social Credit government

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703 Nor was the idea of a Department of Environment. In 1973 Minister Bob Williams responded to the statement quoted at the start of this section, supra note 695 at 1916-17, by saying: "The question of environmental matters is something that's been under consideration by the Government since we came into office. We've reviewed the actions of other provincial administrations and some American states [...] so the question of establishing another department of government or integration with a department of government is still under active consideration. I accept the concern with respect to separation between the resource departments and environmental protection. [...] There's no question about the policy of the Government; it's more a matter of timing and dealing with other priorities." With the plethora of land disputes demanding the government's attention every day during its term (Interview of Norm Pearson, supra note 570), it is not surprising the timing and priorities did not align to enable it to create a separate department for the environment. The more important point is that the department would likely have been similar: an "environmental" department that really was a "resource department." See also Crook's comments on talks in 1973 about a Department of Environment, supra note 655 and accompanying text.
of 1975 retained the Environment and Land Use Committee Secretariat and does not seem to have attempted to restrict its functions. There would have likely been a difference in the degree of change if the elections had turned out differently, but probably not the direction of that change.\textsuperscript{704}

Third and finally, as this part of the chapter has laid out, the work of the Environment and Land Use Committee Secretariat was largely driven towards development, just as the Environment and Land Use Committee interpreted its statute in a manner that supported development. It was not the Social Credit government of 1976 that contained environmentalism, but the institutions the government established at the start of the decade and expanded over the next five years. And it was not those institutions that chose to set a tone of developing land and treating environmentalism as just another land-use demand. It was the land laws James Douglas propounded in the colonial vision of the nineteenth century. These laws continued to frame the operations of the dirt departments, however more sophisticated those operations had become, and continued to drive the goal of the operations.

Part 3 — Environmental activism and land law

In 1976 British Columbia had its first Department of Environment, but not its first department for the protection of the environment. And the "protective" functions of government were in a department that in both its name and operations was focused on (recreational) land use and promoting industry (tourism). This thesis has studied how the

\textsuperscript{704} The Environment and Land Use Committee Secretariat lasted, in fact, longer than later co-ordinating organizations such as the Commission on Resources and Environment, in the early 1990s, and the Ministry of Sustainable Resource Management, in the early 2000s. They both lasted only four years, and the government that eliminated them was the same government that created them. See Jon O’Riordan’s comments on the natural life span of such agencies. \textit{Supra} note 669 and accompanying text.
vision of land in British Columbia as an industrial resource has been built into the
Province's land laws since its founding as a colony. This part argues that the land laws, in
turn, built the vision into the society, and continued to do so during the environmentalist
era. The law that emerged from colonial policy grew to play an instrumental role of its own
in shaping the new "environmental" and "management" policies of the 1970s. First I will
consider the conservation and recreational pressures that came together as an
environmental movement in the 1970s. Then I will consider how the era of land-use conflicts
merged fortuitously with these conservationist and recreational pressures to capture the
government's attention, and how the land laws shaped the government's response, and the
goals and tactics of the advocates themselves.

(1) Roots of pressure: conservation and recreation

"Conservation and preservation" appeared in B.C. land law as early as the 1912 Forest Act in an illuminating way: in the long title of the statute, and in a relatively obscure provision on which the government did not act for fifteen years. Titles have symbolic value, but are sometimes misleading. And so it was in this case, in two senses. The statute had only one conservationist provision, the forest reserve, and the reserve was to conserve land for the logging industry. As with the reserve, so with conservationism in general: ensuring land remains a sustainable resource so industry, jobs, and the prosperity of communities could continue. The apotheosis of conservation is found in the forestry debates of the 1930s and 1940s, and the regime of forest management licences and sustained yield those debates produced.

705 Forest Act, supra note 309, s. 12. The long title was An Act respecting Forests and Crown Timber Lands, and the Conservation and Preservation of Standing Timber, and the Regulation of Commerce in Timber and Products of the Forest
706 Supra note 414 and accompanying text.
Recreation in British Columbia has a history more allied to preservationism, but under the rhetoric of most recreational advocacy—for parks and for wildlife protection—is the familiar ethos of land use. Early advocates of parks such as the B.C. Mountaineering Club used the word “preservation”, as did parks officials when they spoke of the impulse behind parks. But the rest of their language was of use. The hiking clubs wanted accessible, amenities near urban centres. And the government wanted a tourism industry. Both wanted roads and trails and camping facilities, for commercial and non-commercial users.

The meaning of conservation began to blur in the latter half of the twentieth century, overlapping with the desire to protect the environment for its own sake. And the growth of recreation as an activity bred a greater love for and appreciation of British Columbia’s natural beauty, which in turn prompted greater pressure for the protection of nature, even if it was inaccessible for recreation. But how did these pressures begin to organize as a movement? Jeremy Wilson outlines this process in *Talk and Log*, tracing the establishment of small outdoors groups and their gradual organization into regional, then provincial groups. These groups were initially local clubs of hikers, hunters, and fishers, and were focused on organizing activities. Over time, as settlement spread and the Province began to establish a parks system, local groups began to share information with each other. This communication led to local, regional, and, eventually, provincial advocacy for land to use. Wilson encapsulates this history of the “fish and wildlife, naturalist, and outdoor recreation parts” of the “loosely organized” wilderness movement:

The first fish and game clubs appeared in the 1880s, and the province-wide federation that was to become the BCWF [Wildlife Federation] took shape shortly after the Second World War. Federation quickened the wildlife conservation movement’s evolution from one preoccupied with regulatory issues (such as the size of bag limits and the length of hunting seasons) to one concerned with a broad array of environmental and natural resource issues. Naturalist and alpine clubs appeared prior to the First World War. Although groups such as the BC
Mountaineering Club and the Natural History Society of BC did campaign for the creation of early provincial parks such as Garibaldi [created in 1920], these groups were generally slower than their fish and game counterparts to gear up for concerted political action. The first steps in this direction were taken in the 1960s with the establishment of province-wide coalitions. [...] Naturalists followed a parallel path, establishing the BC Nature Council and then the FBCN [Federation of B.C. Naturalists]. In both instances, greater emphasis on environmental advocacy followed federation.\(^707\)

