

NEW FOUNDATIONS



REPORT OF THE
COMMISSION ON LAND AND LOCAL GOVERNANCE
DECEMBER 2009



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REPORT OF THE COMMISSION ON LAND AND LOCAL GOVERNANCE

DECEMBER 2009



*Commission on the Land and
Local Governance*

PO Box 2000, Charlottetown
Prince Edward Island
Canada C1A 7N8



*Commission pour l'aménagement du
territoire et pour la gouvernance locale*

C.P. 2000, Charlottetown
Île-du-Prince-Édouard
Canada C1A 7N8

December 8, 2009

Honourable Robert Ghiz,
Premier of Prince Edward Island,
Shaw Building,
Charlottetown, PE

Dear Premier Ghiz:

The Commission is pleased to present its report on Land and Local Governance. We hope that it will prove useful in moving the Province forward in areas which impact on all Islanders.

Respectfully submitted,

A handwritten signature in cursive script, reading "Ralph Thompson".

Ralph Thompson,
Commissioner

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COMMISSIONER'S MESSAGE

This report of the Commission on Land and Local Governance represents the latest in a series of inquiries into important questions which touch all Islanders in one way or another. The Commission has made its best effort to examine the history of past initiatives, to consult with the public, to evaluate the current situation, to look elsewhere for guidance from the successful approaches taken by others, and to put forth a series of recommendations for change.

All Islanders concerned about the future need to question what our guardianship of the province's environment and resources will provide for those who come after us, if we do nothing to change our current direction.

We need to question what irreplaceable assets are being lost forever because a comprehensive land use plan is not in place for the entire Island.

We need to ask ourselves whether local affairs across the Island could not be better administered at the local level by municipal governments.

And we need to ask ourselves all the ancillary questions which arise from the big questions. Many Islanders have not participated in this process to date. It has been suggested that people like to have something they can sink their teeth into before they really get involved. Hopefully this report will generate the necessary interest to inspire Islanders to come forward and engage in productive dialogue.

In its Land and Local Governance white paper, the provincial government stated its "...intent to move towards a system that is built on public consensus, education, shared goals, and regional cooperation". Many of the recommendations put forward by the Commission will require input from the public as a means of achieving successful change through the informed consent and cooperation of those affected. All of them will require provincial government support.

Some of the recommended changes can be implemented relatively quickly, while others will require more time. The problems which this report addresses did not occur overnight, and many of them will not be solved overnight.

This Commission is well aware that it has revisited several areas which were already the subject of recommendations from the Royal Commissions of 1973 and 1990 and the Round Table on Resource

Land Use and Stewardship in 1997. Many of those recommendations have not been implemented, but not because they are without merit.

Hopefully there is now a heightened recognition of the vulnerable position in which we find ourselves where our most precious resources are concerned. Our land, our water, our natural areas, our viewscapes, and our architectural heritage, both inside and outside municipalities, will not look after themselves. If we do not provide responsible stewardship now, we run the risk of losing them as we know them, forever.

In the area of local governance, the Commission had the benefit of several excellent reports prepared by individuals knowledgeable in the field. Their insight, as well as that of others who made detailed submissions, were of great assistance to the Commission in its work.

The Commission received the full cooperation of all departments of the provincial government, municipal officials both on and off Prince Edward Island, as well as the thoughtful input of numerous presenters who made the effort to share their views on the subject matter of our terms of reference. Special thanks to Albert MacDonald and his staff at the Planning and Inspection Services Division of the Department of Communities, Cultural Affairs and Labour. Sincere thanks to all of you.

The Commission was fortunate to have the input of two very capable individuals who brought a wealth of experience to their respective positions. Deborah Gillespie acted as the Commission's Administrative Assistant. Her organizational ability and knowledge of computers ensured that the Commission's work flowed smoothly. Jean-Paul Arsenault, the Commission's Executive Secretary, is well known inside and outside government for his intellect and work ethic. His research skills, coupled with his common sense approach, led to much sound advice which was of enormous benefit to the Commission in completing what has been a most difficult task.

EXECUTIVE SUMMARY AND ACTION PLAN

BACKGROUND

The Commission on Land and Local Governance was appointed by the provincial government to inquire into land use and local governance issues, and to recommend new approaches where warranted. This Commission began its work by reviewing past research, consultations, analyses, and proposed alternatives to the status quo. It has been very useful to trace the path taken over the past approximately forty years to try to understand how the Island community – and how successive governments – have responded to the challenge of change. The White Paper on Governance and Land Use on Prince Edward Island which sets the course for this Commission asserts that the system is in need of repair. It lists a number of areas of inquiry and sets out the manner in which Government wished the Commission to proceed.

Not unlike Canadians generally, Islanders have a reputation for resisting change, particularly where a lack of public information is available, and where it is driven by what are perceived as outside forces over which they have little or no control. When it comes to the related issues of land use and local governance these matters have been left almost totally in the hands of the provincial government, except in the cities, towns and villages. What has emerged is a system that is almost unique in Canada, where individual landowners in unincorporated areas transact directly with the provincial government on land use decisions, and where their neighbours are often informed of the process after the fact. In other words, the provincial government acts as the local government in unincorporated areas. Where local governments do exist, because of small populations and tax bases, they are often ill-equipped to make or administer land use plans, or to offer their residents a reasonable level of services.

KEY FINDINGS

The Commission's key findings can be summarized as follows:

General

- The body of work created by past Royal Commissions, the Round Table, and other commissions, committees, councils and

consultants, is relevant and continues to have substantial value;

- The key indicators of sustainable land use show definite improvement in the protection of natural areas, mixed results in terms of public health and safety and land use planning, and some disappointing results in the areas of water and soil quality and resource conservation; and
- The emergence in Canada of municipalities as a distinct third level of government requires that the Province reassess its relationship with Island municipalities.

Land Use

- The provincial government must adopt a consistent and cohesive land use plan for the entire province, including an overall vision, a set of guiding principles, and statements of provincial interest on land use;
- Contemporary land use debates center on the plight of the farming community, the high profit motive of land speculators, the need to protect our most valuable resource for future generations, and the benefit which the Province derives from development-driven tax revenue;
- A review of changes to legislation and regulations over the past thirty-five years shows that the rules governing subdivisions and development have been tightened in some areas and loosened in others;
- Only after the provincial land use policy is adopted can the process of developing new official plans and amending existing municipal plans begin;
- Subdivision development remains a contentious land use issue on Prince Edward Island, with the interests of property owners and developers often appearing to prevail over the public interest where development outside municipalities with official plans is involved
- The decisions of individual landowners to subdivide or develop land for other uses should not be allowed to constrain the future of the agriculture industry, except where ample justification can be demonstrated;
- It is in the public interest to compensate farmers financially for measures they take to protect the environment, whether these are mandatory or voluntary;
- The new Forest Policy strikes a good balance between the timber and non-timber values of

Island forests and sets the course for a more sustainable industry in the long term;

- This Commission cannot hope to improve upon the excellent work of the Commission on Nitrates in Groundwater;
- Recreational and retirement subdivisions will have a significant impact on property values and coastal views and, if the present trend toward year-round occupation continues, on the very makeup of rural communities;
- The regulations which apply to the seven existing special planning areas should be amended or eliminated eventually, but not until they are replaced by something better;
- The special planning area regulations should be extended to all areas of the province, as an interim measure, until new land use plans are in place;
- Successful protection of sensitive land following decisions by landowners to donate land or to protect it against development has been amply demonstrated;
- While the provincial government has a role to play by assisting communities to define their needs and, in certain cases, by designating endangered scenic views, the best approach is community centered;
- Restricting the application of aggregate land holdings to arable land only, where *bona fide* farmers are involved, would be one effective means of promoting the conservation of environmentally sensitive land;
- There is nothing to indicate that an increase in aggregate land holdings is warranted at this time;
- Executive Council might wish to consider a transfer to the Island Regulatory and Appeals Commission of its function in relation to applications to acquire and vary permits under the *Lands Protection Act*; and
- Professional land use planning capacity must be strengthened significantly, both at the local community level and within the provincial government.

Local Governance

- The approach taken by a number of provincial governments, as well as the Supreme Court of Canada, indicates a growing recognition that municipalities provide a separate and distinct level of government within certain “spheres of jurisdiction”, and should exercise a higher level of autonomy in those areas;
- Because of the extent to which the current legislation requires amendment in order to bring it in line with the more progressive legislation in

other jurisdictions in Canada, the Commission is of the view that the simpler and better approach to changing the *Municipalities Act* is to bring in a new Act;

- The effect of the current approach to provincial-municipal funding is that the provincial government can arbitrarily determine the level of municipal grants without offering any real level of predictability for the municipalities;
- A process involving the provincial government and representatives of the municipalities should attempt to reach consensus on how to transfer tax room in relation to non-commercial property tax, at levels equitable to the provincial government and the municipalities;
- There is no local government on 70% of the Island, and some local governments are so small that they are unable to provide many services to their residents;
- Before supporting any change to the provincial government’s approach to local governance, Islanders will have to be convinced that changes will be fair, affordable, necessary, not unduly onerous, and in the best interest of the Island as a whole; and
- If there are to be increases in property taxes in return for improved services provided through incorporation, it must be demonstrated to taxpayers that those increases are fair and as minimal as possible in the areas affected.

RECOMMENDATIONS

1. That the provincial government adopt a consistent and cohesive land use plan for the entire province that is based on a comprehensive provincial policy, accurate data, effective public consultation, an element of local governance and consistent enforcement.
2. That the provincial government develop a new conservation strategy which would encompass the principles and goals of the 1994 version and up-to-date policy statements on land use, water quality and alternate energy.
3. That the provincial government launch the public consultation process by proposing an overall vision and a set of guiding principles for a provincial land use policy, using the Manitoba principles as a guide.
4. That the provincial government develop draft statements of provincial interest related to the vision and principles of a provincial land use

- policy and consult with municipalities and the general public before making them part of the regulatory framework.
5. That the Land Use Coordinating Committee be given responsibility for coordinating internal government actions related to the development of a provincial land use policy.
 6. That the provincial government appoint a task force soon after the release of this report to develop a public engagement strategy around the land use question, to guide the work of government staff, to lead public consultations, and to report periodically with findings and recommendations.
 7. That, before additional measures are considered as a means of influencing land use and development on agricultural land, an evaluation be conducted of the impact of current property tax policy.
 8. That the Minister of Agriculture encourage the Farm Practices Review Board to revisit its role and to become more active in promoting the development and application of codes of practice for farm operations.
 9. That program criteria for the Alternative Land Use Services (ALUS) Program be reviewed and expanded and that the budget be adjusted accordingly.
 10. That any provincial land use policy must establish the preservation of agricultural land as a priority, and that all land use plans, municipal and otherwise, must include an agricultural reserve zone, where appropriate.
 11. That the provincial government retain the current buffer zone legislation which requires that landowners restrict activities within a fifteen-metre zone adjacent to all watercourses.
 12. That the provincial government continue its practice of conducting regular corporate land use inventories, the next one of which is scheduled for 2010, and that it complete the State of the Forest Report in 2012.
 13. That the provincial government begin the process of replacing the greenhouse at the J. Frank Gaudet Forest Nursery with a new facility equipped to produce a broader variety of species and nursery stock sizes.
 14. That the provincial government increase the budget for the Greening Spaces, and the Hedgerow and Buffer Zone Planting Programs, to meet current and anticipated demand.
 15. That the provincial government, in consultation with affected parties, continue to develop an implementation plan for the recommendations contained in the report of the Commission on Nitrates in Groundwater, and that concrete action leading to improved outcomes begin as soon as possible.
 16. That the provincial government and municipalities develop and implement land use policies giving greater consideration to watershed boundaries and to the protection of surface and groundwater resources.
 17. That the provincial government review the Subdivision and Development Regulations (sections 13, 14, 26 and 27), which describe the conditions with which a developer must comply before a subdivision permit is granted by the Minister, and bring them more in line with the zoning and development bylaws which apply to the four largest municipalities.
 18. That the Minister encourage all municipalities having an official plan and a zoning and development bylaw to adopt conditions on subdivision development similar to those in effect in Summerside, Cornwall, Charlottetown and Stratford.
 19. That the provincial government continue to monitor and assess the impacts of the trend toward year-round occupation of cottage subdivisions with a view to controlling the future cost of associated public services.
 20. That the regulations governing a special planning area which lies within the established boundary of a municipality cease to apply once the Minister has approved the official plan and the associated zoning and development bylaw for that municipality.
 21. That Executive Council extend the regulations which apply to special planning areas around Stratford, Charlottetown, Cornwall and Summerside to all areas of the province not covered by an official plan or other special planning area regulation, and that these regulations apply until such time as each affected community has developed an official plan and associated zoning and development bylaws to the

Minister's satisfaction or, in the case of unincorporated areas, until the Minister has approved a zoning plan.

22. That the provincial government continue to support groups such as the Island Nature Trust, the Nature Conservancy of Canada and the L.M. Montgomery Land Trust in their efforts to preserve and protect natural areas and heritage places.
23. That the provincial government continue to move toward its stated goal of protecting 12,749 hectares or 31,500 acres of private and public land under the *Natural Areas Protection Act*.
24. That the provincial government offer financial and technical assistance to municipalities and unincorporated communities to help them identify significant landscape features and to develop their own plans to protect scenic viewscapes, including recommendations leading to possible statutory designation.
25. That a landscape plan, paid for by the developer, be added to the list of conditions attached to subdivision applications, both in municipalities having an official plan and in areas of the province covered by the Subdivision and Development Regulations.
26. That the *Lands Protection Act* or its Regulations be amended so that in the case of *bona fide* individual farmers and farm corporations, exemptions be available for all but arable lands in any determination of aggregate land holdings.
27. That the aggregate land holdings prescribed by section 2 of the *Lands Protection Act* remain unchanged.
28. That the Lieutenant Governor in Council give serious consideration to transferring to the Island Regulatory and Appeals Commission its functions on applications to acquire and vary permits under the *Lands Protection Act*.
29. That the Minister responsible for the *Planning Act* assist communities to acquire the professional planning resources they need in order to inform and consult their residents, and to assist them in the development of official plans and zoning and development bylaws.
30. That the provincial government offer to assist communities and municipalities to work together

through the creation of regional planning authorities.

31. That the provincial government increase significantly the professional planning capacity within the Department of Communities, Cultural Affairs and Labour.
32. That the provincial government proceed with the drafting of a new Act (perhaps called the *Municipal Government Act*) which enshrines provisions that ensure to the greatest extent possible that municipalities are publicly accountable, accessible to their residents, transparent in their processes, responsive to the needs of their residents, and efficient in the manner in which they provide services to their residents.
33. That the provincial government consult with the Federation of Prince Edward Island Municipalities, the cities of Charlottetown and Summerside, and the towns of Stratford and Cornwall in advance of the drafting of any new legislation.
34. That the new legislation embody, wherever practicable, the progressive provisions present in the municipal statutes of other Canadian jurisdictions.
35. That the provincial government initiate consultations with municipalities, either through the Federation of Prince Edward Island Municipalities and/or otherwise, to establish a process for the implementation of a transfer of tax room in relation to non-commercial property tax, at levels equitable to the provincial government and the municipalities.
36. That in any determination of what constitutes an equitable transfer of tax room, accurate, up-to-date data be applied in establishing the actual or projected cost of services to be provided by municipalities.
37. That responsibility for the maintenance of municipal streets be transferred from the provincial government to the towns of Stratford and Cornwall, with an appropriate accompanying adjustment in relation to revenue.
38. That the provincial government, through a process of public information and consultation determine the consensus of Islanders in relation to the incorporation of some or all of the province into municipalities having a population

and tax base sufficient to provide effective and sustainable local governance on matters which are local in scope.

39. That as part of its public consultation process, the provincial government provide a detailed analysis of the potential tax implications of any proposed changes to current provincial-municipal governance structures.
40. That changes to local governance legislation clearly provide for the establishment, within a municipality, of different rates of property tax

within the same property classification, based on the range and standard of services provided.

ACTION PLAN

The action plan outlined below addresses the key areas outlined in the Commission's terms of reference. While it does not address all of the recommendations contained in this final report, it does provide a capsule view of the areas where extended action is required, as well as the associated responsibilities and timeframes.

| Action | Responsibility | Timeframe |
|---|--|--------------------------------|
| Review and revise Subdivision and Development Regulations | Communities, Cultural Affairs and Labour | January - June 2010 |
| Extend Special Planning Area Regulations province-wide | Executive Council | Spring 2010 |
| Consult with municipalities and the FPEIM regarding revisions to the <i>Municipalities Act</i> | Communities, Cultural Affairs and Labour | Spring 2010 |
| Develop proposed guiding principles and statements of provincial interest for a comprehensive land use policy | Executive Council | January – December 2010 |
| Introduce Community Scenic Viewscapes Program | Communities, Cultural Affairs and Labour | 2010-2011 fiscal year |
| Review and expand the Alternative Land Use Services (ALUS) Program | Agriculture | 2010-2011 fiscal year |
| Complete the Corporate Land Use Inventory | Environment, Energy and Forestry | 2010-2011 fiscal year |
| Increase professional planning capacity and extend the service to communities, where required | Communities, Cultural Affairs and Labour | 2010-2011 fiscal year |
| Develop a new Provincial Conservation Strategy | Environment, Energy and Forestry | 2010-2011 fiscal year |
| Amend the aggregate land holdings limits so that they apply to arable land only | Executive Council | Fall 2010 |
| Transfer authority to rule on applications to acquire and vary permits under the <i>Lands Protection Act</i> to IRAC | Executive Council | Fall 2010 |

| Action | Responsibility | Timeframe |
|--|--|------------------------------|
| Consult with municipalities regarding transfer of tax room on non-commercial property | Communities, Cultural Affairs and Labour and Provincial Treasury | Fall 2010 |
| Introduce new municipal government legislation | Provincial Government | Spring 2011 |
| Consult with the general public on proposed provincial land use policy | Government-Appointed Task Force | January – June 2011 |
| Implement recommendations of the Commission on Nitrates in Groundwater | Environment, Energy and Forestry | 2011-2012 fiscal year |
| Introduce new legislation associated with a new provincial land use policy | Provincial Government | Spring 2012 |
| Determine the consensus of Islanders regarding local governance and municipal incorporation | Government-Appointed Task Force | January – June 2012 |
| Adopt a new provincial land use policy | Provincial Government | Fall 2012 |



INTRODUCTION

CONTEXT

In December 2008, the provincial government released *A White Paper on Governance and Land Use in Prince Edward Island*. This followed the announcement in the 2008 Throne Speech that government would appoint a Commissioner on Land Use and Local Governance. The White Paper contains an extensive review of the history, present context and key issues related to land use and local governance, as well as the Commission's terms of reference (see Appendix I).

The White Paper lists a number of factors which prompted government to appoint the Commissioner:

- *Municipalities face ever more complex responsibilities, servicing needs and expectations from their residents and taxpayers, and are struggling to identify the resources needed;*
- *Community groups are raising more concerns over land use practices, fragmentation of the landscape and its impact on the future of farming and tourism;*
- *Community groups are raising concerns over the lack of local control over land in areas without official plans; and*
- *The provincial government faces continued requests to provide local, municipal level services, especially in areas without local incorporation.*

According to the White Paper, the decision by government to appoint a Commissioner represents a shift away from one-off, isolated and short-term approaches toward a process that is focused, inclusive, comprehensive and multi-faceted.

TERMS OF REFERENCE

The Commission's terms of reference, laid out in detail in the White Paper, provide direction on the scope of the review, its objectives, the process and timelines to be followed, and the topics to be addressed by the Commissioner in the final report.

Objectives

- *The Commissioner shall identify concerns and recommend changes in the areas of the provincial approach to land use planning, municipal structures, and municipal governance, in order to better protect our land and water resources, promote strong and vibrant local governments, and enable the province to respond to issues such as climate change, viewscape protection and urban-rural conflicts.*
- *The Commissioner shall develop potential action plans and options which would lead, if adopted by Government, to a new model of land use planning for the province within the next 5-7 years, and recommendations on possible future municipal structures and governance, with emphasis on public information dissemination and public engagement.*

Process

- *The report shall contain potential action plans and suggested implementation schedules associated with each of the identified models or options.*
- *The Commissioner will be responsible for designing a consultation process, but shall consult with individual municipalities, the Federation of PEI Municipalities, and other groups or individuals as the Commissioner deems appropriate.*
- *The work of the Commissioner will entail a review and analysis of existing studies and reports and the results of past consultative activities on the subject of PEI's local governance system and land use framework. In addition to this review of existing documentation, the Commissioner will engage in discussions with stakeholder groups and provide opportunities for residents and groups to submit their views.*
- *The Commissioner may examine, inquire into, and report upon any matter or subject which the Commissioner may feel to be relevant to the responsibilities listed below.*
- *The Commissioner shall provide to the Premier a report on findings and recommendations in 2009.*

Topics to be Addressed in the Final Report

- *Roles and Responsibilities*
 - *The efficiency, sustainability and appropriateness of current municipal boundaries.*
 - *Structure, organization, and legal framework of local governance in the province, especially in relation to the development of new municipal legislation.*
 - *Mandatory and voluntary services appropriate to municipal governments.*
- *Funding Frameworks and Property Taxation*
 - *A broad examination of the fairness, transparency and sustainability of the provincial/municipal financial framework.*
 - *Potential changes to responsibilities and expenditures, including any recommendations on revenue measures needed to support such changes.*
 - *Diversification of revenue sources and revenue generation alternatives for municipalities.*
- *Regional Cooperation*
 - *Potential options and minimum standards shall be identified with regards to regional cooperation relating to both municipal services (including utilities, infrastructure, and services such as policing), and land use planning services.*
 - *The impact of unincorporated areas on existing municipal structures shall be assessed, noting that any further amalgamation of communities will only follow a mutual recognition of the merits of regional cooperation and integration.*
- *Land Use Planning*
 - *Identification of the implications of the current situations – financial, social and environmental – including the transformation of rural and agricultural lands to suburban uses.*
 - *Potential options and minimum standards for land use practices in the municipal and unincorporated areas,*

with an eye to long term impacts of development patterns, capacity and stewardship.

- *A strategy for public education on issues, implications, costs, and structures should be identified.*

PROCESS

Following the Commissioner's appointment in December 2008, office space was secured and equipped in Hunter River and support staff was retained, an Executive Secretary and an Administrative Assistant. The Commissioner developed a series of questions to be used as the basis for consultation with key informants, interested groups and members of the general public. These questions were forwarded to the Premier for final verification of the Commission's mandate before they were made public.

In April, the Commission launched its bilingual website and began posting relevant documents, beginning with the White Paper and a review and update of the recommendations of previous commissions. In May, the public hearing schedule was published on the website as well as in daily and weekly newspapers. In response to press releases, the Commissioner did a number of interviews with the media. Eight public hearings were held in June in the following communities: Elmsdale, Abram-Village, Cardigan, Hampshire, Souris, Summerside and Charlottetown (Charlottetown Rural High School and the Farm Centre). The hearing in Abram-Village was conducted almost entirely in French. The eighth public hearing was added primarily to accommodate representatives of the agriculture and forest industries. Approximately 200 people attended the hearings. It was observed that the majority of these were there for the purpose of presenting submissions to the Commission, although audiences also included members of the general public, members of the Legislative Assembly and members of the press. More detail on the dates and locations of the public hearings and those individuals and groups who made written and verbal submissions is shown in Appendix II.

The order of business for each hearing consisted of an introduction by the Commissioner, the presentation of written submissions, questions from the Commission, and an open discussion period during which members of the audience were encouraged to present their views or to ask questions. Hearings were recorded and relevant portions of the discussion were transcribed by the Commission for

future reference. After each public hearing, the Commission published the content of written submissions on the website. A total of forty-four submissions were presented in the course of the eight public hearings, and an additional thirty-three written submissions were received by the Commission. While many submissions were posted on the website, several were deemed by the Commission to contain personal information which should remain confidential.

Following the public hearing stage, the Commission held meetings with a number of groups and

individuals, including representatives of several provincial government agencies which were asked to respond to specific questions by the Commission. The Commission consulted experts in a variety of subject matter areas pertaining to the terms of reference. Finally, the Commission conducted extensive research into a number of questions, utilizing a variety of sources. The list of individuals and groups consulted by the Commission, and a list of additional submissions received, is shown in Appendix III.



REVIEW AND ANALYSIS OF RELEVANT REPORTS

BACKGROUND

The terms of reference of the Commission on Land and Local Governance state in part:

The work of the Commissioner will entail a review and analysis of existing studies and reports and the results of past consultative activities on the subject of PEI's local governance system and land use framework.

While the terms of reference do not specify which existing studies and reports the Commission is to review and analyze, the Commission interprets this statement as meaning those studies and reports that resulted in an examination of similar issues and that were conducted in a similar manner. Three reports meet these criteria and are generally accepted by Islanders as significant reviews of issues relevant to the terms of reference of this Commission:

- Report of the Prince Edward Island Royal Commission on Land Ownership and Land Use (1973)
- Report of the Prince Edward Island Royal Commission on the Land (1990)
- Report of the Round Table on Resource Land Use and Stewardship (1997)

Together, these reports resulted in 331 recommendations directed, for the most part, at the provincial government. This review and analysis is the first known attempt to examine in detail what happened to those recommendations. In addition, the Commission has attempted to track changes in the status of key indicators, particularly those which were identified in the report of the 1997 Round Table and which have subsequently been adopted by the provincial government for purposes of informing the public. The best example of the use of indicators for this purpose is, in the Commission's view, the *State of the Environment Report*¹ first published by the Department of Fisheries, Aquaculture and Environment in 2003 and due to be released again this year. What follows is an overview of the three key reports which focused on topics related to land use.

¹ Government of Prince Edward Island. 2003. *State of the Environment Report*. 53 pp.

ROYAL COMMISSION ON LAND OWNERSHIP AND LAND USE (1973)

The Commission on Land Ownership and Land Use in Prince Edward Island chaired by Charles Raymond was appointed under the *Public Inquiries Act* on August 9, 1972 and presented its final report to Premier Alex Campbell on July 9, 1973. Its purpose was²:

To devise and recommend a set of land ownership and land use policies designed to deal with effects of new demands and pressures on the land resources of Prince Edward Island, and in so doing to provide the public with the opportunity to participate in the development of a land use policy.

In the final report's introduction, the Royal Commission stated the problem as follows³:

During the past decade the very special landscape of Prince Edward Island has come suddenly within the recreational land market of Central Canada and the Northeastern United States. The growing pressures, frustrations and apprehensions of North American urban life, coupled with high personal incomes and ease of travel by both road and air, have allowed the city dweller to look even farther afield for his recreational escape...

These new pressures come at a time when the Island landscape is particularly vulnerable...Larger numbers of Island landowners have moved from the land and/or turned to non-farm income sources, thereby increasing the acreage available in the recreational land market ... The opportunity for quick speculative profit in land has attracted as well the interest of individual and corporate investors, both resident and non-resident.

The report paid special attention to the notion of "minimum maintenance", what is more commonly called "stewardship", and called on landowners to

² Royal Commission on Land Ownership and Land Use. 1973. *Report of the Royal Commission on Land Ownership and Land Use*. p. 7.

³ *Ibid* pp. 12 and 13.

use land more productively, "...with positive benefits to the community, the economy, and the landscape of the Province".

The Royal Commission presented twenty-three recommendations under the following general headings:

- The General Land Use Plan
- The Coastal Land Use Plan
- Community Participation and More Detailed Land Use Plans
- Corporate and Non-Resident Landholders
- The Urban Scene

This Commission has chosen not to review and analyze in detail each of the twenty-three recommendations for the simple reasons that much time has passed since they were made, the context has changed, the issues examined have been overtaken by current events, and many of the issues have benefited from a more recent review (see Appendix IV). The 1973 Royal Commission report called on Government to do the following:

- Develop a province-wide land use plan;
- Give special attention to coastal areas;
- Acquire and preserve beaches, unique and fragile lands, and special wildlife habitats;
- Give communities decision-making power and the necessary resources to develop and administer local land use plans;
- Take measures to protect agricultural land;
- Prevent soil erosion and stream siltation;
- Help private land owners to better manage their woodlots;
- Tighten standards for subdivision development;
- Expand opportunities for outdoor recreation on public lands;
- Legislate a "minimum maintenance" requirement for public lands, and for lands owned by corporations and non-residents;
- Tighten the rules around land acquisition and the holding of land for commercial purposes;
- Curb ribbon development; and
- Sustain the central and integral role of Charlottetown.

Without exception, the thirteen themes listed above which formed the basis for the recommendations of the 1973 Royal Commission were submitted to review once again when the Royal Commission on the Land began its work fifteen years later. The report of the 1990 Royal Commission contains an excellent review of the response to the

recommendations made by the 1973 Royal Commission. It concluded that nothing much had been done and that little had changed for the better in the interim.

ROYAL COMMISSION ON THE LAND (1990)

The Royal Commission on Land Ownership, Land Use and the Landscape chaired by Douglas Boylan was appointed under the *Public Inquiries Act* on October 20, 1988 and presented its final report to Premier Joseph A. Ghiz on October 10, 1990. Its purpose was⁴:

...to examine, inquire into and report upon:

- a) the major changes and the impact those changes have had in land ownership, land use and the quality of the landscape since the inquiry of 1973 into land ownership and land use;*
- b) all existing legislation pertaining to land use, particularly that relating to ownership by non-residents;*
- c) the relationship of property taxation to land ownership and land use;*
- d) land use and quality of landscape issues in relation to the proposed "fixed-link" crossing;*
- e) the relationship between the quality of landscape and Government policy respecting roadside advertising; and*
- f) any matter or subject which the Commissioners may feel to be relevant to the subject of the inquiry.*

The Royal Commission presented a total of 221 recommendations in a report which covered 975 pages including appendices. These recommendations were grouped under twenty-seven general headings:

- Current Situation
- Agricultural Preservation
- Rural versus Urban
- Land Ownership versus Land Use
- Roads
- Communities
- Charlottetown
- Cavendish
- Shopping Centres
- Subdivisions

⁴ Royal Commission on the Land. October 1990. *Everything Before Us*. p. 9.

- Non-resident Ownership
- Off-shore Islands
- Coastal Zone
- Planning
- Structures
- The Landscape
- Historic Preservation
- Rails to Trails
- Trees
- Water and Sewage
- Garbage
- Chemicals
- Weeds
- Soil Erosion and Degradation
- Property Taxation
- Signage
- Fixed Link

Each of these recommendations has been reviewed by the Commission on Land and Local Governance, with the exception of those included in the Rails to Trails, Garbage, Signage and Fixed Link chapters which are considered to fall outside this Commission's mandate. The analysis of individual recommendations was carried out by the Commission, with input from knowledgeable individuals in government departments, agencies and commissions (see Appendix V). The 1990 Royal Commission report called on Government to do the following:

- Develop a comprehensive set of land use plans for the entire province;
- Preserve agricultural land;
- Establish the right-to-farm principle;
- Maintain limits on land ownership;
- Develop a better highway transportation plan;
- Control access to arterial highways by restricting development;
- Expand the boundaries of incorporated areas to encompass future growth;
- Expand the boundaries of the City of Charlottetown;
- Restrict development outside Charlottetown's boundary by establishing a buffer zone;
- Remove the category of "resort municipality" from the *Municipalities Act* and place greater controls on the growth of Cavendish;
- Restrict major retail developments to incorporated municipalities with official plans;
- Deny approval requests for subdivisions to be located outside incorporated municipalities;
- Restrict summer cottage subdivisions;
- Restrict non-resident land ownership;

- Protect wildlife and other natural features on off-shore islands;
- Enforce measures designed to protect natural features in the coastal zone;
- Strengthen the capability of all partners in terms of land use planning expertise;
- Maintain the role of the Land Use Commission as an appellate body and give it greater power over development initiatives;
- Promote a greater appreciation of the role of the working landscape in the provincial economy;
- Preserve and protect the built heritage as well as archaeological remains;
- Acquire title to the railway lands and develop them as a recreational corridor;
- Improve the management of public and private forest lands;
- Expand and improve water and sewer infrastructure;
- Improve systems for the collection and disposal of all forms of garbage;
- Exercise greater control over the sale and application of pesticides;
- Conduct a war on weeds;
- Improve soil conservation measures;
- Apply property tax measures to influence land use and land ownership decisions;
- Improve highway and commercial signage control measures; and
- Evaluate and control the impact of the fixed link on the natural environment, on highways, and on land use, particularly in Borden.

The review and analysis of the 1990 Royal Commission report shows that, while many of the recommendations were implemented, the ones related to the adoption of a comprehensive, province-wide land use plan were not. The report is considered by some to represent an all-or-nothing approach, since so many of the recommendations hinged on the adoption of such a plan and could not be implemented without it. Nevertheless, the 1990 Royal Commission is often cited as the definitive work on the issues of land ownership and land use on Prince Edward Island, and it is often quoted from to this day.

ROUND TABLE ON RESOURCE LAND USE AND STEWARDSHIP (1997)

In the 1996 Speech from the Throne, the Government of Prince Edward Island announced its intention to develop a Resource Land Use Strategy. The Chair, Elmer MacDonald, and the members of the Round

Table on Resource Land Use and Stewardship were appointed for the purpose of developing this Strategy in March of 1996 and presented their final report to Premier Pat Binns in August of 1997. The purpose of the Round Table was to develop a resource land use strategy⁵:

...that will identify ways and means to achieve the following objectives:

- a) To increase the contribution of resource lands and their use to wealth creation in the province;*
- b) To maintain and improve the capacity of the lands to generate wealth for future generations;*
- c) To minimize the conflicts between the use of resource lands and other land uses, and minimize the impacts on human health and the environment; and*
- d) To increase public satisfaction with resource land use.*

While the terms of reference of the Round Table were very similar in scope to those of the 1973 and 1990 Royal Commissions, the membership of the Round Table included sixteen Islanders from all walks of life and from communities across the Island.