It is unclear how much these groups contributed to the creation of particular parks, but they do seem to have played a role in Garibaldi Park, and environmentalists credit the Vancouver Natural History Society’s efforts in 1937 as a factor leading to the creation of the Province’s largest park, Tweedsmuir South and North, which has become a significant amenity for northern resource towns.\(^708\)

Wilson goes on to lay out a more detailed summary of the growth of wildlife, mountaineering, and environmentalist groups into groupings of advocates for parks and other forms of protection of land.\(^709\) The most salient conclusion from his analysis is that the goals of these groups were not originally the protection of the environment for its own sake. Broader preservationist goals only began to appear in the constitution of, for example, the B.C. Wildlife Federation in 1966, but even then it described land and water as “outdoor recreational resources”. This language of land as a resource colours the Federation’s call for protection against and awareness of “the dangers of land, water and air pollution” with the tone of its earlier constitutions, which advocated “protection of [B.C.] waters, forest and soil for the purposes” of hunting and fishing.\(^710\) But the size of the Wildlife Federation and

\(^707\) Wilson, *Talk and Log*, supra note 6 at 43-44.

\(^708\) Paul George, *Big Trees not big stumps: 25 years of campaigning to save wilderness with the Wilderness Committee* (Vancouver: Western Canada Wilderness Committee, 2006) at 468 [George, *Big Trees*]. This date appears in a useful “chronology of the key events pertaining to the environmental movement” in British Columbia at 467-97. Note that Tweedsmuir North and Tweedsmuir South Provincial Park (1938-39) form, together, the largest park today, at 981,000 hectares, but that Hamber Provincial Park, in 1941, was larger, at 985,000 hectares. The government cut Hamber to 22,500 hectares in 1961 to 22,500 hectares. *Supra* note 452.


\(^710\) *Ibid.* at 99.
Federation of B.C. Naturalists prepared the ground for three of the requirements of an effective advocacy movement: widespread membership, co-ordinated communication, and leadership. To the extent that they contributed to the creation of new parks and of a culture of outdoor recreation, they also helped, some argue, to raise a generation of outdoor recreationalists who, in the words of social historian Veronica Strong-Boag, grew from children who camped in parks to become the “citizens who, thirty and forty years later, were committed to saving the Stein and the Carmanah Valleys from destruction and insisting that governments expand the number of protected wilderness areas.” This generation, she goes on, produced a generation yet more “intolerant of the environmental costs of economic development.” So the recreationalists, while pursuing their own land-use goals and economic interests were sowing the beginnings of a new social movement that began to come of age in the 1970s.

The growth of recreational groups and coalitions in the 1950s and 1960s led to corresponding changes within the B.C. government, including the creation of the Department of Recreation and Conservation in 1957. As chapter 3 explains, the Department was a consolidated agency to manage and promote provincial parks, fishing, hunting, and tourism. It housed the Parks Branch and the Fish and Wildlife Branches, which in the later 1970s became the focus of much environmental advocacy. I have noted above the tensions between development and protection that emerged within these branches and between them and other agencies such as the Forest Service. Chapters 3 and 4 summarize the


712 Supra note 651 and accompanying text.
history of parks and of the Parks Branch. Jeremy Wilson's history of its partner in the Department of Recreation and Conservation is illuminating:

The Fish and Game Branch (after 1966, the Fish and Wildlife Branch) was a founding component of the Department of Recreation and Conservation in 1957. The branch had a long history. From 1905-10, a game protection unit existed as part of the Department of Lands [...] . From 1910-57, fish and game administration was the responsibility of the attorney general, with day-to-day operations supervised by the provincial police during the 1918-29 period, by the game commissioner between 1929 and 1934, and by the Game Commission between 1935 and 1957. Before 1945, the efforts of these officials focused primarily on regulation of hunters and anglers through the setting and enforcement of bag limits, season lengths, and other rules. This perspective changed after the commission started assembling a staff of university-trained biologists in 1947.

Although this transition [...] resulted in some long-lasting tensions between the enforcement (game warden) staff and the “new-boy” professional biologists, the [...] biologists broadened the agency’s perspective [and enabled the] assembling [of] evidence [...] of the negative impacts of resource development. In the first decade after the Second World War, fish and wildlife officials were fairly sanguine about the likely impact of the new forest policies. For example, [...] the Game Commission’s 1955 brief to the [second] Sloan Commission [on forestry] concluded: “Logging practices generally have a beneficial effect upon wildlife [...] .” By the mid-1960s, however, branch officials were arguing that the impacts of logging were highly complex, varying from positive to devastating.713

The Fish and Wildlife Branch was undergoing an internal struggle by the 1970s that is visible in the language of its statute in 1966, when the Game Act became the Wildlife Act. I will return in the next section to its difficult relationship with environmentalists in the 1970s.

Before turning to the intersection of recreationalism, conservation, land-use conflict, and land law, I want to reconsider these histories of recreation and conservation in a way that draws on another element of chapters 2 and 3, the role of private property in the development of the Province. This thesis has argued that the primary purposes of British Columbia’s provincial parks had been economic. Parks were symbols of the Province’s resource wealth and at the same time resources for a tourism industry. The importance of

713 Wilson, Talk and Log, supra note 6 at 91-92.
the parks, most of which were inaccessible to most people, as recreational spaces was not significant until the 1950s. I would like to complicate this argument by drawing on a different aspect of the economics of recreation and parks: their value as an amenity to urban land. Perhaps paradoxically, private ownership helped to foster a demand for increased public ownership and control of surrounding lands, in two ways, first, to manage and conserve industry, and second, to create and maintain amenities for urban centres. On the first point, consider the mid-century debate over forestry. This debate was largely a fight to preserve the industry, but recreational interests also played an important part. In some accounts of that history, the public began to worry about deforestation of private lands, and the effect of the loss of beautiful natural landscapes on the recreational values and tourism opportunities in their communities. This perspective bolstered the call for the maintenance of public ownership of land and for greater public control of both private and public forests, and resulted in forest management licences, under which the provincial government had the authority to set rules for logging regardless of the ownership of the land within the licence.714

Through the first half of the twentieth century most of B.C. society saw the resource industries as the foundation of the economy, and connected the social good with what was good for industry. But as the Province became more settled, communities began to think about the value of their property in a more complicated way. Those living in resource-dependent towns saw, in the 1930s, that the abundant resource was not as abundant as they had believed, and called for governmental “management” of forests to ensure the resource

714 Interview of Will Horter, supra note 269. This account of the debate behind the mid-century forestry reforms is not entirely consistent with Wilson, “Forest Conservation, 1935-85”, supra note 378. Wilson emphasizes the debate over conservationism vs. laissez-faire industrial use. It may be that contemporary environmental activists such as Will Horter overstate the extent of the public’s reaction to the destruction of wilderness. The debate over forestry did, however, help what Wilson calls the wilderness movement to coalesce, lending credence to Horter’s argument.
That advocacy sought a continued source of income for these communities. Then as the communities grew more affluent in the 1950s, they also began to see the value of the landscape surrounding them to their own properties and lives. The beautiful natural landscapes of the Province provided a recreational amenity to these communities, as well as source of increased value in their private property, and a future source of income through the growing tourism industry. The current simplification of this changed way of viewing the land tends to be called “NIMBYism”, for the “not in my back yard” reaction to development proposals close to where people live, but with this negative impulse also grew the positive impulse to protect and enhance land, through parks and, later, ecological reserves and reclamation projects. This desire to preserve, however, remained rooted in the idea of improving land on which the Province was founded. While citizens were discarding the idea of pristine nature as waste land, they were accepting the premise of improvement.

So one source of pressure for change in the land allocation regime was the primary product of that regime: a settled society, with increasing affluence, particularly in the period after the second world war. With affluence came the desire for leisure, initially among only a small group of wealthy citizens who could afford to travel to parks, but eventually, as parks spread and transportation systems made them more accessible, among a broader spectrum of the population. Hunting and fishing became sports rather than subsistence, and hiking, bird-watching, and wildlife study became more widespread practices. At the same time as a broader spectrum of British Columbians began to seek recreation outdoors and to see the natural landscape as an amenity, the growth of the economy and population was ushering in another change: conflicts between land uses.
(2) Conflict catalyses the pressures for change

The land-use conflicts of the late 1960s had been in the making for decades, as industrial and urban expansion began to reach the limits of the land base. Outdoor recreation added a further demand on the land. Tourism became in the 1950s part of the government's strategy for economic development, and commercial and non-commercial recreation gained a department to champion their causes. The conflicts played out on the land itself, among users, and within the bureaucracy.715 The Parks Branch, no longer tucked into the Forest Service, restructured the parks, reducing the overall area protected, but increasing the number of parks—and the number of places for potential conflict between recreation and industry.716 Meanwhile, the Tourism Council began to actively advertise the wealth of the Province's park system and to work with the new Department of Highways to improve access to them.717 This division of the lands bureaucracy into several new departments was a challenge to the dominance of the Department of Lands & Forests, which was already forming internal lines of conflict by the 1950s, as the economic dominance of forestry overshadowed the longstanding importance of agriculture, and the Forest Service sought greater protection of its forest reserves from land tenures and sale. Each dirt department was becoming an advocate for the types of land use it authorized. Government reports from the late 1960s reveal the increasing friction over jurisdiction and vision for land use. The Forest Service, for example, prepared a report to the Legislature's select standing

715 See supra note 651 on conflict between recreation and forestry, and the Parks Service and Forest Service.
716 This process of rationalizing the parks system had begun earlier, but the marketing of and advocacy for parks grew with the creation of the Department of Recreation and Conservation in 1957. Youds, B.C. Park System, supra note 433 at 81 quotes a parks official at the 1953 Natural Resources Conference, explaining the recent move to creating small parks, and saying, "mistakes were [...] made and in a few cases areas chosen which might be more suitable for other uses. [...] We have implied a good measure of recreational potential will be within these parklands. In that case, our imposing park acreage, to be significant, must undergo a redistribution of area."
717 Department of Recreation and Conservation Act, supra note 455, s. 12(a) gave the Council the duty to "stimulate and co-ordinate the activities of all [...] public or private organizations, engaged in developing [...] tourist traffic", and 12(b) the duty to "seek the most favourable representation of the Province to the public for tourist purposes." Youds, B.C. Park System, supra note 433 at 83 points out the growing effect of advertising by 1957.
committee on forestry and fisheries in 1969 regarding conflicts between forestry and mining. The report responded to an earlier report citing "damage [...] to the forest and grazing resources [...] by Geophysical Mining." The report outlines instances of trespass on forest lands by miners, and remedies such as penalties. Among its recommendations were legislative amendments to more narrowly define the rights of miners and to clarify the authority of the Forest Service to oversee cutting for mines and mining roads, as well as notice to the mining industry of the need for greater care in planning their operations. It also emphasizes the need for co-operation among the departments responsible for forestry, mining, and recreation.

This growing perception of internal conflict among departments, highlighted by disputes such as the one over agricultural lands in Vanderhoof, prompted the creation of the Land Use Committee in 1969. The Committee did not end the conflicts, of course; it merely managed them. Over the early 1970s, the disputes grew in number and political profile. And the process the government adopted to manage the conflicts provided an opening for environmental advocacy. Most of the conflicts in the 1970s, however, such as that over the Valhalla mountain range, caught the government's attention because they started as conflicts among land users. The environmentalist aspect of these conflicts was not the government's central concern. But the planning process the government established provided an opening for recreation groups and local residents to ally with tourism.