The Round Table presented a total of 87 recommendations in a report which covered 162 pages including appendices. These recommendations were grouped under eight general headings:

- Soil Quality
- Water Quality
- Pesticide Use
- Forest Resources
- Regulating the Use of Resource Lands
- Managing Landscape and Biodiversity
- Provincial Lands
- Other Issues

Each of the 87 recommendations has been reviewed by the Commission on Land and Local Governance. Once again, the analysis of individual recommendations was carried out by the Commission, with input from knowledgeable individuals in government departments, agencies and commissions (see Appendix VI). The 1997 Round Table called on the provincial and federal governments and the agricultural industry to do the following:

- Adopt a series of legislative, policy and program measures designed to improve soil quality;
- Increase financial and technical support to watershed groups;
- Provide adequate financial incentives and technical assistance to improve on-farm manure storage facilities;
- Improve nitrogen fertilizer management practices and restore wells contaminated by excessive nitrate levels;
- Establish mandatory watercourse buffer zones;
- Tighten the rules governing solid waste disposal;
- Tighten the rules governing groundwater extraction for irrigation;
- Improve access to information on environmental contaminants;
- Develop better ways to communicate with the public on the issue of late blight control in potatoes;
- Develop a pesticide reduction strategy based on integrated pest management principles;
- Increase enforcement activities in relation to pesticide use;
- Adopt a zero tolerance policy in relation to off-target pesticide drift;
- Introduce a code of practice for forest contractors;
- Shift the emphasis in the forestry program towards forest enhancement by adopting a more ecosystem-based approach;
- Introduce softwood harvesting controls and adequate reforestation measures;
- Extend the time limit for Special Planning Areas established under the *Planning Act*;
- Develop a comprehensive land use plan for the greater Kensington area;
- Restrict subdivision development on agricultural land;
- Adopt right-to-farm legislation and codes of practice for agricultural activities by 2002;
- Expand the area of the province covered by land use plans to 50% by 2003;
- Increase support to the Island Nature Trust and the L.M. Montgomery Land Trust;
- Strengthen Government programming in several areas: fish and wildlife biology, soil testing, Provincial Land management, and pesticide monitoring and enforcement;
- Designate Provincial Forests under the *Forest Management Act*;
- Conduct a public review of Provincial Parks;
- Designate additional Wildlife Management Areas;
- Designate additional sites under the *Natural Areas Protection Act*;

⁵ Round Table on Resource Land Use and Stewardship. August 1997. *Cultivating Island Solutions*. p. 1.

- Adopt a “no net loss” policy for Provincial Lands;
- Strengthen the role of the Land Use Coordinating Committee; and
- Adopt a series of indicators of soil quality, water quality, pesticide use, state of the forest resource, land use planning, biodiversity, area of land with protected status, measure these indicators, and report periodically on changes thereto.

OTHER RELEVANT REPORTS

Other relevant reports, particularly those completed since 1997, can be placed in the context of the work of the Commission on Land and Local Governance as well as the priorities identified by the current provincial government. A number of key issues before this Commission, namely, municipal structures, municipal governance and municipal funding, have been examined repeatedly over the years. Some of the studies have been commissioned by the provincial government (the Province) and others by the municipalities, but there has been no public review of these issues through a process similar to the three examples noted above. For example, the 2005 review of the *Municipalities Act* resulted in a comprehensive report by the Municipalities Act Review Committee and a total of 119 recommendations, but the review did not include a public consultation⁶.

Following an extensive round of public consultations, in 2006, the provincial government announced the adoption of a new Forest Policy⁷. The stated mission of the new forestry program is to help landowners make choices that enhance overall forest quality. The 2008 report of the Commission on Nitrates in Groundwater⁸ followed a 2007 report by the Environmental Advisory Council which itself highlighted the need for tighter controls on water quality⁹. Based on extensive research and public consultation, the Commission on Nitrates in Groundwater presented a series of thirty recommendations to government outlining an action plan designed to reduce the problem of nitrate contamination in drinking water. In 2007, the Rural

Governance Sub-Committee of the PEI Rural Team, a group made up of federal and provincial public servants, commissioned a study on local governance. The final report by The IRIS Group encouraged the provincial government to “...oversee the evolution of effective local government which includes all the Island”¹⁰.

In 2009, government engaged in a public consultation toward a new Rural Development Strategy. Also of relevance to the work of this Commission is the Island wind energy strategy *Securing Our Future – The 10 Point Plan*¹¹. Overlaying all of these studies, strategies and policies are the Province’s economic development strategy *Island Prosperity – A Focus for Change*¹², the new slogan “One Island Community – One Island Future”, and the prospect of a new brand, that of “Canada’s Green Province”.

STATUS OF KEY INDICATORS

The Round Table on Land Use introduced the concept of indicators and suggested that, if Islanders are to participate in developing and monitoring resource land use policy, they must understand, accept and agree on a set of appropriate indicators. The Round Table proposed the following definition of an indicator¹³:

An indicator is a measure of change in the state of the economy or the state of the environment, as affected by farming, forestry or other development activity on resource land. The indicator shows whether things are getting better or worse during the interval between an agreed starting point in time and a future goal or objective.

⁶ Municipalities Act Review Committee. June 2005. *Municipal Legislative Reform*. 104 pp.

⁷ Government of Prince Edward Island. 2006. *Moving to Restore a Balance in Island Forests. Prince Edward Island Forest Policy*. 14 pp.

⁸ Government of Prince Edward Island. June 2008. *Report of the Commission on Nitrates in Groundwater*. 56 pp.

⁹ Environmental Advisory Council. April 2007. *We Are All Upstream We Are All Downstream. A Report on the Public Consultations on Managing Land and Water on a Watershed Basis*. 57 pp.

¹⁰ The IRIS Group. 2007. *A Study on Prince Edward Island Local Governance*. 52 pp.

¹¹ Government of Prince Edward Island. October 2008. *Securing Our Future – The 10 Point Plan*. 30 pp.

¹² Government of Prince Edward Island. 2007. *Island Prosperity – A Focus for Change*. 70 pp.

¹³ Round Table on Resource Land Use and Stewardship. August 1997. *Cultivating Island Solutions*. p. 12.

By proposing the adoption of indicators of sustainable land use, the Round Table was, in effect, encouraging land users, policy makers, the scientific community and the general public to take the long view. It offered the opinion that not enough time was being spent on consultation, setting goals, establishing standards, and quantifying objectives and their measures, and that too much energy was being devoted to quick fixes, with no way of determining whether they worked. The Round Table believed that good performance indicators and good legislation could be complementary and that, used together, they could influence behaviours in a meaningful and lasting manner. Most importantly, good indicators would provide Islanders with the information they would need in order to formulate opinions and to direct change.

The Commission has examined the thirty-two indicators proposed by the Round Table, some of which have been adopted by Government in developing its *State of the Environment Report*¹⁴ (see Appendix VII – Measure of Change Since 1997 to Indicators Proposed by the Round Table).



¹⁴ Government of Prince Edward Island. 2003. *State of the Environment Report*. 53 pp.

LAND USE

BACKGROUND

“The only land use plan this province ever had was the one Samuel Holland drew up in 1765”. This comment was offered by a former provincial government minister when asked by the Commission to comment on the present state of land use planning on Prince Edward Island. Previous attempts to describe and deal with the challenge of managing growth and change are relevant to the present context, particularly because land use decisions and land use planning are, by definition, so long term in nature and impact. One could imagine how differently the Island might appear today if the recommendations of previous reports had been implemented in their entirety at the time they were made. While it is not possible to turn back the clock, the Commission believes there are lessons to be learned from the situations as they were described in 1973, in 1990 and in 1997, and from the land use policy, legislative and regulatory changes introduced by successive provincial governments since then in an attempt to control land use. It would not be fair to say that governments have ignored the challenge of land use planning on Prince Edward Island. However, based on what this Commission has heard and learned, their efforts have to a large extent failed.

The 1973 Royal Commission on Land Ownership and Land Use had this to say about the need for a province-wide land use plan¹⁵:

Clearly there are major differences between the attitudes and landscape requirements of rural, urban and recreational land users. The need to rationalize and integrate these requirements is crucial if Island landscape and community are to sustain their unique qualities in the long term. The economic rationale for balanced and related growth in agriculture, tourism and urban centres has a spatial or geographical dimension which requires immediate definition in a general land use plan...

It made the following recommendation¹⁶:

Provincial government planning staff must, as soon as possible, prepare in colour a

province-wide land use plan ... (to be) printed and released immediately as a guideline to local community planning efforts and as a basis for broad government decisions with respect to land.

The 1990 Royal Commission on the Land made two observations which are relevant in the current context¹⁷:

- *Legislation in the province often has been “after the fact”, in response to pressure that has built up first; and*
- *The public pressure for collective planning and public receptiveness to planning exercises occurs at two specific times, neither of which are opportune moments to engage in thoughtful planning. The first and most obvious time when there is a demand for planning is during a land use dispute... The second – and often related – timing for widespread planning enthusiasm is during an economic boom...*

Its first two recommendations were¹⁸:

That government develop and implement consistent and cohesive land policies that are fairly and evenly applied and uniformly enforced.

That one of the cornerstones to these land use policies is the adoption of a comprehensive set of land use plans for the entire province.

While it arrived at the same general conclusion, the 1997 Round Table on Resource Land Use and Stewardship¹⁹ proposed a more practical, incremental approach to dealing with issues related to land use and land use planning. It concluded, correctly as it turned out, that government and rural landowners were no more prepared to accept zoning in 1997 than they were in 1990 and 1973. The Round Table recommended the retention of Special Planning Areas, the development of a comprehensive land use plan for the greater Kensington area, a number of

¹⁵ Royal Commission on Land Ownership and Land Use. July 1973. *Report of the Prince Edward Island Royal Commission on Land Ownership and Land Use*. p. 48.

¹⁶ *Ibid* p. 76.

¹⁷ Royal Commission on the Land. October 1990. *Everything Before Us*. Report of the Royal Commission on the Land. pp. 264-265.

¹⁸ *Ibid* p. 41.

¹⁹ Round Table on Resource Land Use and Stewardship. August 1997. *Cultivating Island Solutions*. 162 pp.

changes to regulations meant to discourage the speculative subdivision of agricultural land, stricter rules on subdivision development, right-to-farm legislation, and a significant expansion of the area of the province covered by official plans. In response, government retained the Special Planning Areas and passed the *Farm Practices Act*, R.S.P.E.I. 1988, Cap. F-4.1. A report submitted to the Standing Committee on Community Affairs and Economic Development in December 1999 details an unsuccessful attempt to introduce a land use plan in the greater Kensington area²⁰. The government of the day rejected all other Round Table recommendations pertaining to land use planning and land use controls.

For a more detailed review and analysis of the recommendations contained in the 1973, 1990 and 1997 reports, the reader is referred to the “Review and Analysis of Relevant Reports” section as well as Appendix IV, Appendix V and Appendix VI.

The Land Use Commission

Despite the fact that recent governments have not adopted a comprehensive approach to land use planning, there have been sporadic attempts, the earliest one resulting in the creation of the Land Use Commission (LUC) in response to the recommendations of the 1973 Royal Commission. The LUC was created in 1974 under *An Act to Establish the Land Use Commission*, Stats. P.E.I. 1974, Cap. 22, and was continued as a body corporate in the same year under the *Planning Act*. The LUC operated until 1991 when it was dissolved in favour of the Island Regulatory and Appeals Commission (IRAC). The role of the LUC, as outlined in the *Planning Act*, Stats. P.E.I. 1974, Cap. P-6, was to advise government on land use policy, including:

- a) *Guidelines for land use in inland and coastal areas;*
- b) *Rural, urban and recreational subdivision policies;*
- c) *Highway access and strip development policies and policies relating to development adjacent to municipalities;*

- d) *Policies relating to the establishment and operation of regional, joint and municipal planning boards;*
- e) *Policies relating to the minimum maintenance of land in the province;*
- f) *Programs for the voluntary identification of land for a specific use by landowners;*
- g) *The methods and incentives that could be used to implement programs recommended under clause f);*
- h) *Policies relating to the purchase, ownership and sale of land by partnerships, syndicates, companies and corporations;*
- i) *Policies relating to the production of natural products by processors; and*
- j) *Such other matters relative to land use policies as the Commission may deem advisable or as the Lieutenant Governor in Council may direct.*

The LUC, a quasi-judicial body, heard appeals on land use decisions and held public meetings to allow input into the major land use and land ownership issues of the day. As well, the LUC was responsible for reviewing municipal plans and for making recommendations to the Lieutenant Governor in Council (Executive Council) on these plans. A review of the LUC’s annual reports provides a fascinating glimpse into the hot issues of the day. One of them, the application by a large corporate landowner to have the 3,000-acre limit on land ownership removed, is relevant today. Another, explored through a series of hearings into whether or not the Province should allow a major retail development on the outskirts of Charlottetown, is not.

Perhaps the most significant contribution made by the LUC, as far as this Commission is concerned, is the process outlined in its 1975 report to Executive Council²¹. The report describes an extensive public hearing process during which the LUC received input on a Green Paper outlining a series of specific questions relating to land use policy. The LUC was clearly testing the waters and attempting, on behalf of the provincial government, to forge a comprehensive land use plan in response to the report of the 1973 Royal Commission on Land Ownership and Land Use.

²⁰ Department of Community Affairs and Attorney General. December 1999. *Report to the Standing Committee on Community Affairs and Economic Development. The Kensington Area Consultation Process*. 15 pp.

²¹ Prince Edward Island Land Use Commission. April 1975. *First Report of the Land Use Commission to Executive Council*. 44 pp.

In 1975, the LUC made the following observations:

- *Land use control cannot be divorced from the state of the agriculture industry, and compulsory measures aimed at the preservation of agricultural land are unacceptable;*
- *The general public is not aware of the intent and application of land use controls;*
- *Additional regulations will have very limited acceptance if imposed at the provincial level;*
- *Planning and regulation of development must be tailored to meet local circumstances;*
- *The provincial government must commit to supporting land use planning at the community level;*
- *Differential tax rates should be permitted where municipal boundaries are extended into unincorporated areas;*
- *In addition to local plans, effective provincial guidelines and regulations are needed to control development;*
- *Many of the present conflicts over land use planning can be traced to the fact that proposed developments are denied on the grounds of preservation of open space, containment of urban growth, prevention of premature development, and non-conformity with existing uses;*
- *There is general public support for measures that would curb the worst excesses of land speculation, improve the design of subdivisions and commercial developments, and exact a greater degree of responsibility from the developer;*
- *An environmental impact statement and public hearings should be required for all major developments;*
- *There is a need on major provincial highways to limit access for safety reasons and to preserve the highway for its intended function of moving traffic efficiently;*
- *The coastal zone, with its beaches, estuaries and wetlands, is a major asset and a fragile one, yet there is no consensus on how much of the coastline should remain undeveloped, how much should remain in agriculture, and how much should be devoted to recreational use for residents or tourists;*
- *There are a number of problems associated with summer cottage subdivisions – design, location, maintenance of roads, water and*

sewage systems, and open spaces – not to mention the problem with “ghost” subdivisions, those that are approved but never built upon; and

- *In many parts of the province, particularly in the west and the east, development of any sort is viewed as a blessing, rather than something to be guarded against.*

In 1991, the LUC’s administrative tribunal powers were assumed by IRAC and its policy advisory role reverted to the Minister responsible for the *Planning Act*, R.S.P.E.I. 1988, Cap. P-8. Government issued the *General Land Use Policy* in 1991 and a *Coastal Area Policy* in 1992. Since these were clearly in response to the recommendations of the 1990 Royal Commission, it appeared that a comprehensive land use plan for all areas of the Island would soon follow. This did not happen. In 2000, the policies were replaced by the Subdivision and Development Regulations, a bureaucratic decision-making framework administered by provincial public servants.

The dual mandates of the LUC – administrative tribunal and decision-maker on land use planning matters – ultimately proved incompatible. As well, the LUC, as would any provincial bureaucratic institution, faced a difficult challenge in applying provincial land use policy at the local level. In the Commission’s view, thirty-five years of experience have demonstrated that municipal governments do a much better job of this because of their higher level of local knowledge and the requirement that they be accountable locally.

Other developments which can be traced to the 1973 Royal Commission include the *Planning Act* itself, and the establishment by the provincial government of a corps of professional planners – operating as the “Land Use Service Centre” – who were made available to municipalities to assist them in developing official plans. In addition, regional planning boards were created in Summerside and Charlottetown with a view to establishing regional plans for the province’s two major urban areas.

The Last Twenty Years

During the 1980s, the most significant development in terms of land use planning was the adoption of a new *Planning Act* which gave government the power to adopt a provincial land use policy. Another was the introduction of the *Lands Protection Act*, Stats.

P.E.I. 1982, Cap. 16, which not only established land ownership limits but also the Land Identification Program.

In 1991, the provincial government announced that it had adopted a *General Land Use Policy*²² and it invited the public to choose between two options in developing and implementing a more detailed land use policy: the status quo and what it called “sustainable development”. The Policy stated in part:

- *Government accepts ... as a basic premise that, in the long term, the development pattern across the province (which has) been dominated by strip development along roads and the shore ... is wrong because it will unnecessarily constrain the development of the provincial economy and fundamentally change the character of the land...;*
- *Government believes that there are five general issues which require attention as quickly as possible: coastal area development, including subdivision and shorefront access; arterial road access and strip development along these roads; municipal services and structures...; protection and development of resource lands...; and protection of natural environmental systems, including beaches and dunes, wetlands, streams and estuaries;*
- *In moving towards detailed policies which will deal with these issues, Government is also signaling that continued development across the Province is desirable and necessary. In short, the policy message is that development will be encouraged, but it must be sustainable...;*
- *Government has three general tools available to it for policy implementation: legislation, programs, and information. In developing and implementing detailed land use policy, Government intends to make full use of all of its resources. While regulation will be a significant part of the implementation process, the two other instruments, namely, programs and information will be widely used.*

²² Government of Prince Edward Island. September 1991. *Land Use and Development in Prince Edward Island: Issues, Choices and Policy*. 16 pp.

In March 1992, the provincial government released the *Coastal Area Policy*²³ and announced the adoption of a set of Coastal Area Regulations under section 7 of the *Planning Act*. Government’s stated intention at the time was to superimpose a provincial framework on existing municipal plans and to set out guidelines for its own officials charged with administering *Planning Act* Regulations in the other 90% of the province. Little else happened until the major municipal amalgamations took place in 1995, resulting in the perceived need for Special Planning Areas around Summerside, Charlottetown, Stratford and Cornwall. Then, in December 2000, the Coastal Area Regulations, the General Regulations, the Offshore Islands Regulations, and the Scenic Heritage Roads Regulations were replaced by the Subdivision and Development Regulations. There is no record of the *General Land Use Policy* or the *Coastal Area Policy* ever being rescinded but, according to provincial government staff, these policies are no longer part of the land use decision making process.

A comparison of the original Coastal Area Regulations and the 2000 consolidation shows, in the Commission’s view, that they were weakened in some respects. For example:

- It is no longer mandatory for a developer to designate a traditional shore access for public use and to design the subdivision accordingly;
- It is no longer mandatory to install central water and sewer services for a subdivision consisting of more than ten lots;
- While it is still mandatory to set aside an area equal to 10% of the total area of lots being subdivided, it is for recreation or park use only, and use of the area is restricted to lot owners;
- The “sunset clause”, which revoked a subdivision permit if no lot was conveyed within five years of the date of approval, has been removed; and
- It is no longer mandatory for the Minister to review subdivisions approved prior to 1992 and order that they be brought up to standard.

The present Subdivision and Development Regulations made under the *Planning Act* do contain a number of restrictions that can be traced back to the 1991 and 1992 policies. Other fragments of these policies can be found in the *Environmental Protection Act*, R.S.P.E.I. 1988, Cap. E-9

²³ Department of Community and Cultural Affairs. March 1992. *Prince Edward Island Coastal Area Policy*. 12 pp.

Regulations and in the Highway Access Regulations made under the *Roads Act*, R.S.P.E.I. 1988, Cap. R-15. However, many of the more restrictive provisions are subject to ministerial discretion and all can be changed by Executive Council without the benefit of public review or debate. In retrospect, what appeared to be a significant step toward a comprehensive land use plan for the province following release of the 1990 Royal Commission turned out to be nothing more than a short-lived attempt.

- By 2000, the pattern had been altered significantly: 39% of the land base was being farmed and 48% was forested;
- The area of developed land totaled 6.4% in 2000, up by over 50% since 1980; and
- While much of the development recorded during the 1980-2000 period occurred in the larger municipalities, it took place in rural areas as well, mostly in the form of residential strip development along highways, and cottage subdivisions²⁴.



The Connection between Land Use and Rural Development

Much can be learned from examining the historical record of land use changes in Prince Edward Island over the past 110 years and its connection with rural development. By way of illustration, a review of twentieth century data shows that:

- In 1900, 63% of the land base was in agricultural production, with only 31% in forest;

In the April 2009 discussion paper *Renewing Rural Prince Edward Island*²⁵, the Honorable Neil LeClair, Minister of Fisheries, Aquaculture and Rural Development, invites residents to adopt the vision of “A prosperous, vibrant and healthy rural Prince Edward Island, able to adapt to a changing world and to offer diverse opportunities and quality of life to all

²⁴ Department of Environment, Energy and Forestry. April 2005. *Prince Edward Island Land Use Changes during the 20th Century*. Taken from a presentation by William M. Glen.

²⁵ Department of Fisheries, Aquaculture and Rural Development, April 2009. *Renewing Rural Prince Edward Island*. 36 pp.

its citizens”. While the focus of the discussion paper is on economic development, it provides a very useful analysis of how communities have been transformed. In 1900, 85% of Islanders were rural residents and, by 1950, little had changed. The period following World War II, described in Edward MacDonald’s book, *If You’re Stronghearted – Prince Edward Island in the Twentieth Century* as “the break”²⁶ introduced profound and fundamental changes to rural communities: improved transportation, education and the advent of electricity. By 1971, the proportion of rural residents had declined to 60%, and by 2000, it stood at 55%, still high by Canadian standards, but a significant decline nevertheless.

Even more significant, as pointed out in the discussion paper, is the shift in where people work and what they do for a living. The discussion paper acknowledges that, despite many government efforts to sustain rural communities, these continue to decline from an economic sustainability standpoint. In agriculture for example, although farms have increased in size and efficiency, realized net farm income is negative, and the trend is unmistakable²⁷. Today, Statistics Canada defines an urban area as consisting of a core of at least 10,000 people, and a surrounding area from which at least half of residents commute to work. By this definition, 60,000 people make up the Charlottetown area and 16,000 make up the Summerside area, together accounting for 55% of the province’s population.

The report of the Standing Senate Committee on Agriculture and Forestry states that, in 2006, rural Canada’s share of the national population fell below 20% for the first time²⁸. One national newspaper columnist offered the opinion that rural Canada has become “...so irrelevant demographically that it increasingly exists only in myth”²⁹. The Senate Committee acknowledges that this kind of pessimistic thinking influences government policy and proposes a series of changes designed to put rural Canada back on the policy agenda. These papers and

many others which recommend approaches to stabilize and strengthen rural Canada all point out that “development at any cost” is not the right approach.

THE CURRENT LEGISLATIVE FRAMEWORK

The key statutory instrument guiding land use planning decisions in the province is the *Planning Act*, originally enacted in 1974 and amended significantly in 1988. The objects of the Act are set out in Section 2 as follows:

- a) *To provide for efficient planning at the provincial and municipal level;*
- b) *To encourage the orderly and efficient development of public services;*
- c) *To protect the unique environment of the province;*
- d) *To provide effective means for resolving conflicts respecting land use;*
- e) *To provide the opportunity for public participation in the planning process.*

Section 6 of the *Planning Act* lays out the responsibilities of the Minister with respect to provincial land use planning:

The Minister shall

- a) *Advise the Lieutenant Governor in Council on provincial land use and development policy;*
- b) *Perform the functions conferred on him by this Act and the regulations;*
- c) *Generally, administer and enforce this Act and the regulations,*

and may

- d) *Provide planning advisory services;*
- e) *Promote co-operation between municipalities with respect to inter-municipal or regional planning issues;*
- f) *Promote public participation in the development of policies;*
- g) *Establish organizations and groups which he may consult respecting the exercise of his functions;*
- h) *Delegate any of his functions under this Act or the regulations.*

²⁶ MacDonald, E. 2000. *If You’re Stronghearted*. Prince Edward Island in the Twentieth Century. Prince Edward Island Museum and Heritage Foundation. pp. 226-263.

²⁷ Commission on the Future of Agriculture and Agri-Food on Prince Edward Island. January 2009. *Growing the Island Way. The Next Chapter for the Agriculture and Agri-Food Economy of Prince Edward Island*. 45 pp.

²⁸ Standing Senate Committee on Agriculture and Forestry. June 2008. *Beyond Freefall: Halting Rural Poverty*. 365 pp.

²⁹ Ibbitson, J. March 14, 2007. “*THE CENSUS: SPRAWL Goodbye rural Canada, and hello most urban of countries*”. Globe and Mail. p. A6.

The responsibility of Executive Council is defined as follows in subsection 7.(1) of the *Planning Act*:

The Lieutenant Governor in Council may

- a) *Adopt provincial land use development policies;*
- b) *Establish minimum requirements applicable to official plans;*
- c) *Make regulations establishing minimum development standards respecting*
 - i) *Public health and safety,*
 - ii) *Protection of the natural environment,*
 - iii) *Landscape features.*

The *Planning Act* defines the authority of Executive Council to make provincial planning regulations applicable to any area of the province except a municipality with an official plan and bylaws. These are called the Subdivision and Development Regulations. Under subsection 8.(1) of the Act, Executive Council may make regulations:

- a) *With respect to planning and land use matters affecting the general welfare, health, safety and convenience of persons in any area or municipality;*
- b) *With respect to the definition of areas to be regulated;*
- c) *With respect to land use zones...*
- d) *With respect to the subdivision of land...*
- e) *With respect to the development of land and the provision of services...*
- f) *With respect to building standards...*
- g) *With respect to the use of permits...*
- h) *With respect to environmental protection...*
- i) *Repealed*
- j) *With respect to access to streets and highways...*
- k) *With respect to mobile homes, mobile home courts, travel trailers used as a residence and travel trailer courts...*
- l) *Repealed*
- m) *With respect to vehicular parking...*
- n) *With respect to summer cottages...*
- o) *Prescribing fees in respect of an application for a subdivision approval, development permit or building permit;*
- p) *With respect to a land identification program to prevent commercial or industrial development or subdivision of identified land and respecting the*

particulars of a land identification agreement;

- q) *With respect to the enforcement of this Act, regulations and bylaws...*

Under section 8.1 of the *Planning Act* Executive Council is given the authority to make regulations with respect to special planning areas:

- a) *Establishing the special planning areas;*
- b) *Prescribing their geographical boundaries;*
- c) *Defining the objectives, purpose and function of the special planning areas;*
- d) *Regulating development in special planning areas;*
- e) *Superseding or suspending the application of the bylaws of a municipality or any part of such bylaws within a special planning area and substituting therefore regulations under this Act.*

Other sections of the Act define the duties and responsibilities of municipalities with regard to the preparation and administration of official plans and planning bylaws; the option for two or more municipalities to establish a joint planning board; the procedure for notifying the public of decisions made by the Minister or a municipal council; penalties for non-compliance; and the procedure for appealing a decision of the Minister or a municipal council to IRAC.

Today, comprehensive land use planning is practiced by thirty-one municipal governments on an area covering 10% of the province. The larger municipalities have qualified planners on staff. While all municipalities with official plans are required to comply with provincial planning and development regulations, ironically perhaps, their own bylaws are generally more restrictive than provincial regulations. When a change of use or rezoning is proposed, it is most often dealt with formally by a municipal council whose meetings are open to the public. Generally, a change to the zoning plan is considered to be a change to the bylaw. Official plans in several communities outline a process for notifying neighbours of any proposed change of use, and for providing them with an opportunity to review the application. The plans outline the responsibilities of the applicant or developer, including costs, the requirement to hold a public meeting, and the criteria to be used by council in deciding on the application to rezone. Proposed

developments which fall within the definition of allowed use and which comply with the municipal bylaw requirements are usually dealt with by planning staff, at least in the larger municipalities.

In contrast, on the other 90% of the Island, development applications are processed by provincial public servants who work under the guidance of regulations made under the *Planning Act*, the *Environmental Protection Act* and the *Roads Act*. In the absence of a zoning plan and without the guidance of a community official plan or a provincial land use policy, important decisions are made by ministers exercising the discretion they are granted under the regulations, and by Executive Council.

Weaknesses Attributed to the Current Legislative Framework

It is clear from the preceding that, between them, the Province and municipalities have the authority required to provide for proper land use planning and to exercise broad powers over development in all areas of the province. That this has not happened in a structured fashion on 90% of the province's territory is largely a reflection of the clash between the public interest as stated in section 2 of the *Planning Act* and the interests of landowners and developers which often seem to prevail when it comes to development outside municipalities with official plans. For decades much of the discussion and decision making on development has taken place behind the closed doors of Ministers' offices and the Executive Council Chamber, rather than through the public process which occurs in many municipalities.

The Commission received submissions pointing to weaknesses in the legislative framework and inconsistencies in administering the various acts and regulations which apply to land use planning and development. Not one of these submissions pointed to problems with the administration of official plans or zoning and development bylaws in municipalities. The issues listed below pertain to the exercise of government jurisdiction, or lack thereof, in the 90% of the province where there is no land use plan.

- There is no provincial land use policy to guide decision-making at the local level, and there is no indication that any serious attempt has been made by government recently to remedy the situation;
- The Department of Communities, Cultural Affairs and Labour does not have the capacity to

provide adequate planning advisory services to communities;

- There is no framework to allow for public engagement in the development of provincial land use and development policy;
- There is no effective process for resolving land use conflicts in unincorporated areas;
- The environmental impact assessment process is not applied consistently to all undertakings;
- Outside municipalities with official plans, the only areas of the province subject to any form of zoning are the offshore islands, one conservation zone and the seven special planning areas;
- A significant portion of weekly Executive Council meetings is devoted to processing requests by corporations and non-residents for permission to acquire land and for permission to remove the development restrictions on land identification agreements already in place;
- Special planning areas can be established or modified by order of Executive Council without the requirement for any public consultation or prior notification, and these can supersede or suspend a municipal official plan;
- Some developments have been approved despite the apparent likelihood that they would precipitate premature development or unnecessary public expenditure, or place pressure on a municipality or the Province to provide services;
- Although due regard can be given to compatibility with surrounding uses in considering applications for subdivision development, there is no indication that this condition has been applied consistently;
- There are several instances where ministerial discretion can be exercised, especially in the granting of subdivision, development, and highway access permits and variances;
- Although new rules may be stricter, permits issued under old rules remain in effect under new rules, whether they apply to individual lots, subdivisions, developments, or highway access;
- Under section 11 of the Subdivision and Development Regulations, the Minister may hold a public meeting regarding any proposed subdivision or development, but the Minister is not required to do so and, usually, the public is notified only after the development has been approved;
- With the demise of the Land Use Coordinating Committee, there is no effective forum for interdepartmental collaboration at the senior public servant level for the development,

administration and application of land use policies and standards;

- The Island Regulatory and Appeals Commission can examine and rule on the process followed by a developer and the responsible government authority but, in the absence of a provincial land use policy, it cannot stop a development on the grounds that it may be an inappropriate use of land; and
- With the sweeping powers granted to it under the *Planning Act*, Executive Council can develop or modify regulations at a weekly meeting of Cabinet with no public input or public consultation, and without the guiding framework of a provincial land use policy.

Recent Improvements to the Land Use Planning Framework

A review of changes to legislation and regulations over the past thirty-five years shows that the rules governing subdivisions and development have been tightened in some areas and loosened in others. However, the Commission considers the following examples to be steps in the right direction and acknowledges that, since 1974, successive provincial governments have introduced a number of measures meant to strengthen the land use planning framework:

- Requiring that an environmental impact assessment be carried out before a development is initiated;
- Requiring that riparian zones and other buffers be set aside, and that central waste treatment and water supply systems be constructed to service larger subdivisions;
- Better protection for sensitive areas such as sand dunes, wetlands, watercourses, heritage sites and natural areas;
- Stricter rules governing applications for subdivision approval, including better subdivision plans;
- Requiring that 10% of a subdivision be set aside for open space;
- Recent amendments requiring that roads be constructed to a much higher standard in new cottage subdivisions;
- Measures designed to curb land speculation, including a higher property tax assessment rate for lots that have been subdivided but not yet sold;
- Stricter rules regarding the placement of wind turbines;

- Applying phased-in approval to large subdivisions by requiring that 50% of the first or subsequent phase be sold;
- Stricter rules on minimum lot size required for effective on-site sewage disposal;
- Introducing “panhandle” lots as a means of allowing property subdivision without compromising highway safety;
- A time limit of twenty-four months on preliminary subdivision approval in the event of non-compliance by the developer;
- Stricter rules around change of use for a lot in an approved subdivision, including the requirement to obtain approval from neighbouring lot owners;
- Stricter rules applying to the issuance of development permits;
- Restrictions on the placement of travel trailers, mobile homes and mobile home parks;
- Stricter rules governing resort developments;
- Establishing seven Special Planning Areas: Princetown Point - Stanley Bridge, Greenwich, Borden Region, Stratford, Charlottetown, Cornwall, and Summerside;
- Establishing the concept of “scenic viewscape” zones in two special planning areas, Princetown Point - Stanley Bridge and Borden Region;
- Protecting nineteen offshore islands against development; and
- Designating the Morell River Conservation Zone.

A PROVINCIAL LAND USE POLICY – THE PATH FORWARD

Introduction

In previous sections of this report, the Commission has explored the history of past attempts to develop a provincial land use plan and has identified the factors which seem to have restricted progress. They can be summarized as follows:

- Traditionally, the people who own land tend to have the most political influence;
- Land use debates in rural communities have been dominated by individual concerns over taxation and bureaucracy, without a long-term vision for what is in the best interests of the province; and
- Successive provincial governments have sent out weak and confusing messages regarding land use policy.