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718 British Columbia, Department of Lands, Forests, and Water Resources, Report to the Select Standing Committee on Forestry and Fisheries Regarding the Effect of Mining on the Forest Resources (Victoria: Province of British Columbia, 1969) at 1.
719 Ibid, at 6-7.
720 Ibid, at 1.
721 Supra note 598 and accompanying text.
722 Supra note 653 and accompanying text.
businesses into an environmental campaign. And the land laws provided legal traction for their advocacy, in the form of a growing range of protection measures.

The Valhalla plan, which became an environmental landmark as the first provincial park created in response to activism, shares characteristics with two other precedent-setting campaigns that predated it: the Pacific Rim National Park Reserve, which Canada established in 1970, and the Purcell Wilderness Conservancy, that the Environment and Land Use Committee created in 1974. The Sierra Club of British Columbia was formed during efforts of Tofino residents—both landowners and those in the draft-dodgers’ tent community on Long Beach—to protect the area from logging. The Club’s history says: “There were no Canadian environmental groups working on forest and wilderness issues at that time”. It portrays the campaign as the first modern wilderness-environmental campaign in British Columbia, if not Canada. A similar claim is made for the Purcell Mountain, except in this case it is the B.C. Parks Service making the claim. As with Valhalla, the “citizen action” was originally advocacy from hunting groups and tourism operators. In all three of these cases, a mix of interests—landowners, recreationalists, tourism businesses, and preservationists—worked together for a mutual goal: an area protected from forestry or mining.

Campaigning through, or into, law?

Three implications of these campaigns are of particular interest to my study of the legal system for land use. First, the new environmental movement was channelling itself into the

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724 For a summary of this campaign, see Wilson, Talk and Log, supra note 6 at 103.
726 Supra note 535 and accompanying text.
only mechanism for protecting a large area of land—parks.\textsuperscript{727} Second, that mechanism was very much part of the existing regime. Although in the late 1960s the Parks Branch did begin to adopt the language of ecology and biological diversity, and began to show "[s]ome signs of sensitivity to the role the park system could play in environmental preservation", parks were for recreation and tourism.\textsuperscript{728} The third implication draws on the first two. Parks, I suggest, provided a legal outlet for demands for change that did not challenge the status quo at all. Instead, parks helped to draw environmentalism into the status quo, encouraging alliances among environmentalists and recreationalists, landowners, and tourism businesses—and, in the result, treating environmentalists as another form of land user who ought to be satisfied with the land government allocated to them in parks.\textsuperscript{729}

This third conclusion finds support in several of the interviews for this thesis, in which my subjects commented on the surprise of bureaucrats and politicians felt when the new parks created in the 1970s through 1980s did not sate the environmentalists' demands for more parks.\textsuperscript{730} If one regards the demand for protected areas as a desire for a particular kind of land use (in the literal sense of recreation and tourism, and the more figurative sense of protection as a kind of use), then a reallocation of land towards that use should satisfy it. As Jon O'Riordan said:

One of the comments that's been made by politicians is that the conservation groups never seemed to be satisfied. So I think there was a feeling by the Socreds, after the completion of the Wilderness Committee report, that this would sort of

\textsuperscript{727} The ecological reserves offer more protection than class A parks—though not more than nature conservancy areas—but have proved to be small, low-profile, and, perhaps most important, not oriented to recreation. I revisit to ecological reserves below.

\textsuperscript{728} Wilson, \textit{Talk and Log}, supra note 6 at 98. Wilson at 97 describes the disenchantment of environmentalists with the parks categories, and the fact that most parks were class B.

\textsuperscript{729} In the case of tourism, the parks really drew environmentalism into the status quo, of promoting the economic use of land, albeit a less intensive use.

\textsuperscript{730} Interviews of Jon O'Riordan, \textit{supra} note 429; Bruce Sieffert, \textit{supra} note 479; interview of Peter Jones, Client Services (Coast Region), Integrated Land Management Bureau, B.C. Ministry of Agriculture & Lands; planner with B.C. Lands Service and Ministry of Environment (19 January 2006).
lay to rest a demand for protected areas, that the conservation groups would be grateful to the government that they had done this work. Well, frankly they weren’t. They just assumed that that was the first step. So they were emboldened to place more pressure.\textsuperscript{731}

When, in the late 1980s, the “emboldened” and more organized environmentalists were not appeased, the land-use planners and politicians reacted as if the environmental movement was being unreasonably greedy, or just wilfully unappeasable.\textsuperscript{732} This reaction suggests that the politicians and dirt departments, in treating environmentalism and land protection as a form of land use misunderstood the intent behind the environmentalist pressure. The converse of this interpretation is that environmentalists, in channelling their pursuit of change into the ready legal route of parks, were losing sight of their true goal: changing society’s view of land as a resource to use up.

Given the intermingling of interests that comprised the environmental movement, it is no surprise that government saw and treated it as a group of land users, or that the groups wound up allying themselves with land users and a land-use vision. There was, however, tension between those who saw themselves as environmentalists and those whose interests were more oriented towards recreation and tourism. Indeed, by the late 1990s, while environmental groups continue to work with the Wildlife Federation, Federation of Naturalists, and groups such as the Outdoor Recreation Council, the alliance between tourism and recreation had broken down significantly. Today many environmentalist

\textsuperscript{731} Interview of Jon O’Riordan, supra note 429. He continues by acknowledging the limited effect of the Wilderness Advisory Committee: The areas protected on the Committee’s recommendation “was really a pre-ordained set of parks, many of which were already established. It was a rationalization of boundaries to allow for some mining and logging in areas close to them. There was very little new protected area.”

\textsuperscript{732} The environmental groups had grown both in number and in their focus on protecting the environment itself, rather than protecting it for recreation. As noted supra note 577, the Pearse Commission in 1975-76 heard from 17 “wilderness” groups, of which only five or six were predominantly “environmentalist” rather than recreational. Fifty-four groups made formal submissions to the Wilderness Advisory Committee. Of these, at least 14 were environmentalist, including many of the major environmental groups still operating today.
campaigns target the more intrusive forms of tourism, such as ski-resorts and heli-hiking.733

The tension between environmentalists and tourism operators was, however, also present in the 1970s. This tension is apparent in a story that illustrates the relationship between environmental advocacy, land users, and the government’s land laws and institutions.

Rosemary Fox joined the board of directors of the Sierra Club of British Columbia just after its success with Pacific Rim National Park, and continued as an activist board member for twenty years. She told me:

The first major issue I got involved with in the mid-1970s was the whole issue of wildlife management, or lack of it, in the Spatsizi area in north-west B.C., in the headwaters of the Stikine River. Although there was no overt campaign for a park, that area ended up becoming a park. [But] I was involved in a parallel argument about the activities of the guide outfitter Howard Paish, and his perceived […] over-hunting. This went on into 1977. It culminated in a judicial inquiry into the issuing of licences and in particular to guide outfitters, that was called the McCarthy Inquiry. I don’t think anything like that had ever been held before. I think that the motive behind it—from the government’s point of view, because they called the judicial inquiry — was to crush the Sierra Club, which was being far too, I guess, annoying, in repeatedly raising questions about the wildlife management and the activities of the Director of Wildlife. […]

What ended up happening was that the Wildlife Branch got a rap over the knuckles. Judge McCarthy concluded they had been pretty slack and careless in how they regulated guide outfitters. […] And that really did change things in a way, in that while the Fish and Wildlife Branch of the B.C. government up to that point had been concerned really only with managing hunting, and encouraging hunting, it did realize after this whole controversy that there was more to wildlife management, and there was another public out there that weren’t interested in hunting. They might not be against hunting—and we kept away from being against hunting; our position was that we wanted sound wildlife management, and if that included some hunting, fine, but we wanted wildlife management to be based on protecting the ecosystem, and not favouring one species over another. And I think this did in a way help pave the way for much more of a focus on ecosystem

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733 See for example the Wildsight, "Jumbo Wild", online: <http://www.wildsight.ca/campaigns/jumbowild>. Environmental advocacy against tourism activity further perplexed bureaucrats with whom I worked in the e1990s and 2000s. Grounded in the view of tourism as the solution to environmentalists’ concerns about logging and mining, they did not understand why activists would bite the industry that “supported” them.
management, and the general position that there was more to wildlife than just shooting it.\textsuperscript{734}

This story both complicates and supports my interpretation of the operation of British Columbia's land law in response to environmental activism.\textsuperscript{735} Fox's account underscores the power of the legislative allocation function in determining the attitudes and operations of the Fish and Wildlife Branch, even in the mid-1970s. The guide-outfitter—not the environment, and not environmentalists, and not even, arguably, the wildlife—was one of the Branch's clients, its licensee. And guide outfitters were part of the tourism industry, which also invoked the economic development function of the Department of Recreation and Conservation.\textsuperscript{736} But the story also describes a success: censure of the narrowness of the Wildlife Branch's mandate, and a subsequent change in that mandate. It is an example of activism changing the application of law: not the statutory law itself, but the way a branch of the government operated under that law. And it also describes a battle of tactics, between a provincial government that, in Fox's view, was attempting to quell activism, and environmentalists, who were hoping to embarrass the government into acting differently.

I do not contest that this story reveals that activism can change government. But I suggest the change was in fact, modest. Despite its role in supporting tourism development, the Fish and Wildlife Branch was a relatively small, underfunded bureaucracy in the

\textsuperscript{734} Interview of Rosemary Fox, former member, Board of Directors of Sierra Club of British Columbia, early 1970s–early 1990s; member of the Bulkley Valley Community Resources Board, and participant in land and resource management plans.

\textsuperscript{735} The story of wildlife management in the Spatsizi is also interesting, since it intersects with the weakness of the Ecological Reserves Act. The same Howard Paish had allegedly been able to manipulate the creation of an ecological reserves to create, in effect, his own "private hunting preserve". \textit{Supra} note 676.

\textsuperscript{736} Debates about in the Legislature reveal that the Branch was under constant pressure to fulfil its mandate to support the large "guiding industry in British Columbia". The measure of support was the "harvest" of wildlife and the number of "resident" and "non-resident" (i.e. tourist) hunters. See for example, British Columbia, Legislative Assembly, \textit{Official Report of Debates (Hansard)}, 30(5) (25 April 1975) at 1745-46 (Mr. Chabot), online: <http://www.leg.bc.ca/hansard/30th5th/30p_05s_750425a.htm#01745>. Social Credit M.L.A. John Roland Chabot comments on the "average of game harvested and the number of hunters in the province. We find in looking at these figures that the harvest on every species is down very substantially."
1970s. The other agencies, with their mandate to develop land, dwarfed the Branch, and it was their vision of land “management” that dominated the government of land use. Although the Wildlife Branch became an awkward ally of environmentalists, its role was that of often token resistance to development projects that would damage the environment and, more important to the Branch, interfere with its jurisdictional — and literal — turf: wildlife habitat. So the Branch’s subsequent advocacy within government easily had as much to do with its support for hunting, fishing, and the backcountry tourism industry as for environmental values. Users of game continued to be its main client group.