The Food and Agriculture Organization of the United Nations (FAO) states that two conditions must be met if land use planning is to be successful³⁰:

- *The need for changes in land use, or action to prevent some unwanted change, must be accepted by the people involved; and*
- *There must be the political will and ability to put the plan into effect.*

It would appear that neither condition has been met to date on the 90% of Prince Edward Island where there is no land use plan. The experience of the thirty-one municipalities whose residents have made the tough choices required to guide their elected officials' land use decisions stands in sharp contrast to the ambivalent and conflicting attitudes and practices which prevail elsewhere. That successive provincial governments have done so little to introduce and apply the concept of societal interests to land use planning outcomes is a testament to the power and influence that individual landowners seem to have had on their provincial political representatives.

The White Paper

The *White Paper on Governance and Land Use on Prince Edward Island* issued in December 2008 (Appendix I) describes the present government's assessment of the situation and its general intentions in the following terms:

While the relatively slow rate of growth in PEI often lulls us into believing that we don't face the same planning pressures as larger jurisdictions, what we face has been described in the past as a death by a thousand cuts. Ribbon development, dispersed settlement patterns, loss of shore access, environmental degradation, loss of traditional character, viewscape erosion, and incompatible economic development will ultimately lead to undesirable and long lasting negative consequences...

Government has signaled a desire to move towards a system of local governance and land use practice that is effective, adequately funded, and appropriately

organized. Such a new system would take into account efficiencies of scale, resources and capacity at the local level, and any legislative, financial, and human resource tools required to implement any new models...

Municipal and land use reform appears to follow cycles, with greater or lesser degrees of change at any given point. It is time once again to take a comprehensive look at the structures that govern the day to day life of Island residents, guide our local municipal officials, and direct our use of the land.

The strength of recent statements by the provincial government seems to indicate that the *status quo* is not an option and that it is time for a change. They certainly set a hopeful tone. In this section of the report the Commission will draw from the experience of other nations and provinces and will outline a process which could lead to the adoption of a comprehensive land use plan for the province.

Almost without exception, individuals and groups appearing before the Commission on Land and Local Governance called for a more coordinated and inclusive approach to land use planning on Prince Edward Island. This was hardly surprising given the current situation and the findings and recommendations of two Royal Commissions and the Round Table. The following recommendation is based on the first two recommendations of the 1990 Royal Commission on the Land. It addresses the need for a clear policy, good information to aid in decision making, a local voice in setting goals and determining outcomes, and effective controls on development.

The Commission recommends:

- 1. That the provincial government adopt a consistent and cohesive land use plan for the entire province that is based on a comprehensive provincial policy, accurate data, effective public consultation, an element of local governance and consistent enforcement.**

³⁰ Food and Agriculture Organization of the United Nations. 1993. *Guidelines for Land Use Planning*. <http://www.fao.org/docrep/T0715E/t0715e00.htm>

Applying the Principles of Stewardship and Sustainability to Land Use

The concept of “sustainability” was advanced by the World Commission on Environment and Development (Brundtland Commission) in its 1987 report to the General Assembly of the United Nations³¹. In defining sustainability, the Commission had this to say:

Humanity has the ability to make development sustainable to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs.

This definition of sustainability has since become generally accepted throughout the world.

The parallel and related concept of “stewardship” is more personal, defined as the careful and responsible management of something entrusted to one’s care. It is based on the premise that we don’t own resources, but are managers of resources, responsible to future generations for their condition.

Stewardship is a concept advanced here by Premier Angus MacLean in the early 1980s. In 1987, Prince Edward Island became the first province in Canada to adopt a conservation strategy. Stewardship became one of two pillars underlying the Province’s 1994 conservation strategy: *Stewardship and Sustainability: A Renewed Conservation Strategy for Prince Edward Island*³². The plan has seven goals: to reduce soil erosion, to maintain and improve water quality, to reduce solid waste, to maintain and improve ecological diversity, to maintain and improve air quality, to increase public involvement, and to protect the Island’s landscape.

Unfortunately, the provincial conservation strategy lies dormant, having not been updated since 1994, although it has been supplemented by individual policy statements, most notably the *Drinking Water Strategy* and the *Island Wind Energy 10-Point Plan*. The current vision of the Department of

Environment, Energy and Forestry includes identifying Prince Edward Island as Canada’s green province – a model of sustainability – as proudly proclaimed on our vehicle license plates. The Commission believes it is time to renew the provincial conservation strategy, a process that could be led by the Environmental Advisory Council.

The Commission recommends:

- 2. That the provincial government develop a new conservation strategy which would encompass the principles and goals of the 1994 version and up to date policy statements on land use, water quality and alternate energy.**

A Suggested Approach to Developing a Provincial Land Use Plan

According to the Canadian Institute of Planners “...planning means the scientific, aesthetic, and orderly disposition of land, resources, facilities and services with a view to securing the physical, economic and social efficiency, health and well-being of urban and rural communities”³³. It is about achieving a better balance between economic growth, and social and environmental values.

Air, water and land constitute the three fundamental elements of our environment. It is relatively easy to reach broad consensus on the appropriate standards for air and water because they belong at once to everyone and to no one. However, a land use framework cannot be so easily defined because property ownership has always been considered a far more private or individual matter. Simply put, the current framework consists of thirty-one official plans on 10% of the Island and a somewhat disjointed set of rules for the remaining 90%. These rules are not connected to a provincial policy, because there is none. While many submissions to the Commission called for a provincial land use plan, none proved very helpful in laying out the path from the present to the desired state.

³¹ World Commission on Environment and Development. March 1987. *Our Common Future: Report of the World Commission on Environment and Development*. Transmitted to the General Assembly of the United Nations. <http://www.un-documents.net/wced-ocf.htm>

³² Department of Fisheries and Environment. 1994. *Stewardship and Sustainability: A Renewed Conservation Strategy for Prince Edward Island*.

³³ Canadian Institute of Planners. <http://www.cip-icu.ca/web/la/en/default.asp>

The Commission believes the path forward starts with provincial leadership, which includes clear direction and parameters resulting in the integration and co-ordination at the local level of provincial policies governing air, water and land. To be able to stand on its own, a Prince Edward Island land use policy must have three basic elements:

- A purpose or vision, clearly stated in the *Planning Act*;
- Guiding principles; and
- Statements of provincial interest.

Several provincial jurisdictions including Québec, Ontario and Manitoba have adopted policies and/or provincial interest statements on land use. Saskatchewan's and Alberta's are currently under development and Nova Scotia's is ten years old. The principles of sound land use planning are reflected throughout Manitoba's *Provincial Land Use Policies* and are summarized below³⁴. They are presented here because the Commission believes that, with a few modifications, these principles could form the basis of a new land use planning framework for Prince Edward Island.

- **Long Term Vision** – *Because land use decisions have long term impacts, they must be future-oriented and connected to an overall vision or plan. This requires that individual developments be coordinated and strategic, and that they anticipate needs and support the achievement of community priorities. Without a vision, incremental decisions are made in isolation and can lead to unforeseen conflicts and cumulative negative impacts.*
- **Public Interests** – *A traditional motivation for land use planning is the protection of the public interest. The development of land and resources has both costs and benefits; land use and development decisions must balance private gain with the costs that may be incurred by the public, and evaluate short term profits against long term costs.*
- **Compatibility** – *Land uses and developments that are planned and designed to be compatible with their surroundings will prevent or minimize conflicts and avoid dangers to public health, safety and the environment. When land uses are not*

compatible, they can result in negative impacts on people, property/investment and the environment, such as:

- *Nuisances, including noise, dust, odours;*
- *Financial expenditures by both private operators and the public to deal with legal issues and complaints;*
- *Danger to human health and safety and damage to property and investments from hazards, such as flooding, and the resulting public expenditures for evacuation and compensation; and*
- *Unexpected development costs to mitigate conflict.*
- **Mitigation and Adaptation** – *The ability to anticipate, mitigate and adapt to change speaks to a community's resiliency. Managing change, such as shifts in population, demographics, economics, ecology, and climatic norms requires that local plans and policies be flexible, not static. It requires local capacity to anticipate challenges and evaluate land use and development decisions on the basis of how well they mitigate the negative effects of change or adapt to those effects.*
- **Sustainability** – *Sustainable development is an approach to land use that views the goals of economic development, quality of life, public health and environmental protection as interrelated and not "either or" situations. A sustainable development approach also recognizes and places value on the important functions of the ecosystem and ensures these can be protected from or incorporated into development to provide the best outcomes for both the built and natural environment, both now and into the future.*
- **Optimization and Efficiency** – *The optimal and efficient use of land, resources and existing public investments — such as infrastructure — can reduce costs to the public, promote innovation and competitiveness, and help conserve valuable resources. Land that is developed thoughtfully and strategically can improve affordability, quality of life and services to the public.*
- **Comprehensiveness** – *Land use decisions, policies and programs have impact on and are influenced by a number of interest areas. Planning must consider the interconnections*

³⁴ Manitoba Department of Intergovernmental Affairs. *Provincial Land Use Policies Review*.
http://www.gov.mb.ca/ia/plups/draft.html#def_development_plan

between land use and elements like transportation, housing, social services and cultural differences. A comprehensive approach that considers a variety of elements, can address multiple issues while ensuring it does not ignore problems or create new ones.

- **Integration** – Land use decisions, policies and programs must also be integrated at different scales, levels and times. Decision makers must consider how land use decisions will influence financial plans, capital works budgets, programming and initiatives, watershed management plans, climate change action plans, etc., and vice versa. Such integration helps to ensure that the resources for implementation are available and that potential barriers are recognized and accounted for.
- **Public Participation** – Decisions about the use of land affect the way people live, work and recreate, and will have long-term implications that will be felt by future generations. As a result, the public has an interest in what decisions are made and for what reasons. Good planning processes provide sufficient opportunities for public consultation that are broad and inclusive. Bringing diverse interests into the planning process is essential to building consensus and making the process.

The Manitoba land use policies are a clear statement of the provincial interest in land, resources and sustainable development. They provide direction for a comprehensive, integrated and coordinated approach to land use planning. The policies apply to all lands in Manitoba and they serve as a guide to local authorities and provincial departments in preparing, reviewing and amending official plans and associated zoning and development bylaws. They are intended to give general guidance and ensure that provincial interests are addressed.

Land use policies, by their nature, are general and cannot account for all local situations, special circumstances and exceptions. In recognition of this variability, Prince Edward Island's land use policies should allow for a degree of variance sufficient to accommodate local needs, so long as provincial interests are not undermined. The policies could be more strictly applied in areas of the province experiencing more growth or change, and could be applied with more flexibility in areas experiencing limited growth or change, and where there is little

potential for land use conflict.

The Commission recommends:

3. That the provincial government launch the public consultation process by proposing an overall vision and a set of guiding principles for a provincial land use policy, using the Manitoba principles as a guide.

Statements of Provincial Interest

The province of Saskatchewan updated its *Planning and Development Act* in 2007 and is currently developing statements of provincial interest. The Commission has chosen this example because it illustrates the process of developing statements under a strong legislative framework. The concept of statements of provincial interest is not new to Prince Edward Island. In fact, the 1991 *General Land Use Policy* identified five areas requiring "...action as quickly as possible"³⁵:

- Coastal area development, including subdivision and shoreline access;
- Arterial road access and strip development along these roads;
- Municipal services and structures;
- Protection and development of resource lands; and
- Protection of natural environmental systems, including beaches and dunes, wetlands, streams and estuaries.

Government developed a discussion paper and launched a consultation process led by the Rural Development Board but, as was explained earlier in this report, no enduring results were forthcoming.

The purpose of Saskatchewan's *Planning and Development Act* is stated as being³⁶:

³⁵ Government of Prince Edward Island. September 1991. *Land Use and Development in Prince Edward Island: Issues, Choices and Policy*. 16 pp.

³⁶ Government of Saskatchewan. *Planning and Development Act*, 2007. Chapter P-13.2 of *The Statutes of Saskatchewan*, 2007.

- a) *To establish the planning and development system in the province;*
- b) *To identify provincial interests that guide provincial and municipal planning decisions in the development of communities;*
- c) *To support the development of environmentally, economically, socially and culturally sustainable communities;*
- d) *To enable co-operation between municipalities, planning districts and other jurisdictions and agencies in the delivery of planning services and infrastructure development with communities;*
- e) *To provide for public participation in the planning process;*
- f) *To provide equitable dispute resolution and appeal processes.*

Information provided to the Commission by Saskatchewan's Community Planning Branch explains that the provincial government launched a community consultative process by listing nine areas that should be further outlined in the form of provincial interest statements. The list was expanded to fifteen as a result of the consultation process. In the next stage, the Saskatchewan statements will be drafted by government officials and subjected to a further round of public consultations before they are approved by government and enshrined in regulation.

Based on a review of statements of provincial interest which complement planning legislation in other provinces and the particular needs of Prince Edward Island, the Commission proposes the following list for consideration:

- Agricultural land
- Forest land
- Water quality
- Coastal area
- Watercourses, wetlands and natural areas
- Heritage resources
- Subdivision and development
- Transportation infrastructure
- Municipal infrastructure
- Public safety
- Tourism and recreation
- First Nations
- Scenic viewscapes

The above list is not meant to be exhaustive or in order of importance. The important point, in the

Commission's view, is that the process be managed by the Province and that it involve a high degree of public consultation.

The Commission recommends:

- 4. That the provincial government develop draft statements of provincial interest related to the vision and principles of a provincial land use policy and consult with municipalities and the general public before making them part of the land use planning regulatory framework.**

Suggestions Regarding Process

The development of a provincial land use policy and the associated planning framework will not be simple or quick. It will require strong leadership from the provincial government, a commitment of resources from the Minister responsible for the *Planning Act*, and a capacity for public engagement. The Commission recognizes that, for government, there are considerations which are influenced by many factors including timing, the scope of the changes proposed, and the prevailing opinions of Islanders. If government decides to proceed with the development of a vision, principles and statements of provincial interest, as proposed in this report, it will need to create internal structures and capacity.

The Commission notes with some concern that the Land Use Coordinating Committee (LUCC), the internal, interdepartmental body charged with advising Executive Council and Cabinet committees on matters related to land use policy, is inactive and has been for some time. The LUCC was created by government in order to guide the implementation of the 1990 Royal Commission report. Its mandate was reviewed by Executive Council in 2000, and the LUCC's terms of reference were adjusted at that time. The Commission believes the LUCC must play a key role by overseeing the process, developing the key documents required to launch the public consultations, and in implementing decisions made by Executive Council.

The Commission recommends:

- 5. That the Land Use Coordinating Committee be given responsibility for coordinating internal government actions related to the development of a provincial land use policy.**

PUBLIC ENGAGEMENT

In addition to the leadership provided by the LUCC, the process of developing a provincial land use policy will require significant support from the Department of Communities, Cultural Affairs and Labour in the form of planning staff. In the Commission's opinion, the Department of Communities, Cultural Affairs and Labour (CCAL) does not have the planning capacity to adequately meet its current responsibilities. In assessing the Commission's recommendation – "That the provincial government increase significantly the professional planning capacity within the Department of Communities, Cultural Affairs and Labour" – CCAL will need to consider current and anticipated demands on planning staff.

In addition to the coordinating role of the LUCC and the professional support role played by CCAL planners, the process will require a public engagement strategy. The Commission believes that a critical factor in the success of the public consultation process will be the active participation of a group of individuals from the community, chosen by government for their knowledge and experience in areas such as: the resource industries, environment, community planning and development, municipal government, and tourism. The group would be expected to participate in the public meetings, lead the consultations on government's behalf, guide the work of government staff, and report to government with findings and recommendations.

The Commission recommends:

- 6. That the provincial government appoint a task force soon after the release of this report to develop a public engagement strategy around the land use question, to guide the work of government staff, to lead public consultations, and to report periodically with findings and recommendations.**

APPLYING THE LAND USE PLAN PROVINCE-WIDE

Developing a vision, principles and statements of provincial interest and enshrining these in applicable legislation and regulation is a process that could, in the Commission's view, be completed within a two-year time frame. Only then could the process of developing new official plans and amending existing municipal plans begin. The Commission acknowledges that the delay would result in the continuation and extension of special planning area regulations, even in those municipalities having an approved official plan. In the interim, the provincial government would continue processing subdivision and development applications in accordance with the amended regulations (see recommendations pertaining to Subdivision and Development and Special Planning Areas).

The Commission concedes that not all areas of the province are likely to proceed with incorporation within the two-year time frame. However, existing and new municipalities would be expected to develop official plans in accordance with the new provincial land use policy guidelines and to submit these for approval by the Minister as required by a revised *Planning Act*. For those communities not covered by municipal official plans, the provincial government would develop and apply a form of zoning, following consultation with residents of the affected communities, and CCAL staff would apply the applicable subdivision and development regulations as is now the case. The Commission acknowledges that this will represent a revised set of rules, but as

stated in the introduction to this section of the report, almost without exception, individuals and groups who appeared before us called for a more coordinated and inclusive approach to land use planning on Prince Edward Island. There is only one way to accomplish this.

In the following sections of the report, the Commission will describe specific issues related to land use and proposed solutions.

AGRICULTURAL LAND

Farming is one of the two dominant land uses on Prince Edward Island, accounting for 39% of the land base in the year 2000 compared to 48% in forest cover. Statistical measures of the state of the production component of the agriculture industry point to an industry in difficulty:

- Farm cash receipts represent a declining share of the province's gross domestic product (GDP), falling to 6.7% in 2007;
- The total land area devoted to agriculture has been declining gradually since 1986;
- Total net income realized by farm operators from farm operations was negative in 2007 and 2008³⁷; and
- The capital value of land and buildings has not kept pace with inflation.

The report of the Commission on the Future of Agriculture and Agri-Food concludes that a "...vicious circle has taken hold, characterized by declining profits, consolidation and an intensification of operations that is causing negative environmental impacts and losing farmers the respect of the community"³⁸. In its report, the Commission lays out a set of ambitious goals which, if achieved, would have the effect of reversing the trend and reestablishing agriculture as a viable industry "...that can feed the world with a smaller environmental footprint"³⁹.

A number of groups and individuals confirmed that the agriculture industry is going through a difficult period. In fact, the Commission heard from just as

many farmers who see their land as a liquid asset as from farmers who see it as the foundation of their livelihood, critical to the future of the industry. In other words, it would appear that many farmers are contemplating selling all or part of their land to fund their retirement or to meet short-term cash requirements, perhaps in part due to the current economic conditions in the agriculture industry.

What the Commission heard from three farm groups, the National Farmers Union, the Federation of Agriculture, and the Potato Board, can be summarized as follows:

- There is a fear that Island-wide incorporation would result in a confusing array of bylaws which would limit farmers' ability to grow food;
- Island-wide incorporation would increase the property tax burden on farmers and further exacerbate the urban-rural split;
- Farmers must be better compensated for taking land out of production for buffer zones, and these should be variable instead of a set width;
- Farmers need better protection against complaints and legal challenges from their non-farming neighbours;
- If a comprehensive land use plan is developed, it must include a regulatory framework that is applied consistently across the province;
- Farmers must be better compensated for land use practices which contribute to the public good;
- If there is a societal benefit to preserving agricultural land, then publicly-funded approaches need to be developed and applied; and
- Growers need a flexible and science-based regulatory framework to remain economically and environmentally sustainable.

The Commission explored these issues with farm groups during the public hearings and, following the hearings, with government officials and through its own research.

The Property Tax Question

The *Real Property Assessment Act*, R.S.P.E.I. 1988, Cap. R-4 provides for reduced taxation of farm, wooded and undeveloped land. An example of how the system works was provided to the Commission by the Department of Provincial Treasury.

- A piece of cleared farm land with a market value of \$2,000 per acre is assessed at the preferential

³⁷ Prince Edward Island Department of Provincial Treasury. June 2009. *35th Annual Statistical Review 2008*. pp. 77-83

³⁸ Commission on the Future of Agriculture and Agri-Food on Prince Edward Island. January 2009. *Growing the Island Way: The Next Chapter for the Agriculture and Agri-Food Economy of Prince Edward Island*. p. 39

³⁹ *Ibid* p.5

farm rate for property tax purposes of \$150 per acre for prime Class 2, down to \$100 per acre for Class 3, and one-half of the farm rate for wooded land. Swamp and wasteland owned by a *bona fide* farmer is assessed at \$30 per acre.

- Applying the provincial property tax rate of \$1.00 per \$100 of assessed value to Class 2 agricultural land, the tax payable amounts to \$1.50 per acre.
- The farm acreage on which tax must be paid can be further reduced through tax credits for land not planted in a row crop due to excessive slope or for buffer zone exclusions.
- This compares to the tax payable of \$500 per acre on the same piece of cleared farm land if it is designated as a development lot with a market value assessment of \$50,000.
- A residence on the same one-acre lot could reasonably increase the market value to \$150,000, and the tax payable would rise accordingly to \$1,500.

In this example, undeveloped land owned by a *bona fide* farmer attracts about 0.1%, one-thousandth, of the property tax for the same piece of land once it has been developed. It is therefore clear that provincial property tax policy is already quite considerate of *bona fide* farmers. It is also clear that, once a farmer has made the decision to subdivide, tax policy treats the farmer in the same manner as any other landowner hoping to gain financially from developing a property. However, Provincial Treasury admits that it is not clear to what extent property tax policy has influenced farmers' land use and development decisions. The Commission agrees with this assessment and is not prepared to propose changes at this time.

The Commission recommends:

- 7. That, before additional measures are considered as a means of influencing land use and development on agricultural land, an evaluation be conducted of the impact of current property tax policy.**

Protecting Normal Farm Practices

In 1997, the Round Table on Resource Land Use and Stewardship recommended that government enact legislation to provide an additional measure of protection to farmers operating in accordance with normal farm practice. Section 2 of the *Farm Practices Act* which was passed in 1998 outlines the extent of the protection provided:

A farmer who

- uses normal farm practices; and*
- complies with the Environmental Protection Act, R.S.P.E.I. 1988, Cap. E-9, Pesticides Control Act, R.S.P.E.I. 1988, Cap. P-4, Public Health Act, R.S.P.E.I. 1988, Cap. P-30, Planning Act, R.S.P.E.I. 1988, Cap. P-8, Agricultural Crop Rotation Act, R.S.P.E.I. 1988, Cap. A-8.01 and the regulations made pursuant to those Acts is not liable for damages in nuisance to any person for any noise, odour, dust, vibration, light, smoke or other disturbance resulting from an agricultural operation and shall not be prevented, by injunction or other order, from conducting an agricultural operation because it causes or creates any noise, odour, dust, vibration, light, smoke or other disturbance.*

The Act makes provision for the appointment of a Farm Practices Board, the majority of whose members, including the chair, are to be nominated by farm organizations. The Act gives the Board the authority to rule on complaints and to offer mediation services to parties in dispute over a farm practice. When the Board decides to hold a hearing, a majority of the members of the panel, including the chair, must be representatives of farm organizations. In addition, the Board has the authority to define what constitutes "normal farm practice" based on its own interpretation of the definition provided in the Act, or based on a code of practice submitted by a farm organization. In the process leading to the adoption of a code of practice for a specific type of agricultural operation, the Board is not required to consult with interested parties or with the public. Except for questions of law, which may be appealed to the Supreme Court of Prince Edward Island, decisions of the Board are final.

The Commission also heard the concern expressed that municipalities might pass bylaws that would interfere with normal farm practices, or that the provincial government might do the same. The *Farm Practices Act* contemplates this possibility in section 16:

Any farmer, farm group, or farm organization may refer any proposed enactment, policy or municipal by-law or undertaking that may adversely affect an agricultural operation or restrain normal farm practices to the board for review.

The Board is further authorized to review the proposal, determine whether it could adversely affect or restrain a normal farm practice, and report its findings to the Minister of Agriculture.

No evidence was presented to the Commission to support the suggestion that municipalities operating with an official plan and zoning and development bylaw or a specific bylaw relating to agricultural operations might have an adverse impact on normal farming practice. In fact, the Town of Stratford's Zoning and Development Bylaw contains a specific section outlining permitted uses and practices within its "Agricultural Reserve Zone"⁴⁰ which are meant to protect farmland against development and insure compatibility between farming and other land uses. Furthermore, few complaints are being received by the four largest municipalities with respect to normal farming practices. In summary therefore, in the Commission's view, municipal plans make sufficient allowances for agriculture within their boundaries, and it would be difficult to describe a law that gives more power to farm organizations to protect the rights of farmers to farm than does the *Farm Practices Act*.

With respect to the provision which enables farm organizations to submit codes of practice to the Board for approval, the Commission was surprised to learn that none has been published in the eleven years since the Act came into force. No satisfactory explanation was provided for this apparent oversight, just that the Board remains active in mediating disputes. Evidence provided to the Commission by the Community of O'Leary indicates that these mediation services do not always produce

satisfactory results⁴¹. The Commission believes that, for the benefit of the agriculture industry and the public at large, the Farm Practices Review Board must play a greater role in the establishment of agricultural codes of practice.

The Commission recommends:

8. That the Minister of Agriculture encourage the Farm Practices Review Board to revisit its role and to become more active in promoting the development and application of codes of practice for farm operations.

In its submission to the Commission, the Federation of Agriculture suggested that a disclosure statement be included in all real estate transactions involving the purchase of land within one kilometre of an active farming operation⁴². The intent of such a disclosure statement would be to inform the purchaser that normal farming activities may cause dust, noises, insects, light, odours, smoke, traffic, vibrations and operation of machinery during any twenty-four-hour period, and may involve storage and utilization of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments and pesticides. The Potato Board also suggested that more needs to be done to "...protect farmers from complaints or legal action regarding practices ... that can be considered 'normal farming practices'"⁴³. The Commission agrees that this proposal should be examined further, perhaps by the Farm Practices Review Board.

⁴⁰ Town of Stratford. December 2006. *Town of Stratford Zoning and Subdivision Control (Development) Bylaw*. Bylaw #29. Section 19 - pp. 100-102.

⁴¹ Community of O'Leary. June 2009. *Submission to the Land and Local Governance Commission*. p. 2.

⁴² Prince Edward Island Federation of Agriculture. June 2009. *Presentation to the Commission on Land Use and Local Governance*. p. 3.

⁴³ Prince Edward Island Potato Board. June 2009. PowerPoint Presentation.

http://www.gov.pe.ca/photos/original/clg_potatobd_09.pdf



Compensating Farmers for Contributing to the Public Good

The Commission heard from farm organizations that producers deserve to be compensated for the various contributions they make to society through their land management practices. While not all Islanders agree that everything farmers do contributes to the public good, governments have responded on their behalf with various program initiatives meant to encourage more environmentally-responsible practices. The incentives take a variety of forms:

- Provincial property tax credits on land removed from production because of high slope or buffer zone restrictions;
- The Alternative Land Use Services (ALUS) Program which pays farmers to remove land from production for various conservation measures;
- The Environmental Farm Plan, a voluntary initiative which assists farmers to assess their operations with an emphasis on environmental awareness;

- Lower crop insurance rates for farmers adopting specific soil conservation measures;
- The Canada – Prince Edward Island Agricultural Stewardship Program provides technical and financial assistance to farmers for a variety of soil and water conservation measures; and
- Favorable tax treatment of investments made by farmers in improving environmental stewardship practices.

The Commission is aware of the financial challenges faced by farmers and agrees that society must do its part to protect the strategic food supply and to preserve a way of life that is fundamental to the Island identity. We have earlier recommended that no further changes be made to property tax policy until the impacts of recent changes have been properly assessed. Measures to encourage adherence to the *Agricultural Crop Rotation Act*, R.S.P.E.I. 1988, Cap. A-8.01 were recommended by the Commission on Nitrates in Groundwater in June 2008⁴⁴. The Commission has been assured that the Environmental

⁴⁴ Government of Prince Edward Island. June 2008. *Report of the Commission on Nitrates in Groundwater*. 56 pp.

Farm Plan Program will continue for the foreseeable future and that the federal and provincial governments will continue to offer technical and financial assistance through cost-shared programs like the Agricultural Stewardship Program.

With regard to ALUS, the Commission notes the recommendation of the Federation of Agriculture that this program should be expanded beyond the present budget allocation (\$1.0 million in the 2009-2010 fiscal year) to compensate farmers for protecting land against development and for measures farmers take to protect the environment, whether these are mandatory or voluntary. However, since the program is currently underspent it would seem that more needs to be done to promote its benefits to farmers and other eligible landowners before additional funds are allocated. Also, the Commission believes government should consult with agricultural, environmental and other landowner groups with a view to expanding program criteria to include other eligible activities leading to the removal (retirement) of sensitive land from the production of food and fibre. Examples of these might include hedgerows and shelterbelts, and natural areas such as wetlands.

The Commission recommends:

- 9. That program criteria for the Alternative Land Use Services (ALUS) Program be reviewed and expanded and that the budget be adjusted accordingly.**

Preserving Agricultural Land

Given the prominence of arguments calling for the protection of farming and the preservation of agricultural land presented to the 1973 and 1990 Royal Commissions and the 1997 Round Table, the Commission was surprised that the issue generated so little comment this time around. Perhaps it is a reflection of the current fragile state of the agricultural industry. The Commission on the Future of Agriculture and Agri-Food did not address the question of land, even indirectly, in its final report. The provincial government has advised the Commission that it does not have a policy on the preservation of agricultural land, nor does it plan to develop one in the near future.



Agriculture has been the backbone of the Island economy since the time of the first European settlement in the 1720s. The Commission on the Future of Agriculture and Agri-Food has advanced an ambitious strategy meant to position the industry for growth and prosperity once the present downturn is behind us. There is every indication that food prices will rebound and that agriculture will as well. However, in today's economic climate, farmers increasingly view land as a provider of retirement income rather than one of the primary factors of production required to sustain the business in the long term.

At least three provinces have successfully tackled the issue of agriculture land zoning – British Columbia, Québec and Ontario. In British Columbia, the Agricultural Land Reserve (ALR) was established in 1974 as a means of protecting agricultural land which was being lost at the rate of 6,000 hectares (15,000 acres) per year. It functions as a provincial land use zone, covering 47,000 km² (11.6 million acres), within which agriculture is recognized as the priority resource use; farming is encouraged and non-agricultural uses are regulated. Landowners wishing to subdivide land within the ALR or use it for non-farm purposes must apply to the Agricultural Land Commission for permission to do so. No compensation was paid by the British Columbia government to landowners even though the legislation imposed new restrictions on what they could do with their land.

In Québec, the *Commission de protection du territoire agricole du Québec* was established in 1978. It functions in essentially the same manner as the B.C. Agricultural Land Commission, with added responsibility for the protection of agricultural activities. Québec's provincial agriculture zone, covering an area of 63,500 km² (15.7 million acres) was defined following extensive consultations with residents, the agricultural community and local governments. Once again, no compensation was paid to landowners affected by agricultural zoning.

In Ontario there is no province-wide legislation, perhaps because vast tracts in the north and west are not under pressure. The provincial government did decide that special measures were required to protect the area most threatened by development, the southwestern part of the province. In 2005, following a moratorium on development, the provincial government passed the *Greenbelt Act* creating a 7,300 km² (1.8 million acres) area of permanently protected green space, farmland, forest and wetland

bordering on the area known as the “Golden Horseshoe”. The Greenbelt extends from the area south of Peterborough in the east to Niagara Falls in the south, and northward along the Bruce Peninsula. It contains such significant land features as the Oak Ridges Moraine, Rouge Park and the Niagara Escarpment as well as hundreds of towns and villages and some 7,100 farms. The purpose of the Greenbelt Plan is to protect environmentally sensitive land and farmland, the dominant land use, from urban development and sprawl. In comparative terms, it is bigger than Prince Edward Island. No compensation was paid to landowners affected by the introduction of the Greenbelt. The Government of Ontario's stated goal is to expand the Greenbelt to take in adjacent municipalities, partly as a means to counter an emerging “leapfrog” development pattern.

Presently, across most of the Island, a farmer can sell, subdivide or develop land without too many restrictions, other than those contained in the Subdivision and Development Regulations administered by CCAL. Admittedly, farm land sold to a non-resident or to a corporation must be registered under the Land Identification Program, and its resource use is thereby protected for at least ten years.

In contrast, zoning plans in Summerside, Cornwall and Stratford outline significant areas of agricultural reserve, and vacant land zoned as residential remains in agricultural production in many cases. Information obtained from officials in these three municipalities indicates that there is no plan to convert agricultural land to other uses, nor has there been any recent pressure to do so from farmers or developers. While Charlottetown does not have an agricultural reserve zone, the City bylaw refers to agriculture as a permitted use on undeveloped land in any residential zone. In the four largest municipalities, farmers continue to produce food in an urban setting, with the full support of their councils' official plans.

Even in smaller municipalities, elected councils have dealt with the issue of land use and zoning and development plans. For example, Alberton, Kensington and Souris have established agricultural reserve zones. While acknowledging that there is a minimal amount of agricultural land within the town's boundaries, Souris' official plan reads⁴⁵:

⁴⁵ Town of Souris. November 2001. *Town of Souris Official Plan*. P. Wood & Associates. p. 30.

It shall be the policy of Council to designate any significant blocks of vacant land in the Town which have the potential to remain in viable agricultural production. These blocks of land shall remain designated for agricultural use until they are required to accommodate residential growth.

Borden-Carleton's official plan lists two objectives for its agriculture zone⁴⁶:

- *To protect quality agricultural land from premature development; and*
- *To ensure that any new non-agricultural developments do not conflict with existing or the expansion of existing agricultural uses in the agricultural area.*

The Community of Brackley's official plan goes even further⁴⁷:

It shall be Council's policy that other land use activities shall be permitted within the Community provided such activities do not have a detrimental impact on the long-term sustainability of the agriculture sector of the Community's economy.

The official plan of the Community of North Shore, which includes Stanhope and West Covehead, lists as its primary goal with regard to future land use⁴⁸:

...to encourage a limited amount of new non-agricultural development within the Community, while maintaining the overall character of the Community as a rural, resource-based community.

The hard decisions on land use and zoning made by residents of these communities should reassure the agriculture industry that planning does not pose a threat, and that the agriculture industry has great traditional and strategic importance for the Island's incorporated communities.