More broadly, concessions by the B.C. government to ecosystem management have been modest to negligible, even in the 2000s, when a successful environmental campaign on British Columbia’s central and north coast was pushing not only for protected areas — the usual goal and measure of success — but “ecosystem-based management” on the rest of the landscape. My own experience in government revealed deep scepticism about “ebm,” and my interviews indicate that the land-use planning agreements signed on the coast in 2006 have not yet produced an accepted regime for ecosystem-based management. Further, as Rosemary Fox remarked, the Spatsizi area did become a park, in part because of the environmental campaigning of the 1970s. In the 1980s, parks became the dominant goal of environmental campaigns, for at least three reasons. First, campaigning for a park drew into alliance a broader range of groups — from landowners to the recreation-minded public to the tourism industry — than did campaigns such as Rosemary Fox described. Second, the

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737 Robin, Pillars of Profit, supra note 491 at 293 describes the precipitous drop in the Branch’s budget relative to other resource agencies.
739 Interview of Bill Wareham, Acting Director, Marine Conservation Program, David Suzuki Foundation; former Executive Director, Sierra Club of British Columbia; biologist, B.C. Wildlife Federation and Ducks Unlimited.
government was more responsive to demand for parks, with a bureaucracy dedicated to creating and managing parks. Parks fit into the land regime. And third, the funding that began to flow into environmental campaigns, particularly from large foundations in the United States, demanded parks. Great green blobs were easier measures of achievement than subtle changes in laws or regulations, let alone shifts in regulatory culture. But while the Park Act is an alluring mechanism for those seeking to protect nature, but it offers a limited form of protection. And parks do nothing to change development on the remainder of the landscape.

Conclusion

This chapter focused first on the statutes of the Province’s first environmental era, then on the bureaucratic processes. The latter changed more than the former, but both, in the 1970s, remained within the framework of the development of land. This part shifted the focus toward environmental activism, which in the 1970s posed the first major challenge to the development framework. The analysis here raises some of the questions in the introductory chapter.

One of those is about the effect of the high degree of governmental control of land in British Columbia. Although intuitively one might suggest that the public ownership of land would make the Province more responsive to the environmental movement, it appears that the structure of the legal regime may play a reinforcing role. The most popular explanation for the failure of environmental law to significantly alter the development ethos is to point to the power of economic and political elites. Without denying the role of this kind of political power, I do suggest that law plays an instrumental role that is separate from its use as a mechanism of power. The final chapter focuses on this conclusion.
Chapter 5 - Conclusion: The Role of Law

[Making laws] is like protecting the well-being of a cabbage in the cabbage-patch, while the cabbage is rotting at the heart for lack of power to run out into blossom. Could you make any law in any land, empowering the poppy to flower? You might make a law refusing it liberty to bloom. But that is another thing. [...] Law can only modify the conditions, for better of worse, of that which already exists.\textsuperscript{740}

The year 1978 was a turning point for land law in British Columbia. By then most of the legal and procedural templates that would govern the environmental conflicts of the following three decades were in place. Most of what has come to be known as environmental regulation was also in place. This new regulatory framework both incorporated and extended well beyond the statutory one that had structured land allocation for more than a century. However, I suggest that the new regulatory system did not change the premises of the land statutes. In fact, the vision of the land laws was suffused through the new system, directly and indirectly enforcing continuity with the colonial foundations of British Columbia.

The environmental statutes of the 1970s, in design and in effect, were insignificant as tools for environmental protection, and lacking in content by comparison to the current

\textsuperscript{740} D.H. Lawrence, “Study of Thomas Hardy” in *Study of Thomas Hardy and Other Essays* (New York: Cambridge University Press, 1985) at 10, quoted in Margaret Davies, *Asking the Law Question: The Dissolution of Legal Theory* (Sydney, Australia: Law Book, 1994) at 22. Davies comments at 22 n. 34: “the laws which Lawrence was specifically targeting were those proposed by the suffragists,” whose goals he saw “as worthy”, but, “insofar as these goals involve making more laws, they are, according to Lawrence, somewhat missing the point. Such laws only regulate the sick. Lawrence’s suggestion seems to be that there is no point in adding regulation to an already sick society —that only exacerbates the illness. Something other than increased regulation needs to be attempted.”
body of environmental law in British Columbia. But most of the basic elements of environmental law were in place: statutes for protecting land; an environmental assessment process; inter-agency co-ordination of policy and response to conflicts; referrals among agencies for comments on proposed land uses; planning processes; and policy rules that enabled a more nuanced, flexible response to concerns about land use. In the twenty-first century, most of these regulatory elements, many now built into their own statutes, provide openings for environmentalists, First Nations, other land users, and the public to raise objections to proposed uses of land, and to influence decisions about land use.

The substantial changes to the land regime in the 1970s were in the operations of the dirt departments, not in the statutes. Of the statutes from 1965–1978 that could be called “environmental,” only the Park Act has proved to be a significant tool for protecting land. The others, with the arguable exception of the Environment and Land Use Act, have played almost no role in environmental disputes in the past three decades. Most of the other elements of contemporary environmental law listed above emerged from the crucible of the Environment and Land Use Committee, its Secretariat, and the interagency task groups they created. The Committee used section 6 of the Act to enable the first environmental impact assessment review, a process that became more formal in the Environment Management Act of 1981. Likewise planning, which absorbed much of the environmental activism of the 1990s, was the product of the Secretariat’s task groups. In 1978 the Lands Service was developing its (and arguably the Province’s) first “comprehensive” provincial land-use

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741 By “environmental statutes” I am referring to the statutes in the first part of chapter 4 that provide tools to protect land or alter the use of land in a way that preserves it. I am not considering the role of case law in this thesis.

742 This Act’s protection measure, s. 6, quickly became a legal placeholder pending a land-use plan. The arguable importance of the Act was in the effect its committee had on the bureaucracy. I suggest, however, that the Act was not the cause of these changes; rather, its focus on land use may have helped to contain the potential for change.
planning process. The Committee and Secretariat also helped to herd the dirt departments into becoming policy bureaucracies and "land managers," creating detailed rules for land-use decisions and delegating those decisions to regional offices, closer to the land being used. And while land inventory work—a primary feature, and function, of land-use planning, and a ubiquitous element of environmental and economic debate—had been under way since the nineteenth century, it had not been as concerted or co-ordinated as it has been since the 1970s. Further, until the 1960s the surveys and inventory work were almost entirely focused on finding resources for particular industries to use.

Emphasizing this body of non-statutory rules and procedures returns me to the underlying question of this thesis: What is the role of law in shaping society? From some points of view, law, or at least legislation, had become less important by 1978. Some would suggest that politics and economic power had come to govern the use of land in both the internal conflicts among dirt ministries and their "clients," the land users, and in the more public forums of protests, plans, and elections. Most of the commentary on land-use and environmentalism in British Columbia seems to follow this interpretation—including the commentary of many bureaucrats, who offer stories of conflict and power struggles among dirt departments that mirror the strategies and campaigns of groups outside government.

Without wanting to diminish the validity of this interpretation of land-use politics and the decline in importance of statutory law, I suggest that it underestimates the role of law. The land laws did play an instrumental role in reinforcing the developmental status quo in British Columbia during the upheaval of the 1970s, and that this effect of law continues to be a powerful constraint on environmentalism. The history I have examined in this thesis leads

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743 "Comprehensive" land-use planning is a term that came up in several of my interviews. It means the examination of all possible land uses of all the lands and resources in a defined area. By "provincial" I am distinguishing the planning initiatives of the dirt departments from the community and regional plans led by municipal governments including regional districts.
to this conclusion in two ways. First, the statutes of the 1970s, with their emphasis on land use and continuity with the framework established in the colonial era, hindered and constrained measures to protect the environment. The goal of those laws, which the departments were charged to implement, continued to be the development of land. Second the law also played a subtler but, I suggest, more significant role in shaping the actions of the dirt ministries, resource industries, and even those who challenge the development ethos.

On the first instrumental role of law, described in chapter 4 describes the continuity of the new statutes of the 1970s with the longstanding land laws of the Province. I will offer one example of a statutory rule that has remains significant in shaping land use: the "provincial forest" designation in the 1978 Forest Act. By the early 1990s the provincial forest had grown to cover 85% of the Province. Forestry remains, as the Act dictates, the dominant use of that land; all other uses must be compatible with it. What is most significant about this restrictive law is the effect it had on the intertwined comprehensive land-use plans the regional offices of Lands and Forests began in 1979. The "provincial forest" designation, by providing a specific legal output for the plans—i.e., identifying areas to designate—helped the Forest Service's mandate to dominate the planning process, and the outcome. Thus planning, an initiative based in policy, not legislation, adhered to the existing regime.

744 On s. 5 of the Forest Act and the expansion of this designation, see supra note 583 and accompanying text.
745 The first of these plans was the "CLaPP," or Crown Land Planning Program, which the Lands Service started to develop in 1978 and began to implement the next year. See British Columbia, Ministry of Lands, Parks and Housing, Crown Land Planning Hierarchy and Designation Systems of the Ministry of Lands, Parks and Housing (Victoria: Lands Service, 1980). The plan the Forest Service initiated, which seems to have been joined with the "CLaPP" plan was called the "Deferred Area Planning Process," which had a simpler goal, matched to s. 5 of the Forest Act: to identify areas in which forestry would not happen—deferred areas—to create greater certainty about where forestry could happen. The latter became designated as provincial forest, even though most of it was unsuited to forestry.
In the mid-1990s, when a much larger, centrally co-ordinated planning program was under way, the forest laws again skewed the planning outcomes toward forestry. The land and resource management plans were, unlike the plans of the early 1980s, public consultation processes that often took years to complete. But they were processes designed by the government within its land regime. The planners who designed the planning process then helped to create the *Forest Practices Code* in 1995. The Code provided the only legal mechanism for putting the plans into effect, other than the *Park Act*. It established layers of higher- and lower-level forest plans that shaped the outcome of the plans by giving the planning tables concrete outputs to define. As a result, most plans wound up being useful only for identifying parks and forestry benchmarks. Most managers in dirt departments paid scant attention to the plans, which they found to be too "high-level" to direct uses of more specific sites. The formal law had steered a massive undertaking away from any substantial transformation of the Province's land-development regime.

The second aspect of the instrumental role of law in shaping land use in British Columbia is that law, and specifically the statutory framework of land law, not only dictates the outputs of government, but frames the way the departments operate and interact with land users and activists, and at the same time frames the strategies and goals of those activists. I offer this interpretation in contrast to the treatment of particular government

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747 Several of my interviews described this effect, including those with the two principal architects of the "LRMP" process. Interviews of Bruce Sieffert, supra note 479; Allan Lidstone, Manager, Planning Policy Support, B.C. Ministry of Agriculture & Lands since 2005; land-use planner, Newfoundland, 1978-82; economic analyst, Depart of Fisheries and Oceans and government of Saskatchewan, 1982-1990; land-use planner and manager, Ministry of Forests, 1990-2001; planning manager, Ministry of Sustainable Resources Management, 2001-05 (18 January 2007).

748 The "provincial forest" designation also continued to play a role, since some of the new parks negotiated at the planning table required deletions from the provincial forest. This mechanism gave the Forest Service leverage, which may support the view that politics is determinative. However, the legal mandate is one of the factors shaping the "political" goals of the Forest Service.
agencies as one-dimensional players in a political tug of war between environmentalists and development interests. The interviews reinforced the conclusion I had drawn from personal experience that most of the civil servants working on land policy, planning, and allocation were committed to the goal of ensuring the best use of land, and balancing economic gain against environmental damage. The narrative of power politics too easily casts the dirt departments in roles they do not, in fact, fit: on one side, the allocation ministries and their industrial clients—above all Forests and to a lesser degree Mines—in the role of the anti-environmentalists, attempting to ensure the exploitation of land and head off all efforts to protect land. On the other, the handful of bureaucrats and their “NGO” constituents who hold out against this more powerful juggernaut, relying on strategy and on the limited legislation they have available to protect animals, water, air, and land. But in fact the bureaucrats and their departments do not seem to be deliberately “playing politics” in this way. Something subtler is happening. My research suggests that this subtler thing is the operation of the land laws as a discourse.