The Commission on Land and Local Governance agrees that farmers should be compensated fairly if

⁴⁶ Community of Borden-Carleton. October 2006. *Community of Borden-Carleton Official Plan*. p. 11.

⁴⁷ Community of Brackley. 2006. *Community of Brackley Official Plan*. p. 13.

⁴⁸ Community of North Shore. 2004. *Community of North Shore Official Plan*. p. 5.

they choose to sell their land. This being said, the Commission is concerned about two things. First, agricultural land is being converted to other uses and removed permanently from the food production system at an alarming rate, particularly in communities without an official plan. Second, there has been no public debate for a very long time on the issue of preserving agricultural land. Other Canadian jurisdictions have tackled this issue successfully and there is no reason why it can't be done here. If the land is zoned for agriculture and the farmer wants to sell or subdivide it for development purposes, then the farmer should have to apply for a change in use, the same as any other property owner would have to do where an effective land use plan is in place. The Commission believes the decisions of individual landowners to subdivide or develop land for other uses should not be allowed to constrain the future of the agriculture industry, except where ample justification can be demonstrated. It should be obvious that Island society has a long-term interest in this question and that all should have a say in what becomes of this most basic unit of production, the land itself.

The Commission recommends:

- 10. That any provincial land use policy must establish the preservation of agricultural land as a priority, and that all land use plans, municipal and otherwise, must include an agricultural reserve zone, where appropriate.**

Buffer Zones

In response to the 1997 report of the Round Table, the provincial government restricted the activities of all landowners, including farmers, within fifteen metres of a watercourse or wetland. The fifteen-metre-wide area is referred to as a "buffer zone" in the Watercourse and Wetland Protection Regulations established under the *Environmental Protection Act*. While farm organizations appearing before the Commission did not question the need to protect watercourses and wetlands, they did challenge what they considered to be the arbitrary selection of fifteen metres as the width of the buffer zone. They

questioned whether there is a scientific basis for this decision and one, the Federation of Agriculture, recommended that the Regulations be amended to introduce the concept of a “targeted variable width” buffer⁴⁹.

The Commission has consulted with the Department of Environment, Energy and Forestry on this question and has conducted its own research into the matter. The Commission believes the provincial government had no choice but to act in the face of increasingly frequent fish kills, stream siltation and watercourse contamination from fertilizer runoff. While the ideal width of a buffer zone remains an open question, the Commission believes it would be premature to alter the current Regulations until more is known. Furthermore, enforcement of a variable width buffer zone would appear to be practically impossible. Over time, the vegetative cover will mature, new wildlife habitat will be created, and the health of watercourses should improve. In the meantime, farmers are being compensated for taking land out of production through property tax credits and, with the ALUS Program, are being encouraged to enhance their stewardship efforts through additional soil conservation measures. The Commission concludes that more time is needed to assess the effectiveness of current measures.

The Commission recommends:

- 11. That the provincial government retain the current buffer zone legislation which requires that landowners restrict activities within a fifteen-metre zone adjacent to all watercourses.**

FOREST LAND

Forests cover almost one-half of the province, and the land they grow on is held by thousands of woodlot owners. In the fall of 2004 the provincial government launched a review of the 1987 Forest Policy by directing the members of the Public Forest Council to

hold hearings across the province. This process ultimately led to the release in 2006 of the current Forest Policy *Moving to Restore a Balance in Island Forests*. The vision statement in the new Forest Policy reads as follows⁵⁰:

Our vision is one of enhanced forest quality. PEI will have healthy Acadian forests that host a diverse range of plants and animals, and contribute to the delivery of economic benefits and ecological goods and services essential to human health and well-being. Our forests will not only provide wood, non-timber and value-added products, but will stimulate job creation and wealth, encourage recreational and educational pursuits, support diverse wildlife, generate clean air and water, protect soils, create carbon sinks and reservoirs, promote nutrient cycling, and maintain aesthetic and spiritual values. Islanders will become better connected to forests, and better appreciate and understand the many values of these lands.

The Commission heard from two individuals involved in the forest industry during the public hearings and consulted with officials of the Forests, Fish and Wildlife Division of the Department of Environment, Energy and Forestry. Since there does not appear to be a body which represents the interests of the industry, either regionally or province-wide, the Commission had to exercise some judgment in identifying forestry issues relating to the terms of reference. To be fair, the suggestion that the provincial government encourage the creation of a forestry council was advanced by one of the presenters.

The recent history of the forest industry on Prince Edward Island illustrates the classic boom and bust cycle experienced by a marginal supplier of commodity products, in this case pulpwood and construction lumber, or studwood. Beginning in the early 1990s, the softwood sector of the forest industry – made up of harvesting and trucking firms and sawmills – geared up to supply surging North American markets. Demand was high, and the Canadian dollar was low in relation to the U.S. dollar. Woodlot owners were offered prices for stumpage that they simply could not refuse.

⁴⁹ Prince Edward Island Federation of Agriculture. June 2009. *Presentation to the Commission on Land Use and Local Governance*. p. 7.

⁵⁰ Government of Prince Edward Island. 2006. *Moving to Restore a Balance in Island Forests*. Prince Edward Island Forest Policy. p. 3.

Softwood harvest levels peaked during the 2002-2004 period at 567,000 cubic metres (156,400 cords) per year, only to decline in 2008 to 78,000 cubic metres (21,500 cords). Not only did the market collapse as a result of the recession and the higher Canadian dollar, the resource was severely depleted through over-harvesting. In contrast, other sectors of the industry such as hardwood lumber, fuelwood and value-added processing have remained relatively healthy and stable.

The consultations which led to the 2006 Forest Policy came at a time when the industry was beginning to feel the effects of declining markets and softwood supply. This proved to be not entirely a bad thing because the bleak economic picture encouraged government, resource owners, harvesters, processors and other forest industry players to reflect seriously on the future of the sector and what government might best do to assist. In the Commission's view, the new Forest Policy strikes a good balance between the timber and non-timber values of Island forests and sets the course for a more sustainable industry in the long term. Incentives offered to woodlot owners under the new Forest Enhancement Program encourage responsible forest management on private lands, and government's renewed commitment to managing forests on Provincial Land sets the stage for stronger stewardship and conservation measures.

While the Commission believes the direction being taken by the provincial government and the forest industry is generally satisfactory, several program areas need to be addressed, beginning with the 2010 Corporate Land Use Inventory (CLUI). Although the CLUI has government-wide application, the project of renewing the inventory is led by forestry staff of the Forests, Fish and Wildlife Division. The CLUI includes data that are essential to programs, policies and legislation across a number of provincial government departments and agencies, and to partners outside government, and these data are used to generate many types of maps. For example:

- Farmers use maps to develop environmental farm plans;
- Landowners and property developers use maps to identify watercourse and wetland boundaries;
- The Office of Public Safety uses maps to develop and update its Emergency Response System;
- The National Livestock Traceability System uses maps to identify and locate producers;
- Field boundaries are used to monitor cropping practices in the enforcement of the *Agricultural Crop Rotation Act*; and
- The maps displayed in this report are based on CLUI data.



Based on an assessment of the importance of the CLUI to the forestry program and to other key government programs such as ALUS, property mapping and taxation, road mapping, and the emergency response system, as well as the many uses of maps by the agriculture, wind energy and aquaculture sectors, the Commission believes it is essential that the Province respect the ten-year cycle for comprehensive inventories begun in the early 1980s. A new CLUI is also necessary to complete the 2012 State of the Forest Report, a requirement under the Forest Management Act, R.S.P.E.I. 1988, Cap. F-14.

The Commission recommends:

- 12. That the provincial government continue its practice of conducting regular corporate land use inventories, the next one of which is scheduled for 2010, and that it complete the State of the Forest Report in 2012.**

The Commission was given the opportunity to tour government facilities and to view silviculture treatments on public and private land. While the forestry program benefits from clear direction and competent staff, several improvements should be considered, beginning with the thirty-year-old greenhouse facilities at the J. Frank Gaudet Tree Nursery. The Commission was informed that the greenhouse structures and their mechanical systems are reaching the end of their normal life cycles and that, if they were to be replaced, a new facility would be designed to produce a greater variety of better-quality hardwood and softwood seedlings. The demand for seedlings has expanded beyond reforestation to a number of other areas such as communities, schools and landscape enhancement. This will necessitate a greater variety of species and nursery stock sizes, a requirement that cannot be met efficiently with the present production facility.

The Commission recommends:

- 13. That the provincial government begin the process of replacing the greenhouse at the J. Frank Gaudet Forest Nursery with a new facility equipped to produce a broader variety of species and nursery stock sizes.**

Through the “Greening Spaces Program” and the “Hedgerow and Buffer Zone Planting Program”, communities, landowners and watershed groups are able to access hardwood and softwood seedlings and planting services at a subsidized cost to establish hedgerows and shelterbelts for purposes such as soil and water conservation, landscape enhancement and energy conservation. The Commission has been led to believe that the programs are underfunded.

The Commission recommends:

- 14. That the provincial government increase the budget for the Greening Spaces, and the Hedgerow and Buffer Zone Planting Programs, to meet current and anticipated demand.**

In a brief submitted on his own behalf, Richard Davies advised the Commission that it has been some time since the forest community, including woodlot owners, has had an effective voice, and he recommended the creation of a provincial forestry council⁵¹. Two forest advocacy groups exist presently – the Public Forest Council and the Model Forest Network Partnership – and the *Forest Management Act* contains a provision allowing for the creation of the Forest Improvement Advisory Council. The Commission was advised that past attempts by the Province to encourage the creation of an effective, provincial, broad-based forest advocacy group

⁵¹ Richard Davies. June 2009. *Submission to the Commission on Land and Local Governance*.
http://www.gov.pe.ca/photos/original/clg_davies_09.pdf

proved unsuccessful, and there is no reason to believe the outcome would be any different this time. The Forests, Fish and Wildlife Division has outlined its education, public engagement and advocacy initiatives for the benefit of the Commission, and the Commission believes the Division is on the right track. Hopefully, in the longer term, these initiatives will lead to the creation of a viable provincial forestry advocacy group representing all interests within the forestry community.

WATER QUALITY

Clearly, there is a strong relationship between water quality and land use. The Report of the Round Table on Resource Land Use and Stewardship linked water quality to land use and highlighted the threat to water quality as a significant issue, and it presented the provincial government with a number of recommendations meant to address growing concerns over the quality of drinking water and surface water. Quoting from the report of the Round Table⁵²:

The issue of water quality has two dimensions: groundwater quality from the standpoint of human health and consumption, and surface water quality as it affects aquatic habitat and organisms living in Island watercourses. The human influences of greatest concern are sedimentation, irrigation, waste management, nutrient contamination from fertilizer and manure, pesticide contamination and bacterial contamination.

While the Province did act on some of the Round Table's recommendations, the particular problem of nitrate contamination continued to worsen and, in July 2007, the provincial government appointed the five-member Commission on Nitrates in Groundwater chaired by the Hon. Armand DesRoches. Its final report contains an extensive analysis of the factors which contribute to an increase in nitrate loading and a series of recommendations meant to bring about significant improvements. The other issue which will be addressed in this section is the notion of watershed-based planning, or watershed management.

The *Report of the Commission on Nitrates in Groundwater* enunciates two basic principles⁵³:

- *The present state of nitrates in the Island's surface and groundwater did not occur overnight: the solution also will be long-term; and*
- *All Islanders have contributed to the problem; all must participate in the solution.*

The recommendations call for better public education, sweeping changes to the way sewage treatment systems are managed, mandatory three-year crop rotation, a nutrient management system for crop and livestock producers, and a watershed approach to managing nitrogen inputs. This Commission cannot hope to improve upon the excellent work of the Commission on Nitrates in Groundwater. Rather, we have chosen to focus on what has happened since the report was received by the provincial government in July 2008.

In discussions with the Department of Agriculture and the Department of Environment, Energy and Forestry (DEEF), this Commission learned that officials have been asked to develop a plan for implementing the recommendations of the Nitrate Commission. To date, nothing concrete has happened. Submissions received by this Commission from representatives of the agriculture community did not refer to the nitrate issue nor did they outline the industry's position regarding the recommendations made by the Nitrate Commission, other than a general statement regarding the importance of policies and regulations being based on sound science. This Commission is fully aware of the complexities associated with implementing a nutrient management system for crop and livestock producers and accepts the commitment of the Department of Environment, Energy and Forestry that the provincial government will move forward to implement the recommendations. To date, however, the Province has not released its plan for doing so.

⁵² Round Table on Resource Land Use and Stewardship. August 1997. *Cultivating Island Solutions*. p. 37.

⁵³ Government of Prince Edward Island. June 2008. *Report of the Commission on Nitrates in Groundwater*. p. iii.

The Commission recommends:

15. That the provincial government, in consultation with affected parties, continue to develop an implementation plan for the recommendations contained in the report of the Commission on Nitrates in Groundwater, and that concrete action leading to improved outcomes begin as soon as possible.

the Round Table on Land Use presented a recommendation in this regard in 1997. The Department's website lists twenty-one community watershed organizations. (Additional information provided by DEEF indicates there are thirty such groups whose collective area of interest covers 80% of the Island.) An excellent on-line tool *Guide to Watershed Planning in Prince Edward Island*⁵⁴ is available as well as a list of available financial assistance programs and staff who work as watershed coordinators.

Recently, the Minister responsible announced the provincial government's intention to create a number of watershed coordinator positions within the provincial public service and that, together, these coordinators would be responsible for insuring that all areas of the province are covered by a set of functional watershed plans. According to DEEF



On the issue of watershed-based management and land use decision making, this Commission received several submissions from watershed and environmental groups, and from municipalities. These generally suggested that human activities on the land should be managed in accordance with the hydrologic (water) cycle. DEEF has been very active in promoting and assisting watershed groups since

officials, one of the Department's concerns is that watershed plans are not being implemented to the degree that watershed groups would like to see. This is understandable given the fact that, until now, all

⁵⁴ Department of Environment, Energy and Forestry. *A Guide to Watershed Planning in Prince Edward Island*. http://www.gov.pe.ca/photos/original/eef_waterguide.pdf. 40 pp.

groups have had to depend on volunteer resources and uncertain operating funds.

On the issue of managing human activities in a way that protects water resources and respects the natural water cycle, it is hard to argue that any other approach would make sense. After all, clean drinking water and groundwater are fundamental to all forms of life. In their submissions to the Commission, the Town of Cornwall and the group representing the thirteen communities in the greater Charlottetown area raised concerns about regulatory gaps and conflicting jurisdictions when it comes to managing drinking water supplies. The Town of Cornwall had this to say in its submission⁵⁵:

- *Without addressing and securing a long term reliable and safe water supply for the Province based on groundwater the remaining land use issues pale in comparison;*
- *Discussions on water supply are relatively new to residents of PEI and reinforcing the significance of threats to this resource will be challenging;*
- *Existing municipal boundaries have little or no basis on watersheds;*
- *Continued haphazard development across the Province is a significant threat to our groundwater;*
- *The current draw from well fields around the Cornwall, Charlottetown and Stratford area has been identified as approaching capacity in some cases.*

The concept of “governance on a watershed basis” was first put forward on Prince Edward Island by the Environmental Advisory Council in its 2007 report⁵⁶. The Council reported that the idea that the provincial government should manage the Island on a watershed basis was widely supported in its public consultations. There was also considerable interest in the notion of enhanced consultation between different levels of government and watershed groups. The Council noted that there are upwards of 250 watersheds on Prince Edward Island and that many of them are small, and it recommended that efforts be made to consolidate watershed groups. The Council

⁵⁵ Town of Cornwall. June 2009. *Submission to the Commissioner on Land and Local Governance*. p. 5.

⁵⁶ Prince Edward Island Environmental Advisory Council. April 2007. *We Are All Downstream, We Are All Upstream. A Report on the Public Consultations on Managing Land and Water on a Watershed Basis*. 57 pp.

did not suggest, however, that municipal boundaries should be adjusted to more closely align with watershed boundaries or that watershed boundaries should become more prominent as a defining feature of local governance structures.

The Commission believes there is merit in the concept of management on a watershed basis, an idea advanced by the provincial government, the Town of Cornwall and thirteen municipalities in the greater Charlottetown area. The Commission does not believe, however, that Island communities are ready to accept governance on a watershed basis if this means a realignment of municipal boundaries. We are more inclined to suggest that DEEF consult with watershed groups regarding the proposed new support structure aimed at implementing existing plans, and that this exercise also include consideration of watershed management group boundaries. In addition, amendments could be made to the *Planning Act* and to the Subdivision and Development Regulations to more clearly incorporate the notion of watershed management into official plans and zoning and development bylaws, and as a consideration in assessing requests for subdivision and development approvals.

The Commission recommends:

- 16. That the provincial government and municipalities develop and implement land use policies giving greater consideration to watershed boundaries and to the protection of surface and groundwater resources.**

SUBDIVISION AND DEVELOPMENT

The Subdivision and Development Regulations made pursuant to the *Planning Act* describe the rules with which landowners and developers must comply when they wish to subdivide and develop land. The Regulations apply to all areas of the province, except the thirty-one municipalities with official plans and bylaws approved by the Minister. Subsection 3.(1) of the Regulations states that:

No person shall be permitted to subdivide land where the proposed subdivision would

- a) *Not conform to these regulations or any other regulations made pursuant to the Act;*
- b) *Precipitate premature development or unnecessary public expenditure;*
- c) *In the opinion of the Minister, place pressure on a municipality or the province to provide services; or*
- d) *Have a detrimental impact.*

Development is defined in the *Planning Act* as:

The carrying out of any building operation, including excavation in preparation for building, on, over or under land, or the making of a material change in the use or the intensity of the use of any land, buildings or premises, and includes the placing of structures on, over or under land.

A subdivision is defined in the *Planning Act* as:

A division of a parcel of land by means of a plan of subdivision, plan of survey, agreement, deed or any instrument, including a caveat, transferring or creating an estate or interest in part of the parcel.

A subdivision agreement is defined as:

An agreement between a council (of a municipality) and a developer whereby the developer undertakes to provide basic services in order to develop a plan of subdivision.

Subsection 12.(1) of the Regulations states that:

No person shall subdivide land without first obtaining final approval of the subdivision from the Minister.

Section 13 of the Regulations outlines subdivision design requirements as follows:

Subdivision designs shall be based on sound planning, engineering, and environmental principles, and shall demonstrate that the proposed subdivision is suited to the intended use, having due regard for

- a) *Compatibility with surrounding uses;*

- b) *The topography of the site;*
- c) *Surface drainage on the site and its impact on adjacent parcels of land;*
- d) *Traffic generation onto adjacent highways;*
- e) *Availability, adequacy and the economical provision of utilities and services;*
- f) *The ability to further subdivide the land or adjoining land;*
- g) *The provision of lots suitable for the intended use;*
- h) *Waste water management;*
- i) *Water supply; and*
- j) *Natural features.*

The Current Subdivision and Development Approval Process

Administration of the Subdivision and Development Regulations is the responsibility of the Planning and Inspection Services Division of the Department of Communities, Cultural Affairs and Labour. The Building and Development Services group within the Inspection Services Branch consists of the Manager, one Chief Officer and nine Subdivision and Property Development Officers. The Provincial Planning Branch consists of a Manager and two Planners. Together with the Division Director and other staff responsible for boiler, pressure vessel, plumbing, propane, electrical and elevator inspection, these staff advise the Minister on applications for subdivisions and development on the 90% of the province that is not covered by a municipal official plan.

Applicants are guided through the process by a Property Development Officer located in one of the Access PEI Offices in O'Leary, Summerside, Charlottetown, Montague or Souris. Much of the information required to submit the application can be found on-line. In the case of municipalities having an official plan and bylaws, applicants are directed to the municipality's website, or office, where they are assisted by the municipal administrator or planning officer. Depending on the nature and scope of the proposed subdivision, most applications are referred to other government departments for review and comment before final approval is given.

A permit issued by the Minister may contain conditions required to insure compliance with the Subdivision and Development Regulations, the *Planning Act*, the *Environmental Protection Act*, the *Roads Act*, the *Provincial Building Code Act*,

R.S.P.E.I. 1988, Cap. P-24, and/or the *Fire Prevention Act*, R.S.P.E.I. 1988, Cap. F-11. The Minister is not required to hold a public meeting regarding any application for a permit for a subdivision or development, but may choose to do so (section 11 of the Regulations). There is no policy or guideline in place to direct the Minister in this regard, and recent experience would indicate that public meetings on permit applications occur quite infrequently, less than once per year. Under section 23.1 of the *Planning Act*, the Minister must cause a written notice of decisions regarding subdivision and development approvals and permits to be posted in the local provincial government Access PEI office. In October 2009 the provincial and municipal governments launched a new internet-based information system called “PEI Planning Decisions” which will be used to post all building permits issued by municipalities and the provincial government.

Section 28 of the *Planning Act* outlines the process for appealing a decision of the Minister to IRAC. In addition, the *Environmental Protection Act* contains a provision allowing for appeals to IRAC of the Minister’s decision regarding the issuance or refusal to issue a permit following an environmental impact assessment.

The application process for subdivision and development permits in municipalities with official plans is normally described in the municipality’s bylaws. The Commission has reviewed the procedure followed in the four largest Island municipalities – Summerside, Cornwall, Charlottetown and Stratford. While each municipality has a slightly different set of rules, generally speaking, no approval is given unless the final subdivision plan includes certified engineering drawings, a legal survey plan, a surface water plan, a soil erosion control plan, and an area set aside as parkland in the form of a deeded parcel or cash-in-lieu of parkland.

The developer must also enter into a development agreement which outlines the developer’s commitment to construct roads, sidewalks, curbing, sanitary sewer and water systems, fire hydrants, street lighting and electrical services, and which includes up-front financial guarantees in the form of proof of insurance, performance bonds, letters of credit, and/or lots taken as security. The subdivision approval process and the responsibility placed on developers are similar in Summerside, Cornwall and Stratford. It would be fair to say that the developer is held to a much higher standard than would be the case in a non-incorporated area where the rules are

administered by the Province. Section 28 of the *Planning Act* outlines the process for appealing a decision of a municipality to IRAC.

Trends in Subdivision and Development

Based on input received by the Commission during the public hearings, subdivision development is a very contentious land use issue on Prince Edward Island. Records obtained from the Planning and Inspection Services Division indicate that the total number of unimproved parcels of land in the province stands at approximately 20,000, with approximately 5,000 of these being located within the thirty-one municipalities with official plans. A further breakdown of the 20,000 unimproved parcels shows that approximately one-half are residential and one-half are recreational or cottage lots. Over the past twelve years, approximately 1,200 new lots were approved annually, and approximately 1,000 building permits were issued. This indicates that the surplus of residential and cottage lots continues to grow, and that the gap is widest in areas of the province without an official land use plan. The Commission believes these numbers are important because they provide a measure of the quality and level of planning control, or lack thereof, practiced across the province.

Discussions between the Commission and officials of the larger municipalities indicate that the high cost of subdivision development in urban areas has leveled the playing field to the point where developers are not inclined to engage in speculative practices. Also, the relationship between supply and demand is a very important consideration when it comes to subdivision design and development. If a developer chooses to spend more up front to develop high-cost infrastructure, this decision must be based on a sound business plan and with the expectation that higher-priced lots will sell within a reasonable period of time.

In areas of the province not covered by an official plan, development is governed by the Planning and Development Regulations. Until recently developers have been able to subdivide and offer lots for sale in subdivisions having no infrastructure other than electricity and a basic street. In cottage subdivisions, the street often consists of nothing more than a few loads of shale spread across a field. In this environment, with a surplus of lots in many communities, it is hardly surprising that many unimproved lots remain unsold.

The map below shows the ratio of vacant lots and parcels to total number of civic address points – the higher the ratio, the more surplus lots there are within the community. It is worth noting that the surplus of lots is greatest in coastal communities, most of which have no official plan, and lowest in urban areas where supply and demand are kept in better balance by stronger planning regimes.

However, as pointed out earlier, the rules have been tightened considerably over the past few years, and statistics for 2009 show that the rate of new subdivision applications has slowed. It is not known whether there is a direct relationship between the two or whether the economic downturn or other factors may have contributed as well.

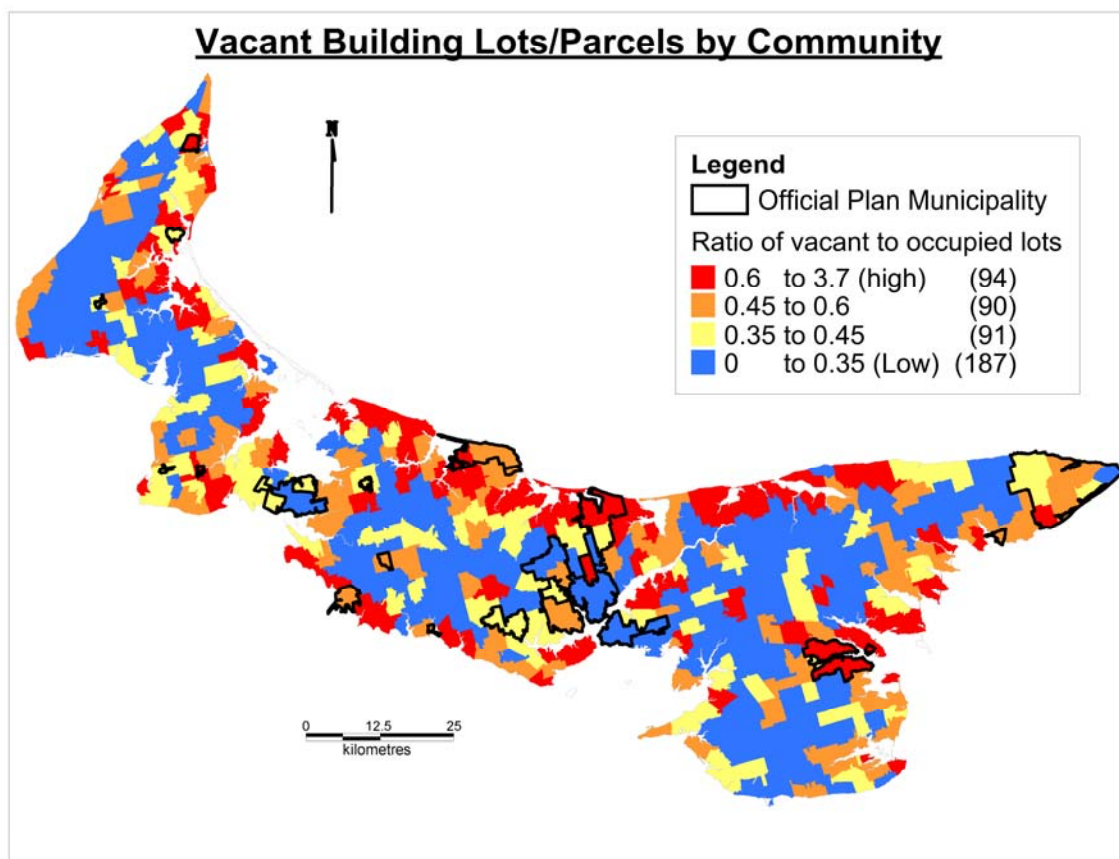
In the case of communities which fall within the special planning areas adjacent to Summerside, Charlottetown, Stratford and Cornwall, the problem is the reverse. Because of a restrictive formula, removed only in August 2009, municipalities like Miltonvale Park, New Haven - Riverdale, Warren Grove, Union Road, Brackley, Linkletter, Sherbrooke and Hazelbrook have been unable to amend their official plans to establish an inventory of new building lots. On average, these eight suburban

municipalities have an inventory of 33 unimproved lots each, not enough to meet anticipated demand or to plan for growth. In contrast, the three municipalities of Eastern Kings, North Shore and the Resort Municipality (Stanley Bridge, Hope River, Bayview, Cavendish, North Rustico), none of which falls within a special planning area, have 1,766 unimproved lots amongst them, an average of 589 per municipality, far in excess of current demand.

These examples illustrate that the restrictions on subdivision development in the special planning areas surrounding the larger municipalities have been very effective in controlling growth. They also illustrate that an imbalance in the supply of unimproved lots has been allowed to develop – one that encourages people to buy, build and commute from communities located outside serviced areas.

Suggested Improvements to the Subdivision and Development Approval Process

The Commission acknowledges that significant improvements have been made to regulations governing the subdivision approval process in the



90% of the province administered by the Planning and Inspection Services Division. However, more should be done to level the playing field between developments occurring outside and within areas having an official plan and zoning and development bylaws so that the future costs of public services can be better managed. As it now stands, it is far less risky, and cheaper, for a developer to do business in an unincorporated area because the rules which govern planning, application and infrastructure are less onerous. Consequently, the return on investment can be much greater, especially in the case of cottage subdivisions which will be discussed in the next section of this report.

In contrast, in the four largest municipalities, a developer must enter into a subdivision roads and services agreement which outlines clearly what is expected, before approval is given. This provides much greater certainty to these municipalities in terms of the future cost of public services. The Commission believes it would not be unreasonable to expect developers in all areas of the province to do the same.

The Commission recommends:

- 17. That the provincial government review the Subdivision and Development Regulations (sections 13, 14, 26 and 27), which describe the conditions with which a developer must comply before a subdivision permit is granted by the Minister, and bring them more in line with the zoning and development bylaws which apply to the four largest municipalities.**

- 18. That the Minister encourage all municipalities having an official plan and a zoning and development bylaw to adopt conditions on subdivision development similar to those in effect in Summerside, Cornwall, Charlottetown and Stratford.**

COTTAGE SUBDIVISIONS

In a 1991 discussion paper, the Province reported that approximately 10,000 cottage lots were approved between 1968 and 1990; only one-third had been built upon. Current statistics list the inventory of undeveloped cottage lots at just under 10,000, 50% above what it was in 1991. The average number of cottage lots approved over the past twelve years was 286 per year while the average number of permits issued over the same period was 200 per year. This means that supply still far exceeds demand, and it is growing. The present Subdivision and Development Regulations do not allow the Minister to take supply and demand into consideration when assessing a request for a cottage subdivision permit. As well, the law does not allow the Minister to require developers to bring old cottage subdivisions up to present standards. The only exception is the case of approved lots in old cottage subdivisions that are subsequently found to be too small to meet the present standards for on-site sewage disposal. Government believes that recently enacted regulations requiring developers to build roads to a higher standard will limit speculative cottage subdivision development, but those regulations are not retroactive.

Summer cottage development increases tax revenue from land sales, infrastructure, construction and servicing, all of which benefit the provincial economy. Property tax revenue grows, often at the higher non-resident rate, and summer residents consume goods and services, many of which are taxed. Local businesses benefit, from grocery stores and gas stations, to restaurants and summer theatres. This is the positive side of the ledger. In the absence of a coastal development policy, short-term financial considerations have apparently driven provincial government economic and land use development decisions in the coastal area since the early 1960s

and, especially in the period since the Confederation Bridge opened in 1997.

To illustrate what is happening in the cottage real estate market, the Commission consulted several on-

line realty websites during the May to August 2009 period. The price range for individual cottage lots as reported on these websites is shown in the table below:

| Subdivision | Location | Price Range |
|--------------------------------|----------------|------------------------------|
| Kildare Estates | Kildare | \$27,900 - \$119,900 |
| Sunbury Cove Estates | Saint Nicholas | \$119,877 - \$229,877 |
| Mill Creek Properties | Grand River | \$43,450 - \$79,900 |
| Bay Breezes Estates | Grand River | \$20,000 - \$90,000 |
| Carleton Cove Estates | Seven Mile Bay | \$29,900 - \$99,900 |
| Sunset Dunes | Cape Traverse | \$59,900 - \$299,900 |
| Stanley Bridge Haven | Stanley Bridge | \$40,000 - \$215,000 |
| Lighthouse Point | Stanhope | \$119,000 - \$329,000 |
| Winter River Woods | Pleasant Grove | \$32,000 - \$52,000 |
| Estates at Sandy Cove | Canoe Cove | \$22,500 - \$139,900 |
| Dykermann Road | Cherry Valley | \$22,500 - \$80,000 |
| Whispering Waves | Morell | \$39,750 - \$199,750 |
| Greenwich Dunes Estates | Greenwich | \$75,000 - \$125,000 |
| Naufrage Harbour | Naufrage | \$25,000 - \$99,000 |
| Battery Point | Georgetown | \$79,000 - \$99,000 |



Not surprisingly, buyers of the more expensive cottage lots are constructing upscale residences, and a market is developing for these exclusive summer properties. A review of real estate property listings shows a price range of up to \$500,000. Realtors' websites advertise these cottage subdivisions as vacation and retirement home communities, in some cases offering to build custom-designed homes, and suggesting that the owner can rent the properties for \$3,000 to \$4,000 per week during the summer months. The distinction between summer and year-round subdivision development is not always clear in the advertisements. Developers and buyers, all of whom are presumably aware of the North American market for such properties, see value on Prince Edward Island and the potential for profit from their eventual sale.

The Commission's interest in the matter of cottage subdivision development flows from the section of its terms of reference which calls for a review of past land use practices and an assessment of the long term impacts of current development patterns. Changes occurring in the cottage real estate market will have a significant impact on property values and coastal viewscapes and, if the present trend toward year-round occupation continues, on the very makeup of rural communities. It is a clear example of how the law of the free market, left unfettered, can influence the future character of rural communities.

But there is another important consequence of this development pattern, one which concerns the Commission. To illustrate, the Commission received a brief from the Schurman's Point Property Owners Committee which argued that government should take over responsibility for a private road in this long-established cottage subdivision, in part because more and more property owners are living there year round. Add to this the concern expressed by the Department of Transportation and Public Works over the expanding number of requests for road upgrading and maintenance, and snow plowing on private roads located in cottage subdivisions, and the scope of the problem becomes clearer.

The Commission believes that, as more and more owners of expensive property on so-called cottage lots choose to occupy their residences year-round, demands on the Province for road upgrading and maintenance, school busing, emergency services and, potentially, central water supply and sewage disposal will grow. Information obtained from CCAL indicates that a significant proportion of cottage owners occupy their properties year-round. After all, these owners pay high property taxes and, in relative terms, receive few property-related services in return. It is true that building permits issued by the Province

make it clear that they cannot expect to receive the same services as owners of lots in residential subdivisions. The cottage owner associations to which they currently belong provide the only means by which they can advance their common interests, and these associations are poorly equipped to deal with the concerns of year-round residents. How the Province might respond to an organized effort by year-round residents of so-called cottage subdivisions to obtain what they consider to be an equitable level of government services remains an open question.

The Commission recommends:

19. That the provincial government continue to monitor and assess the impacts of the trend toward year-round occupation of cottage subdivisions with a view to controlling the future cost of associated public services.

SPECIAL PLANNING AREAS

Section 8.1 of the Planning Act gives Executive Council the authority to establish special planning areas (SPAs). To date, seven SPAs have been identified, and the conditions attached to each of them are further described in the Subdivision and Development Regulations. They are:

- Princetown Point – Stanley Bridge
- Greenwich
- Borden Region
- Stratford Region
- Charlottetown Region
- Cornwall Region
- Summerside Region

The Commission understands that the SPAs, particularly those created as a result of the 1995 amalgamations, were intended as interim measures pending the development of comprehensive land use plans. Considerable input was received from municipalities, groups and individuals regarding the SPA issue. Few advocated the *status quo*, and recommendations ranged from removing the SPAs altogether to amending them, or replacing them with municipal official plans and proper zoning and development bylaws. For the record, the Commission received no input regarding the Greenwich and

Borden Region SPAs. Comments received by the Commission with respect to the other five SPAs may be summarized as follows:

- The most obvious positive impact of the SPAs adjacent to Stratford, Charlottetown, Cornwall and Summerside has been to control the pace of development of new unserviced lots in residential subdivisions within the SPAs;
- Municipalities which lie in whole or in part inside an SPA have been seriously impacted because of the restrictions on development;
- The SPAs have contributed in a positive way to the growth of residential subdivisions in Stratford, Charlottetown, Cornwall and Summerside;
- No SPA should be eliminated until it can be replaced by a municipal official plan and zoning bylaw which is guided by a comprehensive provincial land use policy and is approved by the Minister;
- Residential subdivision development has “leap-frogged” the SPAs and has moved to outlying areas because of looser rules and lower property taxes;
- Strip development has not been significantly curtailed within the SPAs because of provisions which allow the subdivision of single and multiple lots from existing parcels along roads for residential and other uses;
- Those who own land within SPAs feel they are being discriminated against because they do not have the same rights to develop their land as residents living outside SPAs;
- Because of restrictions the SPA Regulations place on the development of official plans, affected communities claim an inability to effectively address significant issues like watershed planning, well field protection and conflicting land uses;
- Government is not required to consult with affected communities before imposing SPAs or making changes to the Regulations;
- The SPA Regulations, because they take precedence over official plans, represent a major impediment to local governance;
- SPA Regulations should be applied only as a temporary measure, designed to control development until a comprehensive land use plan is adopted;
- The connection between the purpose of the Princetown Point - Stanley Bridge SPA and the Regulations themselves is not always evident, for example, allowing subdivisions of more than three lots only within 1,000 feet of the shore; and
- In the Princetown Point - Stanley Bridge SPA, restrictions on subdivision development

significantly reduce the market value of properties lying within the 1,000 foot zone bordering the shore because one-third of the width of the property cannot be subdivided.

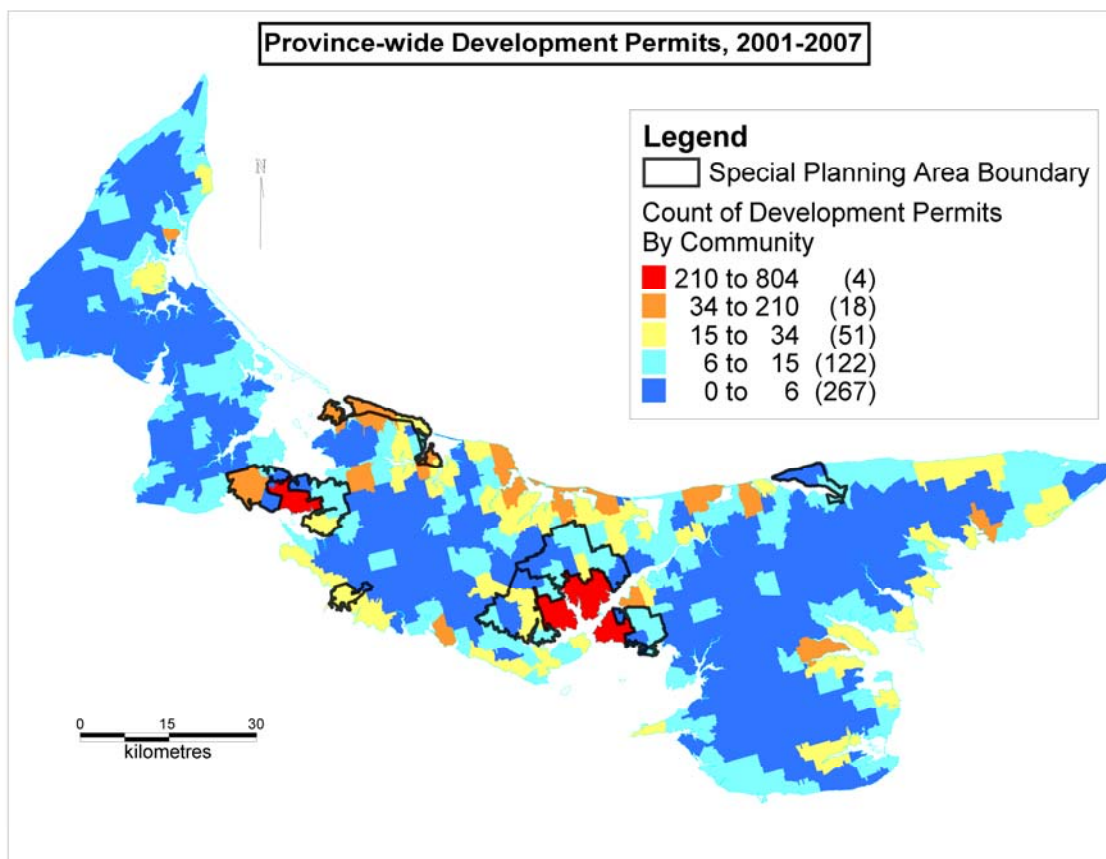
The map on the next page illustrates several of these points, most notably that development, as intended by the SPA Regulations, has been concentrated in Summerside, Cornwall, Charlottetown and Stratford.

The Commission recommends:

20. That the regulations governing a special planning area which lies within the established boundary of a municipality cease to apply once the Minister has approved the official plan and the associated zoning and development bylaw for that municipality.

Earlier in this report, the Commission outlined the recommended process for developing a new, province-wide land use planning framework. The Commission believes that the regulations governing subdivision and development in the areas adjacent to the two metropolitan areas should be extended to the remainder of the province until such time as a new province-wide plan is in place, for the following reasons:

- The process of developing a new planning framework will take approximately two years, and interim measures will be needed;
- There is currently a surplus of cottage and residential building lots across most of the province; and
- It may be necessary to control speculative subdivision and development activities in areas not covered by an official plan or special planning area.



The Commission recommends:

21. That Executive Council extend the regulations which apply to special planning areas around Stratford, Charlottetown, Cornwall and Summerside to all areas of the province not covered by an official plan or other special planning area regulation, and that these regulations apply until such time as each affected community has developed an official plan and associated zoning and development bylaws to the Minister's satisfaction or, in the case of unincorporated areas, until the Minister has approved a zoning plan.

PRESERVING NATURAL AREAS AND HERITAGE PLACES

The loss of natural areas, farmland and open space is an important issue wherever urban and rural communities meet and coexist. The 1973 and 1990 Royal Commissions and the 1997 Round Table all addressed the issue and presented recommendations, many of which were unfortunately not acted upon. As a result, many instances of inappropriate development are in evidence here, especially where the regulatory framework is weak or non-existent. The Commission was made aware by a number of presenters of what they considered to be inappropriate uses of land, for example, wind farms, off-road vehicle racetracks, residential and cottage subdivisions, and various commercial enterprises. Protecting land against inappropriate development is a challenge faced by every jurisdiction. In this section, the Commission will review and analyze approaches used here and elsewhere.

The most successful approaches to protecting land, natural resources and heritage resources on Prince Edward Island have been voluntary, and they have usually involved some form of tax relief if the



property or the development right is donated to a non-profit organization:

- The designation of a heritage place, usually by agreement between the owner and the Minister responsible for the *Heritage Places Protection Act*, R.S.P.E.I. 1988, Cap. H-3.1, as a means to protect a significant historic resource;
- The voluntary designation by a property owner of land under the *Natural Areas Protection Act*, R.S.P.E.I. 1988, Cap. N-2 which, together with a restrictive covenant and a conservation agreement registered with the deed, insures the natural features of a property can be preserved and enhanced;
- The Island Nature Trust, a non-profit organization which has acquired over 3,000 acres of land, through donation, purchase and lease, and which works to protect significant remnant natural areas; and
- The Nature Conservancy of Canada, a national non-profit organization, acquires land for the purpose of protecting natural areas through purchase, donation, life interest or donation of a restrictive covenant.

The Purchase of Development Rights (PDR) Approach

Land ownership carries with it a “bundle of rights” which includes the right to possess, use, modify, lease or sell the land, subject to any restrictions which may be imposed by legislation or the common law. The right to develop a parcel for residential, commercial, recreational or industrial use, subject to those restrictions, is one of the rights which goes with title to land. The sale of a development right involves the transfer of that right by the owner to someone else, leaving the owner with all other rights contained in the bundle. A restrictive covenant, or conservation easement, is an agreement, entered into by the buyer and the owner and registered as an encumbrance against the title to the land. As stated in promotional literature published by the Texas Agricultural Land Trust: “A conservation easement is the legal glue that binds a property owner’s good intentions to the land in perpetuity”.⁵⁷

⁵⁷ Texas Agricultural Land Trust. *Easements*. <http://www.txaglandtrust.org/>

A review of literature from the United States shows that PDR began in earnest there in the 1970s when communities in the eastern U.S., alarmed at the loss of farms that supplied food and fibre locally, decided something had to be done to protect farmland and open space against urban sprawl. In most states PDR began, and is still sustained today, through publicly-financed initiatives. The concept is simple. The state provides a cash payment to the landowner in an amount equal to the value of the development right in return for a conservation easement. Obviously, before the program was offered, residents of the state would have made a conscious and informed decision that the investment was worth the cost, and they would have decided what land needed to be protected against development. In rural areas of Montana, Wyoming and Colorado, large tracts of land are being bought by recreational and seasonal residents who want to create their own private preserves. Under this scenario, ranchers, loggers and rural residents feel threatened and look to PDR as a way of preserving their communities and their way of life.

Could PDR be used as a means of protecting significant features of the Island's working landscape from inappropriate forms of development? The L.M. Montgomery Land Trust is a non-profit organization whose objective is to preserve the scenic agricultural coastal lands along the north shore. The Trust, relying on donations, has secured development rights on approximately 52.6 hectares (130 acres) between Sea View and Cape Tryon. The Commission, while acknowledging and applauding the efforts of the L.M. Montgomery Land Trust to apply the PDR model here, believes it is not the best approach, and for the following reasons:

- PDR is not the preferred approach to protecting land against development in Canada;
- Provincial governments, including our own, have acted to protect land against inappropriate forms of development without offering financial compensation to affected landowners; and
- The purchase of development rights, especially on a parcel that has recreational potential can be very expensive, amounting to ten, twenty or even thirty times the value of the land for agriculture.

The success of other approaches which rely on decisions by landowners to donate land or to protect it against development has been amply demonstrated here by organizations like the Island Nature Trust. The Commission agrees there may be a place here for the PDR approach. However, it remains a poorly-understood, expensive tool which has yet to enjoy public support, even in communities where it has been actively promoted. Certainly, based on information provided to the Commission on the

difference between the price of an acre of farmland and an acre of recreational land, affordability considerations place this option far beyond the financial capacity of the provincial government where any significant tracts of land are involved.

The Commission recommends:

22. That the provincial government continue to support groups such as the Island Nature Trust, the Nature Conservancy of Canada and the L.M. Montgomery Land Trust in their efforts to preserve and protect natural areas and heritage places.

Natural Areas

The provincial government defines protected land area as the area of land designated under the *Natural Areas Protection Act*. Under the general heading of "Biodiversity", the 2003 *State of the Environment Report* states⁵⁸:

Natural areas are protected in perpetuity from various types of development and are, therefore, more likely to maintain biodiversity than land devoted to residential, agricultural or industrial uses.

Biodiversity is more than just a count of species. It includes not only all the plants and animals that naturally occur in a given area, but also their relative abundance and how these plants and animals interact with their habitats and each other. It encompasses the genetic diversity within species, as well as the diversity of habitats in the landscape. "Healthy" habitats may have many species (like older forests) or few (like a sand dune), but they all have one thing in common – a natural variability that helps them to support life, and to resist and recover from natural threats such as fire or disease.

⁵⁸ Government of Prince Edward Island. 2003. *State of the Environment Report*. p.31



The Province's stated objective is to "... (protect) 12,749 hectares or 31,500 acres, adequately representative of habitat types, as natural areas"⁵⁹. Habitat types include offshore islands, bogs, sand dunes, natural ponds, forest, salt marshes, freshwater wetlands and riparian zones, and a target has been set for each habitat type. Other lands benefit from some form of protection such as areas set aside as agricultural and forestry buffer zones along watercourses, and the 7,200 hectares or 17,784 acres included in Wildlife Management Areas designated by Order in Council under the *Wildlife Conservation Act*, R.S.P.E.I. 1988, Cap. W-4.1 Wildlife Management Areas Regulations.

The Commission has earlier noted the successful efforts of the Island Nature Trust and the Nature Conservancy of Canada in acquiring land for natural areas and in convincing private landowners to designate their land under the *Natural Areas Protection Act*. According to figures provided by the Department of Environment, Energy and Forestry, approximately 7,000 hectares or 17,725 acres are protected or proposed for protection, equal to 55% of the provincial target. The figures also show that the

area of designated land has increased by 18.6% since 1999.

The Commission recommends:

- 23. That the provincial government continue to move toward its stated goal of protecting 12,749 hectares or 31,500 acres of private and public land under the *Natural Areas Protection Act***

PRESERVING SCENIC VIEWSCAPES

The Commission heard from a number of groups and individuals who favored the preservation of scenic viewscapes. The arguments are similar to those presented to previous Royal Commissions and the Round Table – that the beauty of the Prince Edward Island landscape is one of our greatest treasures, and that it needs to be preserved, for those who live here

⁵⁹ Ibid p.31

and for those who would like to. How to accomplish this raises a number of challenging questions:

- What is a scenic viewscape?
- Who decides what scenic viewsapes should be preserved?
- Does preservation imply no development?
- To what extent must natural features be preserved?
- Who pays?

Other jurisdictions have attempted to deal with this issue; examples reviewed by the Commission include:

- The UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage;
- The Council of Europe European Landscape Convention;
- Standards and Guidelines for the Conservation of Historic Places in Canada;
- Denmark's *Preservation Act of Natural and Historical Landscapes*;
- The United Kingdom's *Countryside and Rights of Way Act*;
- The Government of South Australia's *Coast Protection Act*;
- New Zealand's *Landscape Protection Act*; and
- The Scottish Landscape Forum.

In the European Convention adopted by the Council of Europe in 2004 and adopted by thirty of the forty-seven member states, landscape is defined⁶⁰:

As a zone or area as perceived by local people or visitors, whose visual features and character are the result of the action of natural and/or cultural (that is, human) factors.

This definition reflects the idea that landscapes evolve through time, as a result of being acted upon by natural forces and human beings. It also underlines that a landscape forms a whole, whose natural and cultural components are taken together, not separately.

Landscape policy and landscape quality objective are also defined in the European Convention as two key stages in the process of protecting landscapes:

"Landscape policy" means an expression by the competent public authorities of general

principles, strategies and guidelines that permit the taking of specific measures aimed at the protection, management and planning of landscapes.

"Landscape quality objective" means, for a specific landscape, the formulation by the competent public authorities of the aspirations of the public with regard to the landscape features of their surroundings.

The European Convention goes on to outline a process to guide member states through a series of steps beginning with awareness-raising and progressing through the stages of training and education, identification, action and evaluation. In terms of experience, lying at the other extreme is Denmark, where legislation designed to protect traditional landscapes has been in place in some form or other for over 200 years. In the United Kingdom, the government decided in 1947 to nationalize all development rights, a rather extreme example of a jurisdiction decreeing that all forms of development had to be carried out in a manner that respected national and local priorities, one of which was identified as the preservation of traditional landscapes.

Despite recommendations from many quarters over the past thirty-six years the provincial government seems to have taken little action to preserve scenic viewsapes. There are two notable exceptions:

- The SPA Regulations which apply to Princetown Point - Stanley Bridge and Borden Region both include areas identified as "scenic viewsapes". Consequently, development restrictions have been placed on the area around Campbell's Pond, the area adjacent to Highway 20 which slopes down to the French River and overlooks the wharf, the view of Amherst Cove from the Trans-Canada Highway in Borden-Carleton, and the section of waterfront located to the west of the Confederation Bridge.
- The *Heritage Places Protection Act* defines "historic resource" as any work of nature or of man that is primarily of value for its palaeontological, archaeological, prehistoric, historic, cultural, natural, scientific or aesthetic interest, and a "heritage place" as a place in the province which includes or is comprised of an historic resource of an immovable nature. Though this notion has yet to be tested, the Commission has been advised that a scenic viewscape could be considered for designation

⁶⁰ Council of Europe. March 2004. *European Landscape Convention*. 9 pp.

as a heritage place and thereby afforded additional protection under this Act.

It is not clear what criteria were used to select the four scenic viewscape zones in Park Corner, French River and Borden, how the measures to protect them were developed, or how successful they have been in achieving their objectives. Moreover, it would appear that the decisions to create the zones were made by Executive Council without the benefit of input from local residents.

Operating in parallel to government, the L.M. Montgomery Land Trust has been very active in its attempts to preserve scenic landscapes. The Trust's webpage states in part⁶¹:

The L.M. Montgomery Land Trust is a charitable non-profit organization founded in 1994 to work to preserve the scenic agricultural coastal lands on Prince Edward Island's north shore. Concentrating on the area between French River and Sea View, the Land Trust works with land owners to identify alternatives to selling land for development, using a variety of mechanisms to secure the "development rights" for land and therein preserving it free from development in perpetuity.

In March 2007, the Trust released a plan announcing that it would focus its efforts on preserving five kilometres of shoreline and 622 acres of coastal land between French River and Park Corner centered on the Cape Tryon Lighthouse, what it calls the "L.M. Montgomery Seashore". It has since commissioned appraisals of the eleven parcels comprising the Seashore zone and is in the process of negotiating with concerned landowners to purchase development rights on these parcels.

The Commission received two submissions outlining possible approaches to identifying and managing scenic viewsapes. One is a policy brief prepared for the Institute of Island Studies⁶² and the other involved a visual presentation to the Commission at a public hearing held in Charlottetown. The paper authored by Carol Horne contains a very comprehensive review of the subject of landscape, and it suggests a process for reaching agreement on the relative scenic value of viewsapes. It states:

An objective, acceptable and agreed-upon methodology is needed to enable identification of a greater number of scenic viewsapes for protection under the (Planning) Act. Such a tool could also greatly assist in determining what is or is not appropriate development.

The paper goes on to suggest:

If it is agreed that efforts must be made to preserve viewsapes, then research is needed to determine which views have the greatest value. Research is also required to determine the point at which alterations to the landscape detract from its original appeal.

The presentation by Karen Lips outlined an approach to community-level viewscape planning, developed for use by a landscape architect and relying heavily on such visual tools as old photographs, aerial photographs, maps, and software designed to create alternative panoramas.

There is no evidence that any consideration is given to aesthetic value or to the impact on scenic viewsapes before subdivision and development permits are issued anywhere in the province. As far as the Commission was able to determine, the provincial government has no plan to add to the list of scenic viewscape zones identified in the Subdivision and Development Regulations, and there is no plan to designate heritage landscapes under the *Heritage Places Protection Act*. The L.M. Montgomery Land Trust's efforts to purchase development rights in the French River - Park Corner area have been slowed by a runaway real estate market that seems willing to pay landowners many times what a farmer would pay for the same property. The province's larger municipalities do not appear to have been any more active or successful in implementing measures designed to protect scenic viewsapes. The recommendation by the Round Table in 1997 which asked that the opinions of residents and visitors to Prince Edward Island be assessed regarding the quality and attractiveness of the landscape and the impact of changes thereto was ignored. Twelve years' worth of good data might have provided the impetus to do something before now.

⁶¹ L.M. Montgomery Land Trust. <http://www.landtrust.ca/about>

⁶² Institute of Island Studies. June 2009. *The Island Landscape: A Non-Renewable Resource*. Policy Brief 2009-1, Carol Horne. 33 pp.

The Commission agrees with Horne that there is no “silver bullet” solution. However, it is important to remember that the attractiveness of the Prince Edward Island landscape, as pointed out in the Tourism Industry Association’s brief⁶³, is one of the province’s most important selling features. The Tourism Advisory Council, in its brief, stresses the importance of “protecting the brand”⁶⁴. Without exception, real estate ads aimed at out-of-province

around identifying and preserving significant landscape features. For example, the Town of Stratford has successfully incorporated the aesthetic dimension into its planning and development process. Below is an artist’s rendering of the desired visual effect applied to a collector street in the Stratford model, including a sidewalk, integrated cycling lanes, a multi-use path, underground electrical, trees and lighting standards.



buyers highlight the beauty of the Island landscape. The Commission considers it unfortunate that some advertisers, including Tourism PEI, consider it necessary to use out-of-date images in order to show the province in its more pristine condition. Quite apart from commercial considerations, the importance of the impact on the psyche of all who view the Island landscape should not be discounted. To varying degrees it touches us all.

In conclusion, the answers to the questions posed at the outset are not apparent. Neither the provincial government nor municipalities with official plans have taken measures to identify, preserve and protect scenic viewsapes. For their part, residents have not really provided local and provincial governments with clear direction on what they desire.

The Commission believes the community-based approach has the greatest potential to produce tangible results, most effectively if it is initiated and managed by a strong local government, if one is in place. The research has been done, and the tools and expertise are available on the Island to enable a municipality to engage residents in a discussion

Some residents of the municipality of St. Peters Bay have called for measures to restore the scenic viewscape looking out over the bay from the center of the community. This would primarily involve removing the overhead electrical wires, and burying them. The Commission suggests that an approach along these lines might produce a positive result:

- The Community Council would take the lead by convening a public meeting of residents to determine if the restoration of this scenic viewscape is an important community priority;
- If the residents agreed, Council could then seek government support to acquire the services of a professional landscape planner to assist the community to come up with a plan for a restoration project;
- The next step might involve Council submitting a request for financial assistance to implement the plan; the Community of St. Peters Bay might be eligible for federal and provincial assistance under the Infrastructure Canada Program; and, finally
- To protect the Community’s investment, it could petition the provincial government to designate the scenic viewscape under the *Planning Act*.

It would appear that past actions by the provincial government, while sincere in their objectives, have largely failed to meet what should be considered reasonable expectations. The Commission believes

⁶³ Tourism Industry Association of Prince Edward Island. June 2009. *A Submission to the Commission on the Land and Local Governance*. 4 pp.

⁶⁴ Tourism Advisory Council of Prince Edward Island. June 2009. *Submission to the Commission on Land Use and Local Governance*. 8 pp.

that the Province has a role to play by prioritizing viewsapes which are determined to be worth protecting. Once a municipality or an unincorporated community has decided to move forward, the legislative framework is in place to protect designated landscapes through the *Planning Act* or the *Heritage Places Protection Act*. The section of this report which addresses the development of a province-wide land use plan identifies scenic viewsapes as an area of provincial interest. In the short term, the Commission believes that positive outcomes might result from a more community-centred approach.

The Commission recommends:

- 24. That the provincial government offer financial and technical assistance to municipalities and unincorporated communities to help them identify significant landscape features and to develop their own plans to protect scenic viewsapes, including recommendations leading to possible statutory designation.**

The Commission also believes that not enough onus is placed on developers to identify and protect significant landscape features when they plan subdivisions, both within and outside municipalities having an official plan. Visual features such as ornamental beds, berms, walking trails, open spaces, natural areas, and the layout of streets should be made mandatory elements of landscape planning and subdivision design.

The Commission recommends:

- 25. That a landscape plan, paid for by the developer, be added to the list of conditions attached to a subdivision application, both in municipalities having an official plan and in areas of the province covered by the Subdivision and Development Regulations.**

THE LANDS PROTECTION ACT

The *Prince Edward Island Lands Protection Act*, R.S.P.E.I. 1988, Cap. L-5 (LPA) was originally enacted in 1982. Given the importance which Islanders attach to land and the fact that the LPA imposes limitations on land ownership and use, it is not surprising that the Act has been the subject of emotional debate, court challenges and amendments.

Aggregate Land Holdings

Under section 2 of the LPA, no person is permitted to have an aggregate land holding, including leased land, in excess of 1,000 acres, and no corporation may have an aggregate land holding, including leased land, in excess of 3,000 acres. Those total acreage limits have prompted some individual farmers to incorporate when they might not otherwise have done so, and large corporate farms find themselves unable to expand beyond the prescribed limit.

There has been substantial public input over the years in the debate concerning the appropriateness of the aggregate limits and what lands should be included in those aggregate limits. In 1993 for example, the final report of the Special Legislative Committee on the Lands Protection Act received thirty nine briefs and presentations. The report indicates that “The Committee heard overwhelming support from the public for the limits of 1,000 acres for individuals and 3,000 acres for family farm corporations”⁶⁵. The report also indicates that some presenters called for increases to the aggregate limits, and one presenter called for the removal of any upper limit. In its 1998 report to the Legislative Assembly, The Standing Committee on Agriculture, Forestry and Environment recommended that the 1,000 and 3,000 acre limits be maintained, but that an additional 200 and 600 acres of land not in agricultural production also be permitted⁶⁶.

The above recommendation by the 1998 Standing Committee stemmed from concerns that had been raised about the effects of having all of a property owner’s lands included in the aggregate limit⁶⁷.

Many who appeared before this Standing Committee have suggested that the limits should be amended to level the playing field

⁶⁵ Special Legislative Committee on the Lands Protection Act. March 1993. *Final Report of the Special Legislative Committee on the Lands Protection Act*. 79 pp.

⁶⁶ Standing Committee on Agriculture, Forestry and Environment. May 1998. *Report to the Legislative Assembly Regarding Bill 84, An Act to Amend the Prince Edward Island Lands Protection Act*. 9 pp.

⁶⁷ *Ibid* p. 4.

for those whose aggregate land holdings include a significant acreage not suitable for agricultural production. The only options available now, to those at the limit and who want to bring more land into agricultural production, are to clear off woodland, sell it off or improve marginal land which might better serve society as wetland, hedgerows or riparian buffer zones....

Having received input from interested parties and having researched the question from a number of angles, this Standing Committee believes the best approach is to apply the 1000 and 3000 acre limits to land in agricultural production.

The 1993 Standing Committee apparently also considered the inclusion of all lands in aggregate land holdings as being inequitable when it recommended⁶⁸:

Where possible, government should assist farmers who are at or close to their aggregate limit to divest of their woodlands and increase their clear land, by exchanging nearby Lending Agency holdings for the woodland, both at fair market value.

While the above recommendations have not been extensively acted upon, in 2007, the Lieutenant Governor in Council (Executive Council) did pass section 34 of the Exemption Regulations made pursuant to the LPA which exempts land holdings from inclusion in the aggregate limits under the Act if they have been designated as a natural area under the *Natural Areas Protection Act*.

There have been more recent calls for removal of non-arable lands from the aggregate limits imposed by the LPA. The Commission on Nitrates in Groundwater in its report stated as follows⁶⁹:

If landowners can exclude environmentally sensitive land in these watersheds from their allowable land holding, a portion of the land in these watersheds could come out of agricultural production, reducing the impacts of agriculture on water quality and improving the potential for biodiversity.

The Commission on Nitrates went on to suggest that “environmentally sensitive land” should include high

sloping land, wetlands, terraces, grassed waterways, permanently grassed headlands, agricultural land converted to forestry, and forested land under an approved management plan. The Commission on Nitrates recommended that the above-described lands be excluded from aggregate limits, conditional upon the implementation of a mandatory three-year crop rotation, without exceptions.

In its brief to this Commission, the Prince Edward Island Federation of Agriculture submitted that “...it is becoming increasingly difficult to maintain crop efficiencies when restricted by the current PEI *Lands Protection Act*”, and although the Federation did not advocate an increase in aggregate limits, it did make the following statement in its brief⁷⁰:

...the PEI Federation of Agriculture proposes (as part of its standing policy on land use) that the Lands Protection Act be revised to include the removal of ALL non cultivated lands from the current 1000 acre private land owner limit and the 3000 acre corporate land owner limit, as it applies to agricultural purposes within the legislation. This should also include buffer zones, water ways, high slope land and shelter belts etc.

The National Farmers Union proposes the preservation of farmland through a “system of land zoning/land banking”, rather than through alteration of the LPA. The NFU stated unequivocally: “We strongly oppose any tampering with the Lands Protection Act”⁷¹.

Until relatively recently, mainstream society has for the most part failed to recognize the positive impact of areas such as wetlands and woodlands on our environment. We are gradually coming to realize that the conservation message promoted by organizations like the Island Nature Trust and the Nature Conservancy of Canada has merit. Our ecological well-being requires the balance which in part is provided by conserving what the Commission on Nitrates defines as “environmentally sensitive areas”.

The LPA was amended in 1998 (c.79, s.20) to state in section 1.1 as part of the purpose of the Act:

This Act has been enacted in recognition that Prince Edward Island faces singular challenges with regard to property rights as

⁶⁸ Special Legislative Committee on the Lands Protection Act. March 1993. *Final Report of the Special Legislative Committee on the Lands Protection Act*. p. 42.

⁶⁹ Government of Prince Edward Island. June 2008. *Report of the Commission on Nitrates in Groundwater*. p. 25.

⁷⁰ Prince Edward Island Federation of Agriculture. June 2009. *Presentation to the Commission on Land Use and Local Governance*. p. 5.

⁷¹ National Farmers Union, District 1, Region 1. June 2009. *Submission to the Commission on the Land and Local Governance*. 2 pp.

a result of several circumstances, including...

- c) the fragile nature of the province's ecology, environment, and lands and the resultant need for the exercise of prudent, balanced, and steadfast stewardship to ensure the protection of the province's ecology, environment, and lands.*

As a society, we can hardly be seen to be protecting the ecology, environment and lands of the province if farmers who consider it necessary to increase the size of their operations are required to clear woodlands and drain wetlands in order to do so. In the Commission's view, restricting the application of aggregate land holdings under the LPA to arable land only, where *bona fide* farmers are involved, would be one effective means of promoting the conservation of environmentally sensitive land.

A lesser consideration perhaps, in favor of restricting the application of the LPA to arable land only, is one of equity. Farmers whose arable land forms a smaller percentage of their total holdings can be in an inferior position to those who have the good fortune to have most of their land arable. This is particularly the case where high slope land or wetland may prevent a change in land use at any cost. Arguably, the application of the LPA to arable land only would help level the playing field for all producers.

The LPA obviously requires a determination of the acreage to which it applies. When total land owned or leased is involved, it is a matter of viewing the acreage set out in the applicable property deeds. One of the disadvantages, perhaps, of moving to application of only arable lands when determining aggregate land holdings under the LPA is that precise acreages will, in most cases, be more difficult to ascertain.

Government, in consultation with the agricultural community, should be able to reach a consensus on the most reasonable mechanism to be used in determining arable acreages. Determinations are already made for tax exemptions for natural areas under the *Natural Areas Protection Act* and for wildlife management areas under the *Fish and Game Protection Act*, R.S.P.E.I. 1988, Cap. F-12, and tax credits are available for buffer zones and high slope land under the *Real Property Tax Act*, R.S.P.E.I. 1988, Cap. R-5. Many, if not most of these situations involve identifying eligible portions of land separately from their larger parcels. The Province is noted for having one of the strongest geographic information (GIS) and property mapping systems in

Canada. The point is that arable land can be distinguished from total acreages, and in fact those kinds of distinctions are already being made for other purposes.

The Commission recommends:

26. That the *Lands Protection Act* or its Regulations be amended so that in the case of *bona fide* individual farmers and farm corporations, exemptions be available for all but arable lands in any determination of aggregate land holdings.

In all of the submissions received by the Commission, including presentations from the floor at public hearings, only one presenter recommended that the aggregate land holdings under the LPA be increased⁷². Aside from the representations concerning non-arable land, there appears to be general acceptance of the limits imposed by the LPA. Furthermore, the Commission, in its consultations with government officials and in its research, has found nothing to indicate that an increase in aggregate land holdings is warranted at this time.

The Commission recommends:

27. That the aggregate land holdings prescribed by section 2 of the *Lands Protection Act* remain unchanged.

Acquisition of Land by Non-Residents and Corporations

Currently, pursuant to sections 4 and 5 of the LPA, Executive Council makes all final decisions concerning the acquisition of land by non-residents and corporations where section 2 of the LPA applies. This follows IRAC's review, assessment and recommendation on the disposition of an application pursuant to section 8 of the Act. Such decisions can be significant, not only to the applicant, but also to

⁷² Cavendish Farms. June 2009. *Presentation to the Commission on Land and Local Governance*. 3 pp.

neighboring landowners whose enjoyment of their own land may be impacted by the decision. Furthermore, the Commission is advised that Executive Council expends a substantial amount of time in disposing of these applications. Statistics obtained by the Commission indicate that Executive Council has dealt with 4,044 LPA-related applications in the past eleven years. This represents an average of 368 decisions per year, approximately seven items on each weekly Executive Council agenda. Each application is supported by a detailed background memo which must be reviewed by members of Cabinet before the item is discussed and a decision made.

As an alternative to the current approach, Executive Council might wish to consider whether its function in these matters could as effectively be performed by IRAC, with the investigative and advisory functions being performed by a line department of the provincial government such as CCAL. Several benefits could flow from such a change in approach:

- The process could be made much more open, resulting in a public better informed and more aware of how this important land issue is being regulated;
- The public would probably see the process as being less politically influenced;
- Judicial review of decisions from a quasi-judicial tribunal such as IRAC would be available if jurisdictional errors occurred; and
- Executive Council would be relieved from performing a time-consuming function which a tribunal could just as effectively carry out.

The Land Identification Program

When the *Planning Act* became law in 1974, it provided for the continuation under the *Planning Act* of the Land Use Commission (LUC) which had been created by a separate statute earlier in the same year. Any land owner wishing to voluntarily enter into a land identification agreement at that time made application to the LUC, and registration in the Registry of Deeds occurred if the LUC approved the application. Applications to alter or cancel the agreement were disposed of by the LUC subject to ratification by Executive Council.

When the *Lands Protection Act* was passed in 1982, section 10 enabled the Lieutenant Governor in Council to require entry into a land identification agreement, before permits to acquire land would be issued to non-residents and corporate purchasers of land who came under the restrictive provisions of sections 4 and 5 of the Act. Under land identification

agreements, purchasers are legally bound to non-development covenants which prohibit any use which involves commercial or industrial development or subdivision.

Under section 8 of the Land Identification Regulations passed pursuant to the LPA, land identification agreements have a life of ten years, except that they are automatically renewed every year, unless an application to terminate the agreement is made not less than ninety days before the next anniversary date of the agreement. In that case the agreement terminates ten years following the next anniversary date. Not surprisingly, many purchasers, on the date the agreement is executed, also file an application to terminate the agreement, which means that it automatically expires eleven years later. In the Commission's view, if the province had a comprehensive land use plan, properly administered, land identification agreements would not be necessary, just as they are not presently required in municipalities which have official plans approved by the Minister (LPA Land Identification Regulations, section 4).

In 1991, the *Island Regulatory and Appeals Commission Act*, R.S.P.E.I. 1988, Cap. I-11 was passed, replacing the LUC with the Island Regulatory and Appeals Commission. As part of the legislative package, the *Lands Protection Act* was amended, giving IRAC the final authority to dispose of applications to cancel, suspend or amend LPA permits, which included canceling, suspending or amending the conditions contained in an applicable land identification agreement. No ratification by Executive Council was required.

In 1992, the LPA was again amended, removing from IRAC the above-mentioned authority which had been bestowed upon it one year earlier. Since that time the authority to make decisions regarding cancellation, suspension or amendment of any condition in a permit has resided entirely with Executive Council. Currently, under the LPA and its Regulations, applications to vary a permit are made to IRAC. IRAC is responsible for ensuring that all preliminary procedural steps are followed before forwarding the application to Executive Council for decision.

Interestingly, clause 9(3)(b) of the LPA requires publication in a newspaper of any application to vary a LPA permit. Such publication is generally intended to enable public participation in a process. However, Executive Council, by its very nature, performs executive functions behind closed doors. The public is informed of its decisions after the fact, but not how or why they were reached.

As with applications to acquire land by non-residents and corporations, substantial time is expended by Executive Council in dealing with applications to vary LPA permits. For the reasons outlined above in relation to acquisition applications, Executive Council might well wish to consider transferring its function to IRAC in relation to applications to vary LPA permits, with any investigative function again being assigned to a line department such as CCAL.

The Commission recommends:

28. That the Lieutenant Governor in Council give serious consideration to transferring to the Island Regulatory and Appeals Commission its functions on applications to acquire and vary permits under the *Lands Protection Act*.

STRENGTHENING LAND USE PLANNING CAPACITY

In an earlier section of this report, the Commission outlined the land use planning process followed by municipalities with official plans and zoning and development bylaws, and by the Department of Communities, Cultural Affairs and Labour in the other 90% of the province. In the case of municipalities, the process of developing and submitting an official plan is outlined in Part III of the *Planning Act*.

The Commission received a submission from the thirteen municipalities which border on the Towns of Cornwall and Stratford and the City of Charlottetown⁷³. These communities described a joint process they undertook with the objective of identifying a means to replace the Special Planning Area Regulations in effect in their communities with official plans of their own. Individually, none of the communities has the financial resources required to hire a full-time planner, although all agree that access to professional expertise is a prerequisite. Other small municipalities which appeared before the Commission echoed this sentiment – that

professional planning advice is an essential component of a good official plan. The Commission supports this view, and believes that local planning capacity must be improved significantly, initially, with the assistance of the provincial government.

The Commission recommends:

29. That the Minister responsible for the *Planning Act* assist communities to acquire the professional planning resources they need in order to inform and consult their residents, and to assist them in the development of official plans and zoning and development bylaws.

The Commission believes there is merit to the concept of regional planning authorities for the greater Summerside and Charlottetown areas, a concept tested in the early 1970s in response to the recommendations of the 1973 Royal Commission. Although they met with some success, it would appear that the Summerside and Charlottetown Area Regional Planning Boards were disbanded, primarily because there was no political will to make the tough decisions required for a successful regional planning approach.

Much has happened since then, including the 1995 amalgamations, but the Commission heard from several quarters that the need still exists for regional planning structures to deal more effectively with drinking water supply, sewage treatment, recreational facilities and arterial highway access, just to name four examples. In addition to the greater Summerside and Charlottetown areas, a case may be made for regional planning structures in other areas of the province such as West Prince, Évangéline, Three Rivers and Souris-Eastern Kings.

⁷³ Thirteen Communities. November 2008. *Building Consensus. A Submission from the 13 Affected Communities Addressing the Future of the Charlottetown, Cornwall and Stratford Special Planning Area Regulations*. 15 pp.

The Commission recommends:

30. That the provincial government offer to assist communities and municipalities to work together through the creation of regional planning authorities.

The Commission recognizes that professional planning resources presently employed by incorporated municipalities, whether on staff or by contract, are paid from property tax revenues collected from their residents. By providing additional planning resources to communities at no cost, as per the above recommendations, the provincial government would be creating an inequity between municipalities that pay for their own and those that do not. The Commission would argue that this arrangement may be justifiable in the short term while new official plans are being prepared and while the regional structures are being set up. However, there is no suggestion that, in the long term, planning services should be paid for by anyone other than local residents.

According to the Department's website, the Planning and Inspection Services Division of CCAL:

Provides an integrated delivery of various acts and regulations pertinent to land use planning for sustainable provincial growth as well as building and development control standards and central delivery of programs in the areas of fire prevention.

The Commission has not carried out a detailed evaluation of the Division's capability or of the quality of the service it provides because to do so would have exceeded the Commission's mandate. However, the provincial government's professional planning capacity would appear to be less than adequate. To illustrate, whereas the Province employed six professional planners and six planning technicians through the 1980s and the early 1990s, its complement is now down to three planners. Currently, the City of Charlottetown employs the same number of professional planners as the provincial government – three. The Commission believes the Province must expand its planning capacity significantly if it is to be in a position to implement the key recommendations contained in this report.

The Commission recommends:

31. That the provincial government increase significantly the professional planning capacity within the Department of Communities, Cultural Affairs and Labour.



LOCAL GOVERNANCE

INTRODUCTION

When it comes to local governance issues on Prince Edward Island, there is a broad range of opinion on what essentially can be reduced down to four central issues in relation to the Commission's mandate.

1. Is provincial legislation which impacts on municipalities in need of revision?

There are several provincial statutes which impact on municipalities, but it is the *Municipalities Act* which principally governs how municipalities on Prince Edward Island function. Since municipalities are creatures of provincial statute, it is the provincial government which ultimately decides what authority municipalities will have, and whether the provincial legislation which governs them is appropriate. There have been calls for the modernization of several relevant provincial statutes.

2. How should local governance be funded?

The opinions expressed depended, to no small extent, on the kind of community in which the individual resided. The manner in which revenue is shared between the provincial government and the municipalities, and potential alternative revenue sources, are matters on which residents of cities, towns, incorporated areas and unincorporated areas have very different opinions. Whether that attitude might change if it could be demonstrated that improved services could be provided with a different form of local government in place, remains to be seen.

3. What form should local governance take?

There are those who advocate municipal incorporation for the entire Island. Others recommend the formation of what might be considered regional municipalities which would absorb existing municipalities and unincorporated areas. Residents in rural areas have expressed a wish to remain in unincorporated areas. Some proponents of change favor an incremental approach which would see expanded municipalities in selected areas as a means of ascertaining whether full incorporation should be pursued further into the future.

4. What are the tax implications of a move to expanded municipal government?

The possibility of an increase in taxes raises its head whenever incorporation or amalgamation is discussed. Paying higher taxes for the same level of services is not acceptable to the vast majority of taxpayers. Paying only for those services actually received, or for improved services, or for services for which a municipality previously bore the cost at no charge to the taxpayer, should be acceptable.

Needless to say, the issues involved are complex, and do not admit of easy solutions. The Commission has considered the many submissions which it has received, and researched the approaches taken in other jurisdictions, as a means of arriving at what are hopefully equitable recommendations.

THE STATUS OF MUNICIPALITIES

Municipalities are often referred to as creatures of provincial statute since their very being is derived from an act passed by a provincial legislature. In Prince Edward Island most municipalities are incorporated pursuant to the *Municipalities Act*, R.S.P.E.I. 1988, M-13. The exceptions are Summerside, Charlottetown, Stratford and Cornwall, which were incorporated under separate statutes (*City of Summerside Act*, R.S.P.E.I. 1988, Cap. S-9.1 and *Charlottetown Area Municipalities Act*, R.S.P.E.I. 1988, Cap. M-4.1). All municipalities created under the *Municipalities Act* are defined as either "towns" or "communities". The use of the term "community" is unfortunate, because its popular definition can connote a city, town, village, or a rural area. Although towns and communities are both considered municipalities under the *Municipalities Act*, as will be seen later, they do not have equal status under the Act.

Traditionally, the authority of municipalities to act was narrowly defined by the empowering statute. If the authority to perform a specific function was not clearly delineated, then the municipality had no authority to act. Over the past several decades, municipalities have, of necessity, had to provide more and more services in an increasingly complex and regulated society. Issues arising from the use of pesticides, noise and air pollution, drinking water quality, public transit, and the downloading of functions by the provincial and federal governments

have combined to make municipalities across Canada feel compelled to take on additional responsibilities.

In several jurisdictions there have been major changes to provincial/territorial legislation which, amongst other things, can be interpreted as an elevation of municipal status. The previous prescriptive approach, which narrowly defined municipal powers, has been replaced by a permissive or purposive approach, which sets out what are referred to as “spheres of jurisdiction” within which municipalities are free to operate, as long as they stay within those spheres.

The Supreme Court of Canada was asked to rule on the authority of the city of Calgary to enact bylaws pertaining to the operation of taxis. The Supreme Court, in the course of its ruling, stated the following⁷⁴:

The evolution of the modern municipality has produced a shift in the proper approach to the interpretation of statutes empowering municipalities.... The “benevolent” and “strict” construction dichotomy has been set aside, and a broad and purposive approach to the interpretation of municipal powers has been embraced.... This interpretive approach has evolved concomitantly with the modern method of drafting municipal legislation. Several provinces have moved away from the practice of granting municipalities specific powers in particular subject areas, choosing instead to confer them broad authority over generally defined matters: The Municipal Act, S.M.1996,c.58; Municipal Government Act, S.N.S.1998, c.18; Municipal Act, R.S.Y. 2002, c.154; Municipal Act, 2001, S.O.2001, c.25; The Cities Act, S.S. 2002, c. C-11.1. This shift in legislative drafting reflects the true nature of modern municipalities which require greater flexibility in fulfilling their statutory purposes.

The Supreme Court of Canada in the above quotation makes reference to the governing statutes of Manitoba, Nova Scotia, Yukon, Ontario and Saskatchewan. The foregoing pronouncement by the Supreme Court not only indicates the approach to legislative drafting required for new municipal legislation, but it also indicates the Supreme Court’s position on the place of the modern municipality in

the overall scheme of governance.

In the Commission’s view, the approach taken by the various provincial governments referred to above, as well as the Supreme Court of Canada, indicates a growing recognition that municipalities provide a separate and distinct level of government, and should no longer be treated as the poor cousins of provincial governments.

THE PRINCE EDWARD ISLAND MUNICIPALITIES ACT

Prince Edward Island’s *Municipalities Act* was enacted in 1983. Over the intervening twenty-six years there have been numerous amendments, but the submissions which the Commission heard maintain that those amendments have been insufficient to keep the Act current and consistent with the legislative trend in other Canadian jurisdictions.

That there was a need for a review of the *Municipalities Act* is indicated by the fact that in 2003 a committee was appointed to conduct a review and recommend changes to the legislation, if it considered them merited. That committee was made up of respected members of the community who had acquired expertise in the area of municipal governance. The Municipalities Act Review Committee submitted its final report in June 2005⁷⁵. That report contained approximately 120 recommendations for change, which essentially called for a comprehensive overhaul of the Act. Included were recommendations for:

- A broad statement of the purpose of municipalities;
- Authority for municipalities to govern appropriately within the jurisdiction granted;
- A requirement that new applications for municipal status demonstrate a sufficient capacity to be vibrant and sustainable;
- Greater public disclosure of the application process for status as a municipality;
- The establishment of standards for restructuring existing municipalities;
- Clear delineation of the functions of council;
- More clearly defined meeting procedures;
- Clearly defined conflict of interest provisions;
- Detailed delineation of the duties of municipal staff;

⁷⁴ Supreme Court of Canada. 2004. *United Taxi Drivers’ Fellowship of Southern Alberta v. Calgary (City)*, [2004] 1 S.C.R. 485, 2004 SCC 19. III *Analysis* B. 6. *The Proper Approach to the Interpretation of Municipal Powers*.

⁷⁵ Municipalities Act Review Committee. June 2005. *Municipal Legislative Reform*. 104 pp.

- A listing in the Act of the services which municipalities are authorized to provide, as an indication of the authority, jurisdiction, and autonomy of municipalities;
- A mechanism whereby electors can express concerns over financial matters, and council can appoint an auditor to investigate;
- A requirement for pre-budget meetings to permit public input into budget proposals;
- Provision to all councils of the authority to give final approval to their budgets;
- Provision for the secure investment of surplus funds until they are required;
- A requirement for filing annual financial statements with the minister;
- A requirement that municipalities meet national standards for municipal public accounting;
- Provision for differential tax rates and user fees where services vary within a municipality;
- Bringing municipal election standards close to, or on par with, provincial election standards;
- Improvement of bylaw enforcement provisions;
- Description of all municipal types as “municipalities”;
- Consolidation of all municipal legislation into one Act;
- Provision of a means of dealing with councils and elected officials who fail to comply with the Act; and
- Authorization of municipalities to hold plebiscites.

The foregoing list of recommendations for change by the Committee is not exhaustive.

The Municipalities Act Review Committee recommended that the Minister hold advance consultations with municipalities regarding changes to legislation and finances which affect municipalities. It further recommended that the Minister enter into a memorandum of understanding with the Federation of Prince Edward Island Municipalities (FPEIM) with regard to that consultation process.

The Municipalities Act Review Committee also made the following recommendation⁷⁶:

The committee recommends that the provincial government prepare an implementation plan to expand the present geographical coverage of municipal government to all areas of the province.

As its rationale for this recommendation, the Committee stated:

A plan to move toward municipal governance throughout the province would strengthen grassroots democracy and enable citizens of unincorporated areas to address local issues and to access municipal services.

The Committee apparently made these two recommendations as part of its mandate “...to develop recommendations that will build municipal authority and capacity...”

As can be seen from the foregoing, the Municipalities Act Review Committee conducted a comprehensive review of the Act, and made sweeping recommendations for change. As part of its process, it held consultations – primarily with municipal leaders and staff – and it studied legislative trends in other Canadian jurisdictions. There is no indication that the Committee received input from the general public as part of its process.

The Federation of Canadian Municipalities, in 2003, commissioned a review which amounted to a comparative analysis of provincial legislation which governs municipalities across Canada. The review was conducted by a Vancouver law firm, Lidstone, Young, Anderson, and its report was authored by Donald Lidstone. In the introduction to the report, Lidstone makes the following comment⁷⁷:

The comparison of municipal acts of the provinces and territories indicates the diversity and complexity of the municipal system across Canada. Noting that legislation is generally the product of a consultative process among interest groups, including the provincial and municipal governments, provincial ministries and agencies, the business sector, electors and others, the ambitions of municipalities alone cannot dictate the final content. The trend in federal and provincial legislation and case law is toward decentralization, reflecting the increased stature of municipalities and the increasing role they play in our lives.

The assessment criteria used by Donald Lidstone were based on the principles of local self government approved by the Union of British Columbia Municipalities in 1991, and adopted by the

⁷⁶ *Ibid* p. 95.

⁷⁷ Lidstone, D. 2004. *Assessment of the Municipal Acts of the Provinces and Territories*. Prepared for the Federation of Canadian Municipalities. p. 1.

Federation of Canadian Municipalities in 1998. Lidstone summarizes the principles of local self-government as follows⁷⁸:

1. *Local governments may act or exercise power in relation to any matter that is not expressly excluded from their competence or exclusively delegated to another entity;*
2. *Local governments must participate in decision making by other levels of government which has local implications;*
3. *Powers given to local bodies must be complete and exclusive so as not to be subject to adverse intervention by other levels of government;*
4. *Local governments must have full discretion to exercise their powers to meet local conditions and the powers must be adequate to meet local needs; and*
5. *The dissolution of local elected bodies or changes in local authority boundaries must only be made in accordance with due process of law, with full consultation with the local authority, and by way of a referendum where permitted by law.*

Employing the foregoing criteria, Donald Lidstone proceeded to assess the municipal statutes of the Canadian provinces and territories. The legislation in many jurisdictions measured up in varying degrees. British Columbia, Alberta, Yukon, Ontario, and Nova Scotia, all of whose legislation has been recently overhauled, fared relatively well in the assessment. The Prince Edward Island *Municipalities Act*, however, was singled out as an example of outdated legislation. Lidstone had this to say: “Some of the older legislation, such as the Prince Edward Island *Municipalities Act*, does not measure up under any of the evaluation criteria”⁷⁹.

Bearing in mind that the Lidstone Report was completed in 2004, and the Municipalities Act Review Committee Report was filed in 2005, the Commission perused amendments to the *Municipalities Act* which have occurred since 2005. Those amendments dealt with deficit budgets, a move to a four-year electoral term, some changes to election procedures, bylaw enforcement, a tourism accommodation levy, and several “housekeeping” matters. For the most part the amendments have not addressed the vast majority of concerns raised by the Municipalities Act Review Committee and Lidstone Reports, and they have not addressed the concerns raised by others who are directly impacted by the Act.

⁷⁸ *Ibid* p. 9.

⁷⁹ *Ibid* p. 2.

The FPEIM, which represents forty-three of the Island’s seventy-five municipalities, in its presentation to the Commission recommended that the *Municipalities Act* be replaced. The FPEIM recommended that the following be included in a new Act⁸⁰:

- *Recognition of municipalities as a democratically elected, autonomous, responsible and accountable order of government;*
- *A requirement for the provincial government to consult municipalities on matters that affect them;*
- *Broad authority granted through spheres of jurisdiction, comparable to most other provinces and all territories in Canada, as well as the authority to adopt bylaws concerning the general welfare of their residents;*
- *Natural person powers;*
- *A requirement that any additional responsibilities imposed upon municipalities must be accompanied by sufficient funding, that will grow over time, to cover all costs arising from those responsibilities;*
- *Stronger and broader protection from liability, including protection from decisions made under other legislation;*
- *Clear conflict of interest guidelines;*
- *A requirement for the provincial government to comply with municipal bylaws; and*
- *Authority for the Council to adopt the budget in all municipalities.* (As opposed to the current situation where city and town councils have authority to pass their budgets, while other municipalities’ budgets are required to be passed by residents at public meetings).

In its submission to the Commission, the Town of Stratford, in addition to making several of the same recommendations as the FPEIM, also recommended that any new legislation contain the following⁸¹:

- *A commitment to ensure that municipalities have access to adequate, fair, equitable and transparent sources for the provision of services;*
- *A clear articulation and division of the duties and responsibilities of Mayor, Council and CAO;*

⁸⁰ Federation of Prince Edward Island Municipalities. June 30, 2009. *Strong Local Government for All Islanders*. Submission to the Commissioner on Land and Local Governance. 32 pp.

⁸¹ Town of Stratford. June 2009. *Submission to the Commissioner on Land and Local Governance*. p. 11.

- A section on confidentiality; and
- A minimum size for a municipality to ensure sustainability.

The scope of recommendations for change is obviously substantial. Significantly, in all of the briefs and other submissions to the Commission, and in all of the Commission's consultations, including those with provincial government officials at the senior level, there has been no suggestion that the current *Municipalities Act* is not in need of change. The real questions are the extent to which changes to the Act are required, and what form those changes should take.

The report of the Municipalities Act Review Committee, in particular, indicates the scope of concerns raised about the adequacy of the current *Municipalities Act*. The same is true of various other presentations to the Commission. While the Commission does not necessarily agree with all of the recommendations which it received, they are for the most part valid, and should be taken into account when any legislative changes are being considered.

The paternalism which provincial legislatures demonstrated toward their municipalities as recently as 1983, when the Prince Edward Island *Municipalities Act* was passed, has given way to a more progressive approach which recognizes the significant and responsible role the municipal level of government plays in our overall political structure. Jurisdictions such as British Columbia, Nova Scotia, Yukon, and Alberta have taken a more permissive, less prescriptive approach in revising their municipal legislation. In the Commission's view, a similar approach should be taken by our Legislature. The precedents are readily available.

If municipalities are to be granted more autonomy however, safeguards must be built into any new legislation, in the public interest. In virtually all other jurisdictions in Canada, municipal legislation enables the Minister to appoint an inspector who has all the powers of a commissioner to look into the affairs of a municipality. In Prince Edward Island's case, municipal legislation allowing for the appointment of an inspector under the *Public Inquiries Act*, R.S.P.E.I. 1988, Cap. P-31 would grant similar authority and would appear to be a fair tradeoff for that higher level of municipal autonomy.

Because of the extent to which the current legislation requires amendment in order to bring it in line with the more progressive legislation in other jurisdictions in Canada, the Commission is of the view that the simpler and better approach to changing the *Municipalities Act* is to bring in a new Act.

A further possibility which should be explored is whether a single Act might replace the current *Municipalities Act*, the *Charlottetown Area Municipalities Act*, and the *City of Summerside Act*. A single Act, perhaps with acknowledgment of Charlottetown's place as the capital city, would enable recognition of all municipalities as having equal status under the law.

The Commission recommends:

32. That the provincial government proceed with the drafting of a new Act (perhaps called the *Municipal Government Act*) which enshrines provisions that ensure to the greatest extent possible that municipalities are publicly accountable, accessible to their residents, transparent in their processes, responsive to the needs of their residents, and efficient in the manner in which they provide services to their residents.

33. That the provincial government consult with the Federation of Prince Edward Island Municipalities, the cities of Charlottetown and Summerside, and the towns of Stratford and Cornwall in advance of the drafting of any new legislation.

34. That the new legislation embody, wherever practicable, the progressive provisions present in the municipal statutes of other Canadian jurisdictions.



REVENUE SOURCES FOR ISLAND MUNICIPALITIES

In Canada, municipalities acquire their revenue essentially from three sources. They levy municipal taxes on property, they charge user fees for some of the services they provide, and they receive grants in various forms from the province in which they are situated. Although Manitoba allocates a small percentage of its personal and corporate income tax to its municipalities, the payment is still a grant, the size of which is determined by the provincial government.

Proponents of more diverse sources of revenue for municipalities point to the practice in other countries, where municipalities generate revenue from income tax (Austria, Belgium, Switzerland, and U.S.A.), sales tax including fuel tax and hotel tax (France, Italy, Japan, U.S.A., and Spain) and taxes at death (Finland and Portugal).

In Prince Edward Island the practice is for municipalities to assess commercial and non-commercial property taxes, which the Province, as a service to the municipalities, collects and remits back to the municipalities at no charge. Limited revenue is generated through licensing and user fees, but for the

most part revenue comes from property taxes and provincial and, to a lesser extent, federal grants.

Many of the municipalities which made presentations to the Commission voiced concerns about the extent to which residents of unincorporated areas avail themselves of services provided by municipalities, without adequate cost recovery by those municipalities. Higher user fees for non-residents for the use of arenas, sports fields and other municipal facilities are not seen as an option by municipalities who value the financial and social input to their communities made by non-residents. But at the same time, because much of the tax revenue collected within municipalities goes to the provincial and federal governments (PST & GST), municipalities claim not to receive the level of benefit from non-resident business often attributed to them.

Residents and businesses located in municipalities pay property taxes to the Province at the same rate of \$1.00 per \$100 and \$1.50 per \$100 of assessment as is paid in unincorporated areas of the province. The municipal tax rate established by each individual municipality is added onto the tax bill. The Province then collects all property taxes, and remits the municipal portion back to the municipalities. Beyond that direct remittance, a rather complicated process takes place in order to determine how to compensate

municipalities who provide services to their residents which the Province provides in unincorporated areas.

Prior to 2008, municipalities, through a system of tax credits and grants, received revenue from the Province to assist in covering the cost of operating the municipalities. The tax credits were designed to help defray the cost of policing and, in some instances, street maintenance. In addition, the Province provided what was known as the Municipal Services Grant to assist further with policing and street maintenance, as well as to provide for equalization.

Equalization grants were instituted to assist municipalities having average *per capita* property assessments which were below the provincial average. A determination was made of the average municipal *per capita* assessment in the province. The difference between the average municipal *per capita* assessment and individual municipalities' average *per capita* assessment was then used to determine the amount of equalization each municipality should receive. If a municipality's average *per capita* assessment was greater than the provincial average under the formula, then that municipality should not have received an equalization grant. Until recently however, grants were not large enough to provide full equalization. That changed in 2008; more on that later.

Information has been provided to the Commission by the Department of Communities, Cultural Affairs and Labour (CCAL) as to the method used in establishing the amounts of tax credits and grants. The municipalities of Montague, Kensington, Souris, Alberton, Borden-Carleton and Georgetown received a street grant at a uniform rate per kilometre for all. Stratford and Cornwall did not receive any provincial funding for streets because the Province retained responsibility for street maintenance in both towns. In relation to policing, Montague, Kensington, Souris, Alberton, Borden-Carleton, Tignish, O'Leary, and Georgetown all received tax credits of \$0.10 per \$100 of assessment. In addition, each of these last eight municipalities received a policing grant based on population. These *per capita* grants varied from municipality to municipality for reasons which are unclear.

Obviously, knowledge of the number of kilometres of streets and the population of each municipality was critical in determining the size of grant and tax credit which should be paid. That information was relatively reliable through surveys of streets and census information. It would appear, however, that until 2008 the Province opted to simply adjust grants

using 1990 figures as a base. The grants to the municipalities were then adjusted according to the Province's assessment of its own ability to pay, rather than relying on available up-to-date data to do accurate calculations. Regardless of how the calculations were done, grants to municipalities from the Province for policing did not, and still do not, necessarily come close to paying the total cost of the service. In 2008, O'Leary for example, received a policing grant from the Province in the amount of approximately \$38,000 while its cost for policing amounted to \$107,000. Alberton paid \$107,000 for policing, but received a \$45,000 grant because of its higher population base. The municipalities are then left to raise the balance of the funds required for policing through municipal taxes.

The Comprehensive Urban Services Agreement

When the four municipalities of Charlottetown, Summerside, Stratford, and Cornwall were created with their current dimensions by statute in 1995, the Province acknowledged that they should be paid by the Province for transitional costs associated with changes to the cost of street maintenance and policing. In 1995, the Province and the four municipalities entered into an agreement known as the Comprehensive Urban Services Agreement (CUSA). The CUSA, for these four municipalities, replaced the tax credits and grants which were still provided to other municipalities. Under the CUSA, the four municipalities each received a tax credit of \$0.20 per \$100 of assessment to compensate for the cost of policing. In addition, Charlottetown and Summerside received tax credits of \$0.46 and \$0.76 per \$100 of assessment respectively to compensate for street maintenance costs. Correspondingly, the Province reduced its tax rates to the four municipalities by the same amounts. In other words, in Summerside, for example, the Province's share of its \$1.00 per \$100 of residential tax assessment was reduced by \$0.96 to \$0.04.

The CUSA was initially intended, in 1995, as a short-term measure, but the parties to the agreement renewed it continuously until 2008, when it was unilaterally terminated by the Province. It is noteworthy that only Summerside formally signed the CUSA on the date intended for its commencement. Charlottetown, in a supplementary agreement signed in 2002, acknowledged that it had never executed the CUSA, but that the agreement had been in full force and effect since April 1, 1995. By the terms of that supplementary agreement, Charlottetown received additional funding from the Province to compensate for the cost of high-

maintenance core streets and for streets which had not been included in the original CUSA. Summerside and the Province also entered into a supplementary agreement. Cornwall and Stratford never did execute a formal CUSA document.

The Province's decision to terminate the CUSA in 2008 may to some extent have been inspired by the contents of a study which was jointly commissioned by the Province, Charlottetown, Summerside, and Stratford in 2000. That study is known as the KPMG report in recognition of the firm which authored it. The KPMG report is entitled *Review to Determine the Most Appropriate Level of Government in Prince Edward Island to Deliver Specific Services*⁸². The primary objectives of the study were to assess the fairness of tax and fiscal arrangements, to assess the most appropriate division of responsibilities, and to assess the need for modifications to existing tax and fiscal arrangements between the Province and each of the municipalities.

On the issue of fiscal fairness, the KPMG report, in addressing the tax credits given by the Province in relation to policing services for Charlottetown and Summerside, at page 38 stated:

The existing arrangements are fair and equitable. In the case of Summerside the situation is more than fair and equitable.

In relation to the tax credits given by the Province for streets, at page 45 of KPMG it states:

In conclusion, it is clear that the costs of streets in the service exchange did not adversely impact Charlottetown and Summerside. Indeed, it could be said, that the Province transferred too much revenue in the form of tax credits at the time of amalgamation.

Not surprisingly perhaps, the KPMG report does not appear to have been favorably received by Charlottetown and Summerside, although they had participated in its commissioning and funding. The Commission views the KPMG report as having historical value, but the 2008 shift by the Province to a grant system of revenue sharing has substantially changed the situation which existed when the report was written.

⁸² KPMG. 2000. *Review to Determine the Most Appropriate Level of Government in Prince Edward Island to Deliver Specific Services*. Report Prepared for the Department of Community and Cultural Affairs, City of Charlottetown, City of Summerside and Town of Stratford. 75 pp.

The KPMG report commented on the matter of the use of property tax credits versus grants as a method of sharing revenues between the Province and the municipalities. It saw the practice as "unusual" and recommended that⁸³:

The provincial government undertake a study of the tax credit program with an objective to replace the tax credit method of transferring property tax revenues from the Province to the municipalities with a series of conditional grants structured to more closely match the cost of delivering the service or at least the cost to deliver a service that meets a minimum uniform standard.

According to officials at CCAL, the study recommended by KPMG was never carried out.

2008 – A New Approach

In 2008, the Province moved to pay municipalities with smaller average *per capita* property assessments the full amount of equalization required to bring them up to the provincial municipal average in relation to *per capita* municipal property tax assessment and the corresponding amount of grant. According to CCAL officials, changes to the data used to apply the equalization formula had resulted in a situation where numerous municipalities were being underfunded, several were being overfunded, and several more had been receiving funding for which they did not qualify.

Also in 2008, the Province moved to a program of providing straight grants to municipalities. Under the previous approach of providing tax credits and grants, the tax credit amounts were based on the application by the Province of a fixed rate in relation to each municipality's assessments. Municipalities were therefore able to forecast their projected revenues with a reasonable level of accuracy since they knew what rate the Province would apply, and they knew what their tax assessments were.

Under the current straight grant approach the Province uses as its basis for calculations the amount of the total payments that the Province made in tax credits and grants to each municipality in 2007. The Province then unilaterally determines what adjustment it will make in each succeeding year. In 2009, for example, the adjustment over the 2008 grant level was 2.6%. That adjustment is ostensibly to cover the increase in the Consumer Price Index

⁸³ *Ibid* p. 32.



(CPI) and also to allow for an increase in total assessment arising from new development. With the CPI at 2.5%, municipalities experiencing growth substantially in excess of 0.1% are receiving considerably less than they would have received under the pre-2008 approach.

In response to the Province's move to a straight grant program, Charlottetown, Stratford, and Cornwall commissioned a study by MacPherson Roche Smith and Associates (MacPherson Report) to inquire into the impact of the new approach on those municipalities⁸⁴. The apparent impartiality of the report is unfortunately compromised by the fact that the Province was not a party to its commissioning or funding.

Relying on data from the previous ten-year period, including assessment growth rates, the MacPherson Report attempted to project the impact of the straight grant approach over the period from 2009 to 2018. The report assumes a grant increase based on the CPI, but there is nothing to indicate that the CPI rate will necessarily be considered in determining the amounts of any future grants from the Province. The MacPherson Report also assumed a growth in property assessments based on the previous ten-year

average, and while it is acknowledged that in order to make projections some assumptions are required, given the current economic climate, the projections arrived at in the report may be anything but accurate. CCAL has provided statistics to the Commission which indicate that, in fact, Charlottetown has come out slightly better under the current arrangement than it would have under the CUSA, while Stratford and Cornwall are slightly worse off under the straight grant approach.

In conclusion, regardless of whose figures are accurate, and the Commission makes no finding in that regard, the effect of the current approach is that the Province can arbitrarily determine the level of municipal grants without offering any real level of predictability for the municipalities. That presents serious budgeting problems for municipalities when it comes to projecting revenues for their upcoming fiscal year.

The decision by the Province to freeze residential property assessments at their 2007 levels has also impacted on municipal governments since municipalities, except for new development, cannot rely on assessments to increase their revenues from taxes on non-commercial property. When the assessment freeze is removed, as eventually it must be, there will presumably be a noticeable effect on municipal revenues, unless of course, there is a corresponding adjustment otherwise.

⁸⁴ MacPherson Roche Smith & Associates. 2008. *Provincial/Municipal Fiscal Relationships*. A Report Prepared for the Capital Region Municipalities (Charlottetown, Cornwall, Stratford). 59 pp.

A PROPOSAL FOR CHANGE

As indicated earlier, in many foreign jurisdictions municipalities generate revenue from income tax, sales tax, and even death taxes. There are advantages to the so-called “growth taxes” in that they have greater elasticity in times of economic change. Recommendations that Canadian municipalities be provided with access to these taxes have been made in the past, but never legislated. The Commission is not recommending such drastic departures from reliance primarily on property taxes, given the availability of other remedies which, in the Commission’s view, could be far more easily implemented.

When considering approaches which can be taken in relation to tax revenue distribution, the best option, in the Commission’s view, is to provide a shift in the available tax room from one level of government to another. In June 2007, the Standing Senate Committee on National Finance had this to say about “tax room”⁸⁵:

Also called “transfer of tax points”, tax room is transferred when one level of government reduces the amount of tax it imposes, thereby allowing another order of government to increase their taxes by a corresponding amount. The transfer of tax room has no net financial impact on the taxpayer per se; the only discernible effect is that a different order of government receives the revenues that another order could have collected. However, the value of the tax room changes along with the growth rate of the economy, and specifically the revenue potential of the tax base.

In his report on the future of local governance in New Brunswick, Commissioner Jean-Guy Finn, in coming to the conclusion that a tax room transfer from the provincial to the municipal level of government is preferable to tax sharing, stated⁸⁶:

Tax sharing refers to a system in which one level of government levies a tax and in turn shares a portion of these tax revenues with another level of government.

A tax room transfer is different in that it anticipates one level of government vacating a tax field (or a portion thereof) and transferring the ability to enter into the vacated tax room to the other level of government. It is up to the recipient government to determine the extent of the tax room that it wishes to use for its own purposes.

From our perspective, a tax room transfer improves general accountability for the taxes levied and the services provided at the local level. It enhances transparency, respects local autonomy and supports the concept of those who spend, tax. Therefore, in our opinion, a tax room transfer is the preferred approach.

If such an approach is taken, the portion of tax room to be transferred must be commensurate with the level of services provided by individual municipalities. One of the benefits of a tax room transfer, aside from accountability, is the predictability which it would provide to municipalities in projecting their revenues for the upcoming fiscal year.

Another benefit of a tax room transfer is that it would enable a move away from unconditional grants. With unconditional grants there is little accountability attached to the level of government which does the actual spending, since the grant money is turned over without conditions as to how it is to be spent. That is what happens when the Province collects tax revenue and turns it over to municipalities without requiring an accounting as to how that provincial tax money is applied.

Grants might still be required for equalization purposes, in relation to smaller municipalities, but conditional grants, which require monies to be specifically applied, to the limited extent that they may be required, should not unduly encroach on municipal autonomy.

If a tax room transfer is to be done, the two levels of government should be capable of agreement on the means of arriving at a determination of an equitable level of transfer to the various municipalities. A process involving the Province and representatives of the municipalities, and perhaps the FPEIM, should be capable of reaching consensus as to an acceptable process, whether through arbitration or otherwise.

⁸⁵ Standing Senate Committee on National Finance. June 2007. *The Vertical and Municipal Fiscal Balances*. Second Interim Report on the Committee’s Study of the Fiscal Imbalance between the Different Levels of Government in Canada. p. 20.

⁸⁶ New Brunswick Commission on the Future of Local Governance. *Building Stronger Local Governments and Regions – An Action Plan for the Future of Local Governments in New Brunswick*. November 2008. p. 133.

The Commission recommends:

35. That the provincial government initiate consultations with municipalities, either through the Federation of Prince Edward Island Municipalities and/or otherwise, to establish a process for the implementation of a transfer of tax room in relation to non-commercial property tax, at levels equitable to the provincial government and the municipalities.

36. That in any determination of what constitutes an equitable transfer of tax room, accurate, up-to-date data be applied in establishing the actual or projected cost of services to be provided by municipalities.

Stratford and Cornwall Streets

On a somewhat related issue, Stratford and Cornwall, the third and fourth largest municipalities in the province, are not responsible for their streets. Prior to amalgamation the Province maintained those towns' streets, and that arrangement has continued to this day. Stratford has expressed an interest in assuming responsibility for its streets, so that it can exercise control over construction and maintenance, including attention to the details which it feels can make the community more aesthetically pleasant. The Commission has found no indication that Cornwall is similarly interested. In the Commission's view, responsibility for a service as local as street maintenance, which is almost universally the responsibility of municipalities, should reside with Stratford and Cornwall, with consideration for the added financial burden attached.

The Commission recommends:

37. That responsibility for the maintenance of municipal streets be transferred from the provincial government to the towns of Stratford and Cornwall, with an appropriate accompanying adjustment in relation to revenue.

SOME BACKGROUND ON PRINCE EDWARD ISLAND'S COMMUNITIES

Prince Edward Island is in a somewhat unique situation amongst Canadian provinces and territories. Except in areas which are essentially unpopulated lands or Crown lands, only Prince Edward Island and New Brunswick have areas which are not served by either local or county levels of government. And although New Brunswick has unincorporated areas, those areas are served by Local Service Districts which act in an advisory capacity to the provincial government on local matters. The effect of the foregoing is that ours is the only jurisdiction in which the provincial government provides local government services directly to some of its residents without some other form of local government structure in place.

Currently, Prince Edward Island has seventy-five incorporated municipalities, made up of two cities, seven towns, and sixty-six entities defined under the *Municipalities Act* as "communities". Of a total population of 140,000 residents, approximately 93,000 live in those incorporated areas. In addition to the area of the province covered by the various incorporated municipalities, more than 70% encompasses unincorporated areas which are traditional communities with long histories. Although these communities have been recognized as such for generations, they have no legal status. They cannot sue or be sued. They cannot perform any function legally, because from a legal standpoint, they don't exist. There is no local government *per se*. They are not eligible for programs such as infrastructure funding and other forms of government financial assistance. If there is a problem within the community, such as contamination of a resident's water supply, that resident has no government recourse except to the Province. In a very real sense,

the Province provides local government to the 47,000 residents of these unincorporated areas. The result may be that a local problem, which might best be resolved at the local level, ends up having a relatively long-distance solution.

The range of services provided by Prince Edward Island municipalities is broad. The cities and most of the towns provide policing, street maintenance, planning, animal control, public works, parks and recreation, a community center and water and/or sewer services. These services, by today's standards, are generally considered essential to a vibrant municipality, and in the Commission's view they are sufficiently local in nature that they should be considered basic municipal services. There may of course be situations where the absence of need for a specific service or services is demonstrated.

Aside from the above-mentioned cities and towns, of the remaining sixty-six municipalities, none provides all of the services referred to above. In fact twelve municipalities provide none of those services. As a result, some municipal non-commercial tax rates are as low as six and seven cents per hundred dollars of assessment, and one municipality charges no municipal tax at all. The number of services provided by smaller municipalities can be a reflection of the services required by their residents, but it may also reflect the small size of municipal populations and tax bases, with accompanying limited human and financial resources.

Why, it might be asked, did these municipalities incorporate in the first place? CCAL advises that prior to 1983 Community Improvement Committees (CICs) had been the vehicle through which the residents of many communities banded together to access funding and carry out improvements to their communities. With the repeal of the enabling legislation for CICs on November 1, 1983, these communities, if they wished to continue as legal entities, had no choice but to incorporate, so incorporate they did. It would appear that in some cases their *raison d'être* may have expired, but the municipalities live on.

FURTHER INCORPORATION: IS IT THE BEST OPTION?

The FPEIM and several of the smaller municipalities who made presentations to the Commission contend that a change in municipal structures must occur in order to enable local governments to function more effectively. The FPEIM submits that the entire province should be incorporated through the

establishment of municipalities which have sufficiently large tax bases and populations to make them sustainable political entities, and that view was expressed to the Commission by other presenters as well.

The call for full incorporation is not new. As indicated earlier, the Municipalities Act Review Committee in 2005 recommended "...that the provincial government prepare an implementation plan to expand the present geographical coverage of municipal government to all areas of the province"⁸⁷. In 2007 The Iris Group concluded a project funded by the Government of Canada, the Government of Prince Edward Island and the FPEIM which it entitled *A Study on Prince Edward Island Local Governance*⁸⁸. At public meetings and in interviews with the public The Iris Group heard several concerns expressed about the disadvantages of being unincorporated, including a shortage of volunteers for local projects, a lack of political clout on local issues, lost opportunities for federal/provincial funding of local projects, and a lack of local decision-making on matters of local interest. Those same concerns were expressed to the Commission. The fact that no one appeared on behalf of unincorporated areas at the Commission hearings graphically illustrates the lack of representation those areas suffer from where matters which directly affect them are involved.

In relation to funding, The Iris Group makes reference to the fact that funding under the Federal/Provincial Agreement on the Transfer of Federal Gas Tax Revenues is not available to unincorporated areas since it is part of the federal New Deal for Cities and Communities Program which applies to incorporated areas only. More recently, on June 4, 2009 the Government of Canada and the Province announced an Infrastructure Stimulus Fund of approximately \$32,000,000 for infrastructure projects in the province⁸⁹. It is worthy of note that in every instance the Infrastructure Stimulus Fund monies were earmarked for projects in incorporated areas. Although those projects included sports field and civic center renovations to which residents of unincorporated areas would most likely have access, the possibility of having direct access to such funding for community services should be an incentive to residents of unincorporated areas to consider incorporation.

⁸⁷ Municipalities Act Review Committee. June 2005. *Municipal Legislative Reform*. p. 95.

⁸⁸ The IRIS Group. 2007. *A Study on Prince Edward Island Local Governance*. 52 pp.

⁸⁹ Government of Prince Edward Island. June 4, 2008. *Canada and Prince Edward Island Invest in Infrastructure*. <http://www.gov.pe.ca/news/index.php3?number=news&dept=&newsnumber=6349&lang=E>

The Iris Group study heard as reasons for moving toward larger municipal units⁹⁰:

- *The need for greater capacity to engage in strategic long-term planning;*
- *The need for greater administrative capacity including professional staff;*
- *More resources and more authority situated at the local level;*
- *A greater ability to participate in the development process; and*
- *A stronger local collective voice when dealing with other levels of government.*

The Commission heard essentially the same submissions from various presenters.

In his report on the future of local governance in New Brunswick, Commissioner Finn addressed a situation not unlike that which exists here when he stated⁹¹:

Any in-depth reform of local governance in New Brunswick hinges on addressing the “democratic deficit”, that is, the absence of true local government for 35% of the population and 90% of the provincial territory.

Commissioner Finn then went on to recommend:

...that incorporated municipal governments be established over all of the New Brunswick territory and that all residents be represented and governed by elected municipal councils....

By comparison, in Prince Edward Island, approximately 33% of the population and 70% of the provincial territory are contained in unincorporated areas, with an absence of true local government.

Some of the submissions the Commission heard indicated that the smaller municipalities not only have difficulty attracting candidates for election, but they are also hard-pressed to find volunteers to organize and run programs for which there is no funding for paid employees. Information obtained from Elections PEI indicates that in the 2006 municipal elections, of the 432 seats available for mayors, chairpersons, and councillors, only 151 were contested while 281 candidates went in by

acclamation. While there may very well be several reasons for these numbers, including a lack of interest in municipal politics, the population of some of the smaller municipalities cannot be ignored as a probable contributing factor. The latest census figures indicate that twenty-seven municipalities have populations of less than 300 residents, and several have populations of less than 100.

The provincial government does provide grants to municipalities which are designed to equalize the financial situation of smaller municipalities with that of more highly populated municipalities with larger tax bases. However, the Commission heard repeatedly that the existing grant system, combined with the municipal tax rates which small municipalities feel they can sustain politically, are simply insufficient to adequately fund important services such as planning. As an example, if a municipality cannot afford the services of a professional planner, and no planning services are available from the Province, planning becomes a function of well-intentioned but untrained members of the community, often with less than satisfactory results. Attempting to function with part-time administrator/bookkeepers and sporadic, brief office hours further exacerbates the situation.

If a local government is to be a viable entity, there are two key requirements for long-term sustainability. There must be sufficient population to competently fill elected, staff and volunteer positions in order to provide the services which residents should reasonably expect to receive, and there must be a sufficient tax base to cover the administrative and other costs of providing those services.

Municipal assessments on which property taxes are based cover a broad range in Prince Edward Island. The 2008 assessments varied from a high of \$2,149,063,880 for the largest municipality to a low of \$2,698,724 for the smallest. The significance of these figures, particularly the approximately \$2.7 million figure, becomes relevant when we consider what is regarded as the preferred level of assessment for a sustainable municipality.

What is a Sustainable Municipality?

There are no precise numbers available pertaining to the minimum population and property assessments necessary to sustain all municipalities. Obviously, the numbers will depend in part on which services municipalities are expected to provide, and the cost of those services. In the assessment carried out by Commissioner Finn in preparation for his 2008 New Brunswick report, he concluded that it was

⁹⁰ The IRIS Group. 2007. *A Study on Prince Edward Island Local Governance*. p. 30.

⁹¹ New Brunswick Commission on the Future of Local Governance. *Building Stronger Local Governments and Regions – An Action Plan for the Future of Local Governments in New Brunswick*. November 2008. p. 77.

reasonable for rural municipalities, which do not provide a full range of services to their residents, to have a minimum of 2,000 residents, and a minimum tax base of \$100,000,000. For full-service municipalities, notwithstanding that some experts hold that a minimum of 5,000 population is required, Commissioner Finn advocated for a minimum of 4,000 residents and a minimum tax base of \$200,000,000, given the various considerations applicable in New Brunswick.

Commissioner Finn made the following observation⁹²:

Some academics have suggested that the optimal size for a municipality is one having a population of 5,000 to 10,000. However, this would likely depend on a variety of factors such as geographical size, population density, the health of the economic base and trends in population growth or decline. The wide range of municipalities that exist across the country in terms of geographic size, population and tax base suggests that coming to such conclusions is a near impossible task.

A perusal of the population and tax bases of Prince Edward Island municipalities indicates that only Charlottetown, Summerside, Stratford and Cornwall are above the 4,000 population/\$200,000,000 tax base recommended by Commissioner Finn. If the minimum required numbers are reduced to half of Commissioner Finn's recommendation, it does not alter the number of municipalities which would qualify as being sustainable. That leaves seventy-one municipalities which do not have a population of 2,000 residents and sixty-eight with a tax base of less than \$100,000,000. In fact, only twelve municipalities in the entire province have a population of more than 1,000 residents.

Some Possible Options for Change

If it is accepted that the majority of Prince Edward Island municipalities are not sustainable at their current levels of population and tax base, the question then follows as to what form new municipal structures might take, if it is decided to proceed with change.

- Should the communities of West Prince be incorporated into three municipalities with their

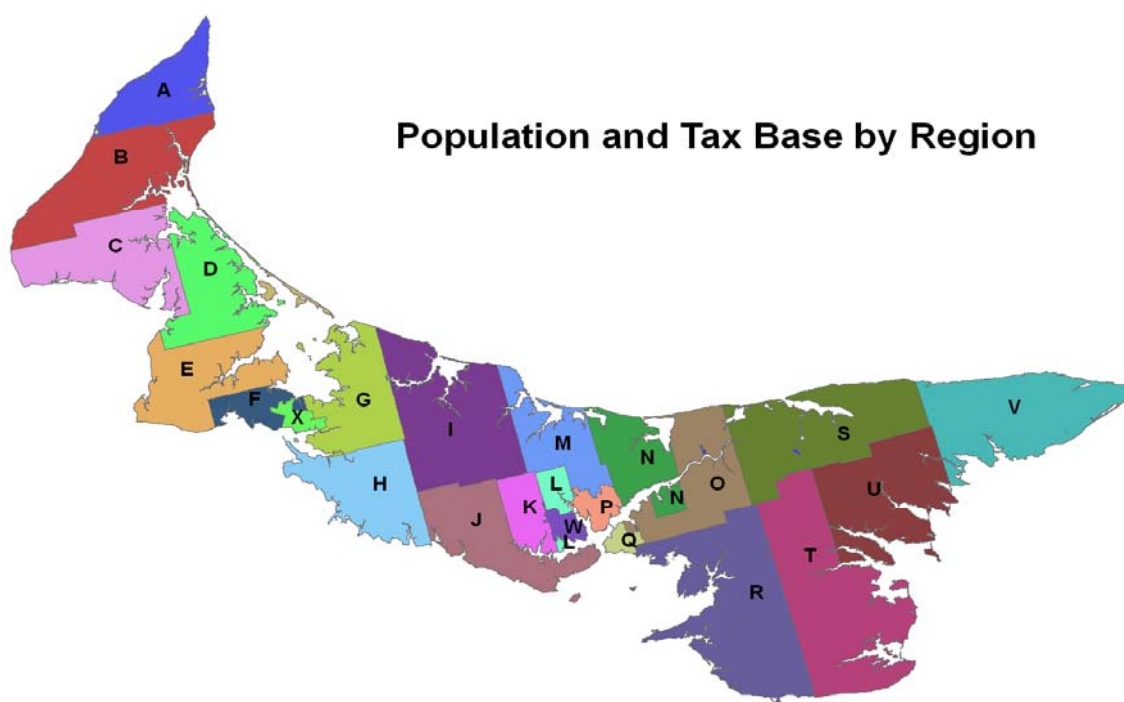
centres of government in Tignish, Alberton and O'Leary?

- What are the advantages in having the culturally distinct Évangéline region incorporated into a single municipality?
- If the current Eastern Kings and Souris West communities were to merge with the Town of Souris, what benefits would flow?
- Would the residents of Georgetown, Cardigan, Brudenell, Montague, Lower Montague and surrounding areas benefit from having their communities incorporated into the municipality of Three Rivers?

The analysis of what might constitute appropriate boundaries for sustainable municipalities required population and tax base data for defined geographic areas of the province. The Commission began by perusing 2008 provincial government data for population resident within the various original Township Lots. Assuming a required population in the vicinity of 4,000 residents as a starting point, the Commission then acquired the taxable market value property assessments (tax base) for combinations of Township Lots which contained populations within a reasonable range of 4,000 residents. An interesting pattern began to emerge. Township Lots 1 & 2, for example, with Tignish as its largest centre, have a combined population of approximately 4,750 residents and a tax base of \$242,209,800. Township Lots 3, 4, 5, & 7, with Alberton as the largest centre, have a combined population of approximately 5,100 residents and a tax base of \$411,483,100. Township Lots 6, 8, 9, & 10, with O'Leary as the largest centre, have a combined population of approximately 3,200 residents and a tax base of \$211,051,500. Township Lots 14, 15, & 16 which contain, in part, most of the Évangéline Region, have a population of approximately 3,400 residents and a tax base of \$233,233,600. At the eastern end of the province Townships 43, 44, 45, 46, & 47, with Souris as the largest centre, have a population of approximately 4,600 residents and a tax base of \$363,214,900.

The Commission is not suggesting that the above geographic areas should necessarily be incorporated into new municipalities. However, the data do indicate that the population and tax base distributions are such, not only in the areas referred to above, but throughout the province, that larger self-sustaining municipalities are achievable across the province. The map on the following page and the accompanying table show province-wide population (2008) and taxable market value data (2009) for selected groupings of municipalities and Township Lots.

⁹² New Brunswick Commission on the Future of Local Governance. *Building Stronger Local Governments and Regions – An Action Plan for the Future of Local Governments in New Brunswick*. November 2008. p. 84.



Population and Tax Base by Region - Current

| Region | Township Lot | Population | Tax Base (\$) |
|--------|------------------------------|------------|---------------|
| A | 1, 2 | 4,744 | 242,209,800 |
| B | 3, 4, 5, 7 | 5,110 | 411,483,100 |
| C | 6, 8, 9, 10 | 3,205 | 211,051,500 |
| D | 11, 12, 13 | 2,460 | 139,055,000 |
| E | 14, 15, 16 | 3,378 | 233,233,600 |
| F | 17 (less Summerside) | 2,706 | 135,116,900 |
| G | 18, 19 (less Summerside), 25 | 5,684 | 575,756,900 |
| H | 26, 27, 28 | 4,185 | 461,979,200 |
| I | 20, 21, 22, 23, 67 | 7,330 | 846,642,700 |
| J | 29, 30, 65 | 4,129 | 390,389,100 |
| K | 31 | 2,728 | 172,685,100 |
| L | 32 (less Cornwall) | 1,247 | 119,906,700 |
| M | 24, 33 | 4,372 | 458,847,900 |
| N | 34, 35 | 3,935 | 421,948,900 |
| O | 36, 37, 48 (less Stratford) | 3,517 | 281,339,100 |
| P | Charlottetown | 32,260 | 2,514,869,600 |
| Q | Stratford | 6,700 | 541,028,600 |
| R | 49, 50, 57, 58, 60, 62 | 4,505 | 387,651,400 |
| S | 38, 39, 40, 41, 42 | 3,042 | 312,802,300 |
| T | 51, 52, 59, 61, 63, 64, 66 | 8,523 | 574,740,700 |
| U | 53, 54, 55, 56, Georgetown | 3,167 | 296,036,300 |
| V | 43, 44, 45, 46, 47 | 4,559 | 363,214,700 |
| W | Cornwall | 4,565 | 288,144,900 |
| X | Summerside | 13,614 | 834,417,200 |

The population and tax base data for Summerside, Stratford and Cornwall were separated from the Township Lots in which they are located, since their populations and tax bases are all well in excess of the 4,000 population and \$200,000,000 tax base which the Commission used as its focal point in considering possible geographic areas for incorporation. Furthermore, there has been no indication given that any of the three above municipalities or Charlottetown has any present need to increase its geographic area.

If communities are to be cohesive units, their residents must share common interests which bind them together. Geographic area may contribute to that bond, but common cultural interests may also be a factor. Areas of West Prince, Eastern Kings, and the Évangéline Region with its Acadian cultural heritage, may all consider themselves as being distinct to an extent that makes local governance on issues of local significance an attractive option. The same may well be true in other areas of the province.

If it is intended to bring about dramatic changes in the Province's approach to local governance, it will be necessary to demonstrate to Islanders who will be most directly affected, that any proposed changes are fair, affordable, necessary, not unduly onerous, and in the best interest of the Island as a whole. In the Commission's view that can only be achieved by a process of information dissemination followed by public meetings at which residents would have an opportunity to raise concerns and openly debate with proponents of change, any proposals for change. The Commission understands and appreciates that there may well be strong and active opposition to the idea of incorporation from certain quarters, including long-established community groups and local provincial government representatives who genuinely believe that nothing is broken. This should not, however, be used as a reason not to consult.



The Commission recommends:

38. That the provincial government, through a process of public information and consultation determine the consensus of Islanders in relation to the incorporation of some or all of the province into municipalities having a population and tax base sufficient to provide effective and sustainable local governance on matters which are local in scope.

THE TAX IMPLICATIONS OF A CHANGE IN STRUCTURES

Many residents of unincorporated areas view the expansion of existing municipalities, or indeed the creation of new municipalities, as a potential further tax burden which they should not have to bear. The principle that those who do not receive the benefit of municipal services should not have to pay for them has prevailed for a very long time. Tax equity is achieved in many municipalities through a process of differential taxation, including the imposition of user fees, and in some cases, area rating. There are several kinds of tax differentials, including the differential most common in Prince Edward Island, that between commercial and non-commercial tax rates. What merits consideration here however, is the differential available to compensate for the different services which municipalities provide to their various residents.

In his book *Municipal Revenue and Expenditure Issues in Canada* Professor Harry Kitchen makes the following observation⁹³:

Differences in effective property tax rates (the tax price) within a municipality are efficient if they reflect differences in the cost (production, environmental, and social) of delivering services to different property types. In other words, if some properties or

⁹³ Kitchen, H. 2002. *Municipal Revenue and Expenditure Issues in Canada*. Canadian Tax Paper No. 107. Canadian Tax Foundation. p. 105.

property types are more expensive to service than others, one can make a case for differential property tax rates.

And in his presentation to the 36th Annual National Workshop of the Canadian Property Tax Association in Québec City in 2002, Professor Kitchen stated⁹⁴:

For water and sewers, public transit, solid waste collection and disposal, and public recreation where specific beneficiaries can be identified, user fees make solid economic and financial sense. ...reliance on user fees removes the fear that many taxpayers have and that is "they don't have to pay for services that they don't use."

For services where individual beneficiaries could not be identified but where service levels are higher for taxpayers within specific areas, area rating was recommended. For services that benefit taxpayers across the entire municipality, the general property tax is the appropriate financing tool.

The Halifax Regional Municipality (HRM) came into being on April 1, 1996, with a land area approximately the size of Prince Edward Island. Subsequently HRM created a tax structure which took into account the fact that the new municipality was comprised of elements as diverse as the cities of Halifax and Dartmouth, and small communities such as Ecum Secum West and Sheet Harbour. HRM's tax structure included a Base or General Tax Rate, a Suburban General Tax Rate and an Urban General Tax Rate. The Base Rate applied to HRM in its entirety, and funded policing, compost, recycling and garbage, recreation programming, planning, libraries, sports fields and playgrounds. Water and sewer was charged through a separate bill. The Suburban Rate included the Base Rate items plus fire, streetlights, recreation facilities and crosswalk guards. The Urban Rate included all Suburban Rate items plus sidewalks and the cost of Metro Transit.

The Cape Breton Regional Municipality (CBRM), which includes approximately one quarter of Cape Breton Island, took a similar approach to HRM. In 1996 it established an Urban, Suburban and Rural tax structure based on services provided to residents, but CBRM also distinguishes different levels of service within each category.

Beyond the above differentials, in most major cities in Canada there are at least seven different property tax rates for residential properties alone⁹⁵.

What all of this illustrates is that property tax rates can be established within a single municipal structure which take into consideration the various service levels which its residents receive. Provision for differential rates of tax is commonly contained in municipal legislation, and in fact it can be found in our *Municipalities Act*, as part of subsection 37(2) where it states:

...where certain municipal services are provided only in certain districts of the municipality, the council may fix a different rate in respect of those districts....

The practice in other jurisdictions generally is to vest in municipalities the authority to set their own tax rates, including any differential for different levels of service. (See, for example, the *Municipal Government Act*, Stats. N.S. 1998 c.18, ss.73 and 75.) It should be noted also that under s.73, the Province of Nova Scotia has made it mandatory that HRM establish different tax rates for commercial and residential properties within the municipality. The Commission sees no reason to diverge from the general practice, unless it appears to the Province that a safeguard is necessary in order to ensure lower tax rates for residents of areas which receive a lower range of services.

The Commission does not wish to suggest that if unincorporated areas incorporate, or become annexed to an existing municipality, there will not be any increase in property tax rates in the affected area. Whether tax increases occur would depend on a number of factors, including those which Professor Kitchen refers to below, and also including whether a transfer of tax room was approved by the Province, as previously discussed. If there are increases which are only sufficient to cover the cost of services which the municipality is already providing to the unincorporated area, such as recreational facilities, or if the newly incorporated area begins receiving services which it did not formerly receive, reason would dictate that such increases should be seen as being only fair.

Professor Harry Kitchen, in a presentation to the Institute for the Economy in Transition in Moscow, in dealing with the question of the impact of amalgamation on local taxes, made several

⁹⁴ Kitchen, H. 2002. *Municipal Restructuring – My Experience as a Provincially Appointed Commissioner*. Presentation to the 36th Annual National Workshop of the Canadian Property Tax Association Inc. Québec City. 19 pp.

⁹⁵ Kitchen, H. *Municipal Revenue and Expenditure Issues in Canada*. Canadian Tax Paper No. 107. Canadian Tax Foundation. p. 104.

observations⁹⁶. He indicated that the impact on local taxes depended on the:

- *Level and range of services provided after amalgamation;*
- *Vigilance of the newly elected council to control costs;*
- *Extent to which there is a leveling up in labor costs and service levels;*
- *Willingness of local councils and administrators to trim excess staff and excess equipment; and*
- *Way in which services are delivered – through creation of seamless delivery zones and possible privatization.*

As rationale for amalgamation beyond possible cost savings, Professor Kitchen, in the same presentation, stated⁹⁷:

Amalgamations have almost always led to improved local public services – both in the range and standard (level) provided. It has also provided a fairer tax base for sharing service costs that benefit taxpayers across a wider geographical area. This is important if suburbanites or those living in more rural areas use public services provided by the more urbanized centres without paying for them.

In the Commission's view, if there are to be increases in property taxes, it must be demonstrated to taxpayers that those increases are fair and as minimal as possible in the areas affected.

If the public is properly informed, given time to digest what is being proposed, and given an opportunity to respond, any increases, if indeed there are any, will most likely be grudgingly accepted.

The Commission recommends:

39. That as part of its public consultation process, the provincial government provide a detailed analysis of the potential tax implications of any proposed changes to current provincial-municipal governance structures.

40. That changes to local governance legislation clearly provide for the establishment, within a municipality, of different rates of property tax within the same property classification, based on the range and standard of services provided.



⁹⁶ Kitchen, H. 2003. *Municipal Restructuring: Are There Lessons to be Learned from the Canadian Experience*. Presented at the Institute for the Economy in Transition. Moscow, Russia. pp. 9 and 10.

⁹⁷ *Ibid* p. 10.

CONCLUSION

The work of this Commission was undertaken with the knowledge that land use and local governance are sensitive issues, especially to those most directly affected. The Commission does not suggest that its recommendations are a panacea for all of the contentious issues which arise in these areas.

Hopefully though, this report will encourage public discussion of those issues which in the past have not been fully aired. Hopefully too, following further consultation where it is found to be necessary, the governments involved will move the process forward in a manner which leaves this province better administered than before, strengthened by new foundations.

If the provincial government is to build a vision and develop policies which resonate with Islanders and receive their support in these areas of land use planning and municipal government, it must demonstrate the soundness of its approach. And it must be prepared to move decisively if it is in the Island's best interest to do so, even though criticism is inevitable regardless of the approach taken.

We cannot afford to maintain the *status quo* in a world that is changing all around us.



APPENDICES

APPENDIX I

COMMUNITIES, CULTURAL AFFAIRS & LABOUR
GOVERNMENT OF PRINCE EDWARD ISLAND

LAND AND LOCAL GOVERNANCE

A WHITE PAPER ON GOVERNANCE AND
LAND USE IN PRINCE EDWARD ISLAND

APPROVED BY EXECUTIVE COUNCIL
DECEMBER 2, 2008

WHITE PAPER ON GOVERNANCE AND LAND USE

EXECUTIVE SUMMARY

1) INTRODUCTION

It is nearly impossible to talk about land in Prince Edward Island without also talking about municipalities. The oft-quoted description of local government as being the closest to the people applies in some ways equally to the land aspects of community – our communities are intimately aware of the relationship between the people and land use changes over time. The reverse is also true; it is difficult to speak of municipalities without touching on questions of land. That being said, to resolve land use issues without also examining the role of the unincorporated areas would be to respond to only one piece of the puzzle. For that reason – and since response has become increasingly urgent – any attempt to develop solutions to current challenges must necessarily acknowledge and take into consideration the inter-related nature of land use, local governments, unincorporated areas, and the Province.

2) CURRENT SITUATION

Prince Edward Island is a patchwork of systems in more ways than one. With a population of about 139,000, PEI has:

- 35 fire departments
- 26 sewer and/or water utilities
- 32 jurisdictions issuing building permits, including the Province
- 8 municipalities with responsibility for their own road and highway system (roughly 11%)
- 11 municipalities with responsibility for police services (roughly 15%)
- 10 percent of the Island's land mass covered by a municipal official plan; the remaining 90 percent falls under the jurisdiction of the Province and a general set of land use regulations.
- 30 percent of the Island's land mass incorporated with local governments, taking into account approximately 70 percent of the province's population. The seventy-five municipalities range in population from 77 to 32,174 people (2006 Census).

Added to this mix are complex layers of community development areas, incorporated community development groups, economic development districts, school boards, health districts, and watersheds, along with all other components of governance from the Provincial level, including a network of 'regional communities of interest' under the Community Development Bureau system.

Moreover, the layers of political representation in Prince Edward Island contribute to the complexity of jurisdictional discussions:

- 4 members are elected to represent Islanders federally (34,740 people / elected official)

- 27 members are elected provincially to represent the interests of Islanders (5,148 people / elected official)
- 26 School Board Trustees are elected to represent the Island's education interests (5,346 people / elected official)
- 476 council members are elected to represent 70% of the Island's population, residing in 30% of the Island's land mass (195 people / elected official).

3) ISSUES

Both local governance and land use in the province have experienced a gradual transformation over the years, with villages and community improvement committees (CICs) shape-shifting into new municipal structures, provincial land-use service centres giving way to an amalgam of municipal and provincial planning jurisdictions, and changes at the national level affecting the roles and legal responsibilities of municipal bodies. Unfortunately, legislation, planning structures, funding structures, boundaries, and local capacity have not necessarily kept pace with changing realities on the ground, with the noted exception of large steps towards realignment in the mid-1990s with the amalgamations in the Charlottetown and Summerside areas.

A review of municipal legislation completed in 2005 identified, through more than 129 recommendations, a range of weaknesses in the existing framework. The modernization of the legislation is now intended to go hand in hand with the implementation of findings and recommendations from the Commissioner process.

4) OBJECTIVES

Government has signaled a desire to move towards a system of local governance and land use practice that is effective, adequately funded, and appropriately organized. Such a new system would take into account efficiencies of scale, resources and capacity at the local level, and any legislative, financial, and human resource tools required to implement any new models.

It is also Government's intent to move towards a system that is built on public consensus, education, shared goals, and regional cooperation.

5) PROCESS

The Province took the first step in moving towards comprehensive improvements when Premier Robert Ghiz announced the forthcoming appointment of a Commissioner of Land and Local Governance in his 2008 Throne Speech. This White Paper represents the second step; identifying the situation and setting the stage for the Commissioner's work. The appointment of the Commissioner and the commencement of his/her work will then take place over a period of twelve months, culminating in a report and suggested action plans for implementing changes. After the submission of the report will come a period of internal review of the recommendations, planning for change, consultation, amendment of legislation, possible restructuring, and a strengthening of the Island as a mosaic of communities.

6) CONCLUSION

Municipal and land use reform appears to follow cycles, with greater or lesser degrees of change at any given point. It is time once again to take a comprehensive look at the structures that govern the day to day life of Island residents, guide our local municipal officials, and direct our use of the land.

BACKGROUND

1) HISTORY

The announcement in the 2008 Speech from the Throne of a Commissioner of Land and Local Governance is by no means the first announcement of a provincial study on the question of municipal structures and/or land use. Indeed, the Commissioner will have access to a rich library of documents and recommended action plans, many of which remain just as (if not more) timely and relevant as they did when they were first released.

The complexity of the current land use and governance frameworks, and the potential for opposition to modernization strategies, has meant that implementation of previous reform efforts has been limited and incomplete.

Previous reports:

- the 1973 Royal Commission on Land Use and Land Ownership
- the 1990 Royal Commission on the Land
- the 1997 Roundtable on Resource Land Use
- the 1999 Institute of Island Studies report, *The Geography of Governance*
- 2005 Municipalities Act Review
- the 2007 Rural Governance study conducted by the IRIS Group,
- various internal reports
- annual submissions from the Federation of PEI Municipalities (FPEIM)

2) RECENT EFFORTS

The 2005 Municipalities Act review was the most recent report process to reach its conclusion. There are also a series of annual submissions from FPEIM outlining concerns and priorities from the municipal perspective. Within the broader realm of governance, moreover, a series of reviews are underway, including reviews of water quality, rural development and the future of agriculture. The challenge with the earlier and recent processes is two-fold: firstly, ensuring that the various reviews build on each other and acknowledge overlaps; and secondly, developing action plans that build strongly enough on public education and consensus that the necessary changes are broadly accepted and embraced.

3) MOTIVATING FACTORS

The motivations for examining local governance and land use issues in a comprehensive fashion are not new, but they are increasingly critical. Municipalities are facing ever more complex responsibilities, servicing needs, and expectations from their residents and taxpayers, and are struggling to identify the resources needed to meet those responsibilities, needs, and expectations. Community groups raise concerns over land use practices, fragmentation of the landscape and its impacts on the future of farming and tourism, and lack of local control over land use in areas without official plans. The Province faces continued requests to provide local, municipal-level services, especially in areas without local incorporation.

4) CONCLUSION

There are a variety of ways to respond to land use and governance challenges and concerns. The route most frequently chosen usually involves one-off, isolated, and short-term solutions that ultimately result in greater and far more complex issues down the road. By following a Commissioner process involving a comprehensive, multi-faceted review of the interconnected factors, it is hoped that our municipalities, communities, and our province as a whole, can begin to work towards a new governance and land use system that will bring us into the 21st century.

LAND USE

1) HISTORY OF REVIEWS

The question of land has been reviewed many times. With particular regard to land use, the following reports provided a wide range of insightful observations and targeted recommendations.

- the 1973 Royal Commission on Land Use and Land Ownership
- the 1990 Royal Commission on the Land
- the 1997 Roundtable on Resource Land Use

2) CHALLENGES AND LIMITING FACTORS – PROVINCIAL

The challenges and concerns raised by municipalities and their residents regarding land use should not be read as being limited in effect to the incorporated communities; the long-term impacts on the province as a whole are far-reaching.

Dispersed, scattered and unplanned development and the lack of detailed local area planning in culturally, historically, and naturally sensitive areas have:

- increased the cost of government service delivery, e.g snowplowing, school bussing, health care etc;
- undermined the viability of municipalities and the services they offer;
- countered any trends towards compact siting of services and commercial centres in the various regions;
- undermined climate change initiatives by encouraging greater use of fossil fuels through dispersed development and allowing development in areas that may be prone to storm surges;
- increased the threat to the water supply with dense development of individual wells and septic systems, with no requirements in place to develop on central sewer and water, regardless of population or development density;
- degraded viewsapes with continued development in the most scenic areas of the province, particularly in coastal and waterfront areas, with long-term implications for tourism;
- impaired the province's transportation system through the gradual transformation of roads designed to move goods into largely residential streets;
- increased dependency of the general public on commuter transportation patterns in an economy of rapidly increasing transportation and energy costs;

- promoted the ongoing conversion of prime agricultural land to residential or commercial use; and
- increased urban-rural conflict issues between farmers and their residential neighbors.

3) CHALLENGES AND LIMITING FACTORS – MUNICIPAL

In the late 70's and early 90's, planning responsibilities were systematically transferred to the municipalities. For those areas wishing to have official plans and bylaws, the onus was on the councils and their residents to develop, implement, maintain, and enforce their own planning documents. Not all of the municipalities have been willing or able to do so, and at this point in time, only 10 percent of the Island's land mass is covered by a municipal land use plan. The remaining 90 percent of the Island's land mass is subject only to the basic provincial planning regulations, with limited planning guidance.

Of the 31 municipalities with an official plan, only four have had permanent full-time planning staff, while the remaining municipalities have depended on administrators, councillors, contract consultants, or other individuals to meet their needs. In many cases, municipalities do not have the capacity, resources, or training to properly maintain or enforce their planning systems and many struggle to protect the land controls and priorities of their communities, knowing that abandoning their plan would result in an absence of local involvement in the development of their neighbourhoods.

Municipalities also raise other concerns prompted by the existing land use system:

- limited boundaries and space for growth within some of the municipalities (Montague is one clear example)
- competition between targeted land use regulations (zoning) and the comparatively simple requirements beyond municipal boundaries
- challenges posed by the overlapping of municipal planning and provincial special planning areas
- challenges in rural municipalities both with and without official plans to protect their rural qualities and characteristics in the face of provincial attempts to foster "rural" development.

4) CONCLUSION

Land use changes in all corners of the province will have long term impacts on all residents, business owners, primary resource operators, and visitors to the province. While the relatively slow rate of growth in PEI often lulls us into believing that we don't face the same planning pressures as larger jurisdictions, what we face has been described in the past as a death by a thousand cuts. Ribbon development, dispersed settlement patterns, loss of shore access, environmental degradation, loss of traditional character, viewscape erosion, and incompatible economic development will ultimately lead to undesirable and long lasting negative consequences.

LOCAL GOVERNANCE

1) HISTORY OF REFORM

The most serious challenge facing the municipal sector will depend on who one asks, but can be summarized as a lack of municipal capacity. Generally speaking, the smallest 30 municipalities have no staff, have no bylaws, offer no services other than the purchase of fire services for their residents, and operate on budgets of less than \$50,000 per year.

Given the range of services provided, the resulting fragmentation of traditional municipal services has undermined their efficient delivery, resulting in duplication, under-use of resources, and inconsistency in service standards or charges. Meanwhile, development pressures beyond municipal boundaries have led over time to infrastructure challenges and servicing issues. An initial attempt at municipal reform took place in the early 1990's with the Moase Commission and the resulting amalgamations in the Charlottetown and Summerside areas. While it was intended at the time that the process extend eventually to other areas of the province, the resulting public feedback and perhaps the complexity of negotiations required and a provincial election put the rest of the process on permanent hold.

A further process of reform, this time legislative, was begun with the 2005 *Municipalities Act Review*. During that process, extensive and wide-reaching shortcomings in existing legislation were highlighted; municipalities consider the replacement or modernization of the *Municipalities Act* to be an urgent priority.

2) BOUNDARIES AND LAND MASS

The land mass of municipalities range from 151 acres to 56,740 acres, and several municipalities have noted to the Province that they are restricted in their ability to grow or offer new services by the fact that the majority of land within their boundaries has already been developed. Processes to expand boundaries are similarly restricted by the vastly different conditions in the unincorporated areas, as tax rates, political structures, and in some cases planning regimes, make many reluctant to voluntarily bring their lands into the municipal fold.

3) FUNDING & FINANCIAL MANAGEMENT

Municipalities are funded through the traditional property tax system, as well as a program of equalization transfers and grants from the Province. Property taxes are also collected by the Province in all areas of the province. At the national level, municipalities are lobbying strongly for a new model of financial tools, as their responsibilities increase and extend beyond simple property-related services. Locally, it could be argued that there are varying expectations and understandings as to where responsibilities lie (municipally, provincially) for the various services such as policing, education, transportation, and planning, and what various existing funding sources are intended to cover.

Municipalities also face wide scale differences in fiscal capacity; tax rates range from 0 cents to 85 cents, and budgets range from \$2.7 thousand to \$35.8 million. Municipal literature suggests that a viable municipality should have a minimum tax assessment base of \$50 million dollars and a minimum population of 2,000. Currently, 62 municipalities have a tax assessment base of less than \$50 million, and 41 of those have a tax assessment of less than \$20 million. Seventy-one municipalities have a population of less than 2,000 and 48 have a population of less than 500.

In this environment of overlapping responsibilities, municipalities remain troubled by their vulnerability to changes in provincial and federal funding and grant programs, and raise further objections to the provincial-municipal split in the collection of property taxes, especially in the case of so-called 'full-service' municipalities, where all property-related services are being provided at the municipal level.

4) CAPACITY & RESOURCES

Petitions by citizens and even members of various councils submitted to the Minister of Communities, Cultural Affairs and Labour have highlighted capacity issues at the municipal level; without strong and effective local government structures, individuals and groups feel bound to turn to the Province to act as an oversight body to what are still seen in some cases as committees comprised of volunteers, rather than governments of elected officials. Concerns range from transparency and accountability to financial management and administrative processes.

Approximately 15 municipalities have full-time staff, another 29 have part-time administrators, and only 25 have employees in addition to their administrators. Many of the part-time administrators offer their services on a

volunteer basis. Two municipalities have a water utility, 14 have sewer utilities, and 11 have both water and sewer utilities. Four municipalities have their own police system, and 36 have bylaws of some nature.

5) INCORPORATED / UNINCORPORATED DIVIDE

Submissions to the Province by individual municipalities, as well as the Federation of PEI Municipalities, have referenced strains caused by the relationship between incorporated and unincorporated areas. In many cases, individuals are motivated by lower property tax rates and/or minimal development regulations outside municipal boundaries, knowing that the proximity to an incorporated municipality will guarantee access to services. Many developments are further encouraged by provincial incentives or other financial programs.

Municipalities have been struggling to provide adequate services with small and in some cases decreasing populations, while the areas just beyond their boundaries have continued to grow. In many cases, providing services shared with the neighbouring areas – such as fire protection – have meant added costs for municipal taxpayers. Meanwhile, those located in the unincorporated areas often reject incorporation or proposed annexations as they are unwilling to see their property taxes increase or the regulations around land use, where there is a municipal plan in place, become more complex.

It is in this context that the Federation and individual municipalities have repeatedly expressed concerns about unrestrained development in rural areas placing a significant burden of non-resident demand on services while making no contribution to the revenue base. They argue that the rural, unincorporated areas are in fact highly subsidized, to the detriment of the municipalities. With the dispersed patterns of development in the unincorporated areas, the cost of providing services becomes much higher than can be financed by the Provincial property tax rate, resulting in an invisible subsidy by the property taxes collected from the urban areas. Municipalities and the Federation have also called for municipalities to play a much larger role as important instruments in rural development strategies, in the siting of provincial institutions and facilities, and in negotiations with the Federal government.

Municipal governance is also likely to become more complex in the years to come. Changing relationships with first nation communities and on-going legal developments will lead to additional responsibilities for municipalities to take expressed first nation rights into consideration when embarking on new developments.

6) CONCLUSION

While the range of concerns relating to local governance may ultimately exceed the abilities of any single process, especially in light of the scope of the challenges for municipalities nationally, the opportunity to share ideas, document shortcomings in the existing models, and explore alternate models can't help but move governance in PEI towards a more sustainable framework.

SCOPE OF REVIEW

1) THRONE SPEECH COMMITMENTS

- There is a critical link in our province between municipal and land use and development issues. My Government is committed to the progressive future development of our cities, towns and villages, within the framework of compatible provincial policy and regulatory structure.
- My Government will appoint a Commissioner on Land and Local Governance to conduct a comprehensive review of municipal and land use and development issues. This commission will report in 2009.

- The Commissioner will also be asked to ensure that recommendations involving changes to responsibilities and expenditures will include recommendations on revenue measures needed to support such changes. Further, the Commissioner will be asked to provide an opinion on the impact of unincorporated areas on existing municipal structures.
- My Government wishes to emphasize that any future amalgamation of communities will only follow a mutual recognition of the merits of regional co-operation and integration.

2) BUDGET SPEECH COMMITMENTS

- We have to defeat the temptations of the short-term fix and the instant solution. We understand the dangers and pitfalls of such an approach - and Government will not succumb to those who seek temporary and fleeting relief from challenges that require a deeper and more lasting resolution.
- Instead, Government is carefully and thoughtfully proposing plans meant to benefit our Island well into the future.
- Madame Speaker, we also believe it is time for the Province to take a close look at our Island's municipal framework.
- It has been 25 years since the last province-wide changes to municipal structures on the Island were made. Further, there is a critical link between municipal governance, land use issues and future development.
- For those reasons, a Commissioner on Land and Local Governance will be appointed to conduct a thorough review - including a broad examination of the fairness, equity and transparency of the provincial/municipal financial framework - and is expected to report in 2009.
- While this work is being done, Government understands that improvements must be made to the relationship between the Province and its municipalities.

3) OBJECTIVES FOR COMMISSIONER PROCESS

ANTICIPATED OUTCOMES

At its most basic level, it is anticipated that the Commissioner will review and highlight three components with regards to local governance:

- which services must be provided by municipalities to their citizens;
- which resources are required in order to provide those services, including funds, land base, population base, and assessment base; and
- how those resources will be funded.

The scope of the Commissioner process as laid out in the Speech from the Throne does not extend to a review of the provincial taxation policy. That being said, with the review to include an examination of municipal financing and funding structures, including required expenditures and revenues, there is value in identifying the nature of service responsibilities among the various orders of government, along with the revenue sources used to fund those services. Added complexity is generated by the fact that the Province offers services in some areas that in others are provided by municipalities (ie roads, lights, police, and development control), and other services that in some provinces are deemed to fall within the municipal realm, such as education.

As land is also included in the Commissioner's mandate, it is anticipated that the Commissioner will further review and highlight the following with regards to land use:

- the minimum requirements for land use planning; and

- the preferred models for providing land use planning services.

PROCESS

1) PROCESS FOR COMMISSIONER REVIEW

The Commissioner of Land and Local Governance shall be free to establish his/her own process for the undertaking of the review, including the assignment of research staff.

The review shall include an examination of previous reports and reviews, a broad consultation process with municipalities, community groups and the general public. The final report shall include the identification of potential options or solutions, recommendations, and implementation suggestions associated with each of the potential solutions. Recommendations and findings shall be guided by the quadruple bottom line principles of respect for our social system, our economy, our environment, and our culture.

Upon receipt of the final report from the Commissioner, the Province shall undertake its own review process, which will involve gathering public feedback from the Commissioner's report and an internal review period. After examining the final recommendations and models proposed for consideration in relation to the Province's policy directions, the Province shall provide a formal response and develop final implementation plans for the preferred solutions.

CONCLUSION

1) CONCLUDING REMARKS

The scope of the challenge ahead was well-described in the following words from the 1993 White Paper on Municipal Reform, words which remain true to this day:

"Responsibility for resolving the current shortcomings and inequities rests not with local municipal units, but with the Province. It is the Province which has created and perpetuated antiquated and artificial borders. It is the Province which has created and perpetuated inequities in delivery of municipal services. It is the Province which has, up to now, chosen to ignore the fundamental societal shifts which have dramatically altered urban life as we know it. This has occurred without effectively altering the administrative and statutory environment within which its municipalities must exercise their important local functions.

It is a provincial problem that requires provincial leadership and provincial solutions."

With careful thought, effective public engagement, and fruitful discussion, however, the challenges can be overcome, and it is with great optimism that the process is now handed over to the Commissioner of Land and Local Governance.

TERMS OF REFERENCE

1) INTRODUCTION

While this White Paper as a whole is intended to set the stage for the review, identifying priorities and naming the problems as they are understood, the terms of reference shall set out more specifically what is anticipated from the process.

2) OBJECTIVES

1. The Commissioner shall identify concerns and recommend changes in the areas of the provincial approach to land use planning, municipal structures, and municipal governance, in order to better protect our land and water resources, promote strong and vibrant local governments, and enable the province to respond to issues such as climate change, viewscape protection, and urban-rural conflicts.
2. The Commissioner shall develop potential action plans and options which would lead, if adopted by Government, to a new model of land use planning for the province within the next 5-7 years, and recommendations on possible future municipal structures and governance, with emphasis on public information dissemination and public engagement.

3) MEMBERS

The Commissioner may appoint administrative and research staff to provide necessary support.

4) PROCESS

The Commissioner shall incorporate the following criteria into the review process:

1. The report shall contain potential action plans and suggested implementation schedules associated with each of the identified models or options.
2. The Commissioner will be responsible for designing a consultation process, but shall consult with individual municipalities, the Federation of PEI Municipalities, and other groups or individuals as the Commissioner deems appropriate.
3. The work of the Commissioner will entail a review and analysis of existing studies and reports and the results of past consultative activities on the subject of PEI's local governance system and land use framework. In addition to this review of existing documentation, the Commissioner will engage in discussions with stakeholder groups and provide opportunities for residents and groups to submit their views.
4. The Commissioner may examine, inquire into, and report upon any matter or subject which the Commissioner may feel to be relevant to the responsibilities listed below.

5) RESPONSIBILITIES

The Commissioner shall provide to the Premier a report on findings and recommendations on the following areas:

1. Roles and Responsibilities
 - a. The efficiency, sustainability and appropriateness of current municipal boundaries
 - b. Structure, organization, and legal framework of local governance in the province, especially in relation to the development of new municipal legislation
 - c. Mandatory and voluntary services appropriate to municipal governments
2. Funding Frameworks and Property Taxation
 - a. A broad examination of the fairness, transparency, and sustainability of the provincial/municipal financial framework
 - b. Potential changes to responsibilities and expenditures, including any recommendations on revenue measures needed to support such changes

- c. Diversification of revenue sources and revenue generation alternatives for municipalities
- 3. Regional Co-operation
 - a. Potential options and minimum standards shall be identified with regards to regional co-operation relating to both municipal services (including utilities, infrastructure, and services such as policing), and land use planning services
 - b. The impact of unincorporated areas on existing municipal structures shall be assessed, noting that any future amalgamation of communities will only follow a mutual recognition of the merits of regional co-operation and integration
- 4. Land Use Planning
 - a. Identification of the implications of the current situations – financial, social, and environmental, including the transformation of rural / agricultural land to suburban uses
 - b. Potential options and minimum standards for land use practices in the municipal and unincorporated areas, with an eye to long term impacts of development patterns, capacity and stewardship
 - c. A strategy for public education of issues, implications, costs, and structures should be identified

6) REPORT DATE

The Commissioner shall provide to the Premier a report on findings and recommendations in 2009.

APPENDIX II

LIST OF PUBLIC HEARINGS AND PRESENTERS

Monday, June 1, 2009 - Elmsdale (Westisle Composite High School)

1. His Worship, Mayor Perry Morrell and Susan Wallace-Flynn, Chief Administrative Officer (Town of Alberton)
1. Nancy Wallace, Chairperson (Community of O'Leary)
2. Ivan Gaudet, (SOUL – Save Our Unspoiled Landscapes)
3. Nora Dorgan
4. Beverly Howard
5. Robert Henderson
6. Irene Dawson
7. Fenton Shaw
8. Cora Gaudette-Shea

Tuesday, June 2, 2009 – Abram-Village (École Évangéline)

1. Gilles Painchaud, Président et Alcide Bernard, Conseiller (Communauté de Wellington)
2. Roger Gallant, Président (Communauté d'Abram-Village)
3. Giselle Bernard, (Réseau de développement économique et d'employabilité)

Thursday, June 4, 2009 – Cardigan (Cardigan Consolidated School)

1. Reg Phelan
2. Peter Doucette, Councillor (Town of Montague)
3. Andy Daggett (Association of Municipal Administrators of PEI)
4. Ron MacInnis, Chair (Community of St. Peter's Bay)
5. Kim Kline
6. Cathy Horne
7. Gary Fraser
8. Jock Beck
9. Ed MacAulay, Chair (Community of Cardigan)

Monday, June 8, 2009 – Hampshire (Bluefield High School)

1. Andrew Lush
2. Betty Pryor (on behalf of the Special Planning Area Group, the 13 Communities encircling the City of Charlottetown and the Towns of Cornwall and Stratford)

3. Brian Andrew, Chair (Community of Miltonvale Park)
4. Charles Easter, Deputy Mayor (Town of Cornwall)
5. Blaine MacPherson, Vice President of Agricultural Affairs and Ron Clow, General Manager (Cavendish Farms)
6. Harry Baglole
7. Phillip Wood

Wednesday, June 10, 2009 – Souris (Souris Regional High School)

1. Her Worship, Mayor Joanne Reid, (Town of Souris)
2. Jackie Waddell, (Island Nature Trust)
3. Anne MacPhee

Monday, June 15, 2009 – Summerside (Three Oaks Senior High School)

1. James R. Beairsto
2. Bruce Campbell, Councillor (Community of Borden-Carleton)
3. Ralph S. Carruthers, Chair (Schurman's Point Property Owners' Committee)
4. Jeremy Stiles, Chair (Malpeque Bay Planning Board)
5. Shawn McCarville, President (Slemon Park Corporation)
6. Col. J.D. Murray, Provincial Director (Canadian Association of Veterans in United Nations Peacekeeping)
7. Bruce MacDougall, President and John Dewey, Executive Director (Federation of PEI Municipalities)
8. His Worship, Mayor Basil Stewart, and Terry Murphy, Chief Administrative Officer (City of Summerside)

Wednesday, June 17, 2009 – Charlottetown (Charlottetown Rural High School)

1. His Worship, Mayor Clifford Lee, (City of Charlottetown)
2. Frank Zakem
3. His Worship, Mayor Kevin Jenkins, (Town of Stratford)
4. Dr. Darren Bardati, (UPEI Environmental Studies)

Commission on Land and Local Governance

5. Diane Griffin, (Nature Conservancy of Canada)
6. Tim Banks
7. Matthew McCarville, (Environmental Coalition of UPEI)
8. Don Cudmore, Executive Director (Tourism Association of PEI)
9. Sean Casey, President (Greater Charlottetown Area Chamber of Commerce)

Wednesday, June 24, 2009 – Charlottetown (Charlottetown Farm Centre)

1. Richard Gill, (PEI Model Forest Partnership)
2. Richard Davies
3. Elda and Bruce Campbell

4. Edith Ling, Women's District Director and Elwin Wyand, District Director (National Farmers Union)
5. Ernie Mutch, President and Mike Nabuurs, Executive Director (Prince Edward Island Federation of Agriculture)
6. Boyd Rose, Chairman, Greg Donald, General Manager and Brenda Simmons, Assistant General Manager (PEI Potato Board)
7. Karen Lips
8. Michael Reid
9. George Kelly
10. David Ling
11. James R. Beairsto
12. Wayne Cousins

APPENDIX III

LIST OF ADDITIONAL SUBMISSIONS AND CONSULTATIONS

Written Submissions

Earl Affleck
 Dr. Godfrey Baldacchino
 Breadalbane Community Council
 Community of Victoria
 Kirsten Connor
 Thomas Connor
 Dale Dewar (Owners of Bunbury Farm)
 Katherine Dewar
 Art Gennis
 Daryl Guignon
 James E. Hickey
 Willard Horne
 Seymour and Janet Hurry
 Institute of Island Studies, UPEI
 Earle Lockerby
 Margaret MacKay
 MacKillop Centre for Social Justice
 Prince Edward Island Advisory Council on the Status
 of Women
 Prince Edward Island Association of Planners
 Prince Edward Island Coalition of Women in
 Government
 Prince Edward Island Real Estate Association
 Betty Pryor
 Arlene and Robert Roberts
 Bill Rooney
 David Sisam
 Russell Smith
 Dr. Douglas Sobey
 Tourism Advisory Council of Prince Edward Island
 Town of Kensington
 Victoria Concerned Citizens Group
 Water Management Division, Department of
 Environment, Energy and Forestry
 Kevin Waugh
 P. Wood & Associates

Consultations

John Blakney
 Jeff Brant and Donald MacKenzie (Mi'kmaq
 Confederacy of Prince Edward Island)
 Mary Boyd
 Nigel Burns and Colin Mosley (Economics, Statistics
 and Federal Fiscal Relations)
 Nichola Cleaveland, Government Services Librarian
 Doug Clow, Deputy Provincial Treasurer
 Martin Corbett, Manager Strategic Planning, N.B.
 Department of Local Government

Ian Cray
 John Cousins
 Hon. Olive Crane, Leader of the Opposition
 Lowell Croken, Chief Electoral Officer, Elections
 PEI
 Tracey Cutcliffe, Deputy Minister, Communities,
 Cultural Affairs and Labour
 John Dewey, Executive Director, Federation of
 Prince Edward Island Municipalities
 Steven Dickie (Office of Public Safety)
 Bush Dumville, Member of the Legislative Assembly
 Brian Douglas, Deputy Minister of Agriculture
 Dan English, CAO, Halifax Regional Municipality
 Jean-Guy Finn, Commissioner, N.B. Commission on
 the Future of Local Governance
 Robert Hughes, CAO, Town of Stratford
 Don Jardine and Brenda Penak (Pollution Prevention
 Division)
 Professor Harry Kitchen
 Helen Kristmanson, Provincial Archaeologist
 L.M. Montgomery Land Trust
 Gordon Lank
 Kingsley Lewis
 Albert MacDonald, Jack Saunders, Don Walters,
 Samantha Murphy, Dale McKeigan, John
 Chisholm, Patrick Carroll, Douglas Campbell,
 Steven Crozier, Garth Carragher, Sharlene Quinn
 (Planning and Inspection Services Division)
 Steve MacLean, Deputy Minister of Transportation
 and Public Works
 Kate MacQuarrie and Brian Brown (Forests, Fish and
 Wildlife Division)
 John MacQuarrie, Deputy Minister of Environment,
 Energy and Forestry
 Roy Main, CAO, City of Charlottetown
 Malpeque Community Council
 Kevin McCarville, CAO, Town of Cornwall
 Hal Mills
 Terry Murphy, CAO, City of Summerside
 Nature Conservancy of Canada
 Murray Pinchuk, City Planner, City of Summerside
 Don Poole, Manager of Planning and Development,
 City of Charlottetown
 Maurice Rogerson, Chair, Island Regulatory and
 Appeals Commission
 Jerry Ryan, CAO, Cape Breton Regional
 Municipality
 Dennis Williams (Taxation and Property Records
 Division)

APPENDIX IV

UPDATE ON 1973 ROYAL COMMISSION ON LAND OWNERSHIP AND LAND USE RECOMMENDATIONS

BACKGROUND AND ANALYSIS

Rather than analyze in detail each of the 23 recommendations made by the Royal Commission on Land Ownership and Land Use, given that 36 years have passed since the report appeared and that other commissions, task forces, round tables and committees have covered the same ground, the Commission on Land and Local Governance has opted to rely on previous analyses and commentaries on the outcome of the 1973 process.

The report of the 1990 Royal Commission on the Land contains a detailed review of the 1973 recommendations and explains the process government followed in analyzing and responding to the 1973 Royal Commission on Land Ownership and Land Use. The following quotes are from the 1990 report¹:

...the 1973 Royal Commission report touched off a storm of controversy. Attention focused on the issue of 'regulations' and public opposition to more intensified regulatory measures over land use became a central issue.

After the Royal Commission submitted its report to government in July 1973, Executive Council appointed a small committee of senior civil servants to assess the report and bring forward recommendations for its consideration.

The Committee viewed the Commission's report as too radical for immediate implementation; it suggested three modifications that would render the major recommendations more acceptable. These were: the formation of a Land Use Commission, the use of voluntary zoning, and the purchase of development rights.

We understand that the Committee believed that government would not be willing to

implement the Commission's recommendations because of strong opposition from landowners...

The Committee believed that both the coastal land use plan and the provincial plan proposed by the Royal Commission were politically unacceptable and that Executive Council would reject them. They represented too big a stick. The idea of voluntary zoning proved to be the carrot they were looking for.

In summary, the main contribution of the Committee on Land Use and Development Issues was its recommendation to establish a Land Use Commission, with a broad mandate and sweeping powers. The legacy of the earlier Royal Commission is not so easily identified, for the extent to which its recommendations may be said to have been implemented depends upon a somewhat objective assessment of what has transpired in the interim.

In a paper presented to the Royal Commission on the Land, John McLellan, then former Executive Director of the Land Use Commission offered the following scorecard²:

"The 1973 Royal Commission made 23 recommendations. By my count, five were adopted by government, three were partially adopted, and fifteen remain in limbo. Its major recommendations were not adopted. They included a generalized provincial land use plan, and minimum maintenance requirements for non-resident and corporate lands."

¹ Royal Commission on the Land. October 1990. *Everything Before Us*. p. 29.

² *Ibid* p. 31.

RECOMMENDATIONS

1. Provincial government planning staff must, as soon as possible, prepare in colour a general province-wide land use plan at the 2 miles to 1 inch scale. This plan might well be printed and released immediately as a guideline to local community planning efforts and as a basis for broad government decisions with respect to land.
2. The Province should designate without delay those public beaches, unique and fragile lands, and special wildlife habitats which it plans to acquire and/or preserve in the long term. Further, it should err on the side of designating too much rather than too little in each of these categories.
3. Additional access points must be opened and/or reopened to the beach. Where access roads are opened, they should be combined with nearby back-up parking area, and provision made for periodic clean-up and inspection.
4. Before the spring of 1974, a coastal land use plan must be prepared by the Department of Environment and Tourism for a coastal strip of at least one-half mile in depth, and up to one mile in depth in special cases, along the entire Island shoreline touched by tidal waters. This plan should designate:
 - (a) areas for public beaches and for the preservation of unique and fragile lands and wildlife habitat;
 - (b) areas of present and possible land subdivision;
 - (c) points of public access to the shore, both present and proposed;
 - (d) areas which should be retained in their present or natural state.
5. The Province should state its intention to make it truly possible for communities to participate in decisions that affect land use.
 - (a) Local planning areas could be based on the old school districts units and might possibly consist of multiples of the old school districts, at the choice of the concerned community.
 - (b) Subject to certain province-wide conditions these community groups should be given real decision-making power in their area. e.g.
 - the right to limit subdivision activity in amount and location;
 - the right to require higher standards than the minimum set by the provincial government with respect to:
 - (a) land subdivision
 - (b) minimum levels of use, protection or maintenance of land.
 - the obligation to prepare and recommend suggested long-range plans for land use including areas for parks, residential and other uses.
6. In addition to preparing the general land use plan outlined above, the Province should encourage and support more detailed planning at the local level through:
 - (a) the provision of technical and professional planning advice;
 - (b) the provision of encouragement and support to the Rural Development Council as a catalyst for community involvement in the planning process.
7. Class 2f, 3w, 3ms and 3t soils should be indicated as prime agricultural use areas on the general land use plan, with the guideline that they be retained wherever possible for agricultural use.
8. (a) The Provincial Highways Department should:
 - (1) take steps to control the erosion of highway shoulders through better design and through continued reseeding practices;
 - (2) improve the design of highway ditches and run-off control so as to reduce the erosion of farmers' fields.
- (b) Assistance should be offered to farmers by way of seed or ground cover planting along denuded streams.
9. Consideration should be given to the compulsory offering of practical agricultural courses in both high schools and vocational schools.
10. The provincial government should encourage and help woodlot owners who will enter into cooperative woodlot management arrangements through:
 - (a) assistance in the preparation of woodlot management plans and the provision of technical advice;

- (b) placing adjacent Crown lands, if any, in the woodlot management unit;
 - (c) instructing the Land Development Corporation to not sell woodland that it acquires, but to hold for eventual inclusion in woodlot management units.
11. Lines of credit should be extended to small Island sawmills to encourage the production of better quality lumber, and to enable competition with pulp dealers in the roadside purchase of logs.
 12. Forms other than the traditional National Park concept for federal government assistance in the creation and maintenance of public recreational space should be explored.
 13. Federal Government assistance should be sought for further coastal research as a basis for the long-term preservation and management of the Island's fragile coastline.
 14. Developers of future cottage lot subdivisions or owners of lots within the coastal zone should be penalized with substantially higher taxes on those lots which remain undeveloped for more than three years after acquisition date, or for three years after the introduction of the legislation.
 15. Much improved subdivision design and servicing regulations should be introduced, including:
 - (a) minimum 200-foot setback from the bank;
 - (b) the pinning of lots and the payment of taxes prior to registration of the subdivision plan;
 - (c) improved standards for sewage and waste disposal, roads and other services, together with the establishment of formulas to cover their initial installation costs, and long-term maintenance.
 16. Future provincial parks should confine day use activities to areas near the shore.
 17. Public walking and cross country ski and snowmobile trails together with simple shelters and facilities should be provided through interior areas, to provide an outlet for new recreational pursuits and to ease pressures at the beach.
 18. A minimum maintenance requirement should be placed on the landholdings of the Land Development Corporation, corporations, alien non-residents, other non-residents, and non occupiers (whether residents or not).
 19. In order to improve the understanding of corporate pre and post development activities with respect to land, the following steps are recommended:
 - amendments to the *Registry Act* making the registration of all documents relating to interests in land or in the use of land compulsory;
 - encouraging a more concise statement of corporate objectives upon