The longstanding legal mandates of the dirt ministries shape their response to conflict. The legislation has long ingrained into each agency its function to support a certain kind of land use. The resulting allocation culture appears to have caused each agency to see the kind of uses for which it is responsible as the most important, and to resist challenges to that use—from other users, from environmentalists, and, more recently, from First Nations. It encourages the departments to treat challengers to the land regime as land users: people with an interest in land. Thus local advocates for protection have greater standing with land

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I am not, however, denying that both activists and bureaucrats tell stories of individuals or even branches in government that tend to be aggressively anti- or pro-environment. As noted above, the government is rife with struggles over jurisdiction and vision for land use. I am, however, suggesting that the source of these struggles lies more in the legally defined culture of the organizations than in other sources.

I say more recently because until court cases in the 1990s began to find that First Nations had aboriginal rights to land, the dirt departments paid minimal attention to First Nations.
managers and planners than do environmentalists from distant urban centres or outside of British Columbia. Thus the government is reflexively inclined, in response to objections to development, to align preservationists with recreationalists and the tourism industry and seek to appease them with a park or some form of protected area. And thus the departments seem to have been genuinely surprised when environmentalists respond to the Wilderness Advisory Committee’s recommendations by demanding more parks, and its frustration in the 1990s when environmentalists launched high-profile campaigns against tourism development.

It may not be controversial to suggest this role of the land laws in shaping the actions of the dirt departments founded on those laws. But my research supports the hypothesis that the land regime has also structured the environmentalists’ approach to land use. This effect of law was starting to manifest itself in the 1970s, when the environmental movement was still forming, and still intertwined with recreational advocacy. That advocacy flowed into certain legal mechanisms and bureaucratic processes, specifically the Park Act, land-use plans, and environmental assessments, that reinforced the use of land as a resource. Those mechanisms and processes provided a forum for environmental activism and a result, usually parks, that satisfied some of the goals of the activists. These processes grew more inclusive and public in the 1980s, with a formal environmental assessment process and consensus-based public land-use plans that came to cover vast regions and eventually the entire Province. These processes were rooted in the Environment and Land Use Committee Secretariat’s specific plans of the 1970s, such as those for Williston Lake, the Fraser River estuary, and the Valhalla mountain range. The later plans continued within the

751 The Province’s public land-use planning started with the Wilderness Advisory Committee, followed by sectoral plans for commercial backcountry recreation and aquaculture, the much broader regional plans of the Commission on Resources and Environment at the start of the 1990s, and the land and resource management plans that covered most of the Province between the early 1990s and 2007.
template established in the 1970s: plan for development, and accommodate other interests by creating parks.

The nature of these processes, grounded as they were in a regime designed to allocate land, have since the start of environmental activism shaped its methods and goals. Even the environmental "markets campaigns" of the 1990s, in which environmental groups called for international boycotts of wood cut in old-growth forests, were shaped within this regime. First, they drew activists into the economic and legal systems of commerce and international trade. Second, they all led to a land-use planning process in which environmentalists sat down with industry and government and worked out plans and regulations that would fit into the land-use regime. Many environmentalists speak of a social movement that challenges the precepts of our economic system, its definition of land as a resource, and its use of that resource. But in practice, environmentalism in British Columbia has often become a technical negotiation within a system that remains founded on the goal of improvement of land for economic ends, and on continuous economic growth as the purpose of government policy, plans, and land law. Instead of questioning the need for an automobile, many environmentalists have joined the engineers and regulators under the hood of the engine, tinkering with the mechanics in an effort to mitigate the damage from emissions.752

I suggest that law itself has played an instrumental role in shaping activism toward development, just as law has, in British Columbia, always been the instrument for shaping the landscape. Whether this is good or bad depends on one's perspective on development of the natural world. For some of those I interviewed, the more collaborative approach taken

752 This metaphor is literally the case, when it comes to the regulation of vehicle emissions and debates about support for hybrid cars, hydrogen fuel cells, and ethanol.
by most environmental groups was a sign of maturity of the environmental movement. And many environmentalists believe achieving incremental improvements in the way humans use land is better than remaining outside the process and leaving land entirely to the government and industry. For those, however, who see law as a transformative tool for society, I suggest that the existing legal regime inevitably draws opposition closer to the status quo than the other way around.

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753 Interview of Bruce Sieffert, supra note 479.
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Note on citation of colonial statutes: The government of British Columbia printed the proclamations, ordinances, and acts from the period 1858 through 1870 that were still in force when British Columbia joined confederation in the Revised Statutes of British Columbia, 1871. Those laws are therefore cited to their chapter number in R.S.B.C. 1871. The government also printed in an appendix to this document some laws that had been superseded but which seemed to be of particular significance.

As noted in Joan N. Fraser, “Bibliographic Notes on Pre-Confederation “Laws” in British Columbia” (1988) 77 BC Studies 54 at 57, n. 8, “there is no absolute standard for citation in Canada … to early acts”. I have therefore followed her general rule for ordinances and acts, identifying the jurisdiction (Colony of Vancouver Island, Colony of British Columbia, or, after 1866, United Colony) first, followed by the title and date. I have added the regnal year in parentheses and, where applicable, the chapter number of that law in the R.S.B.C. 1871 or the number in the appendix. For proclamations, some of which were made before the existence of either colony, I have for consistency cited them all as Proclamation by His Excellency James Douglas, followed by the date, regnal year, and, if applicable, reference to R.S.B.C. 1871 or its appendix. The text of the thesis should make clear whether the particular proclamation applied to Vancouver Island, the mainland, or both. All appear here alphabetically by first letter, so all the proclamations are gathered together, and the acts and ordinances are grouped by jurisdiction.


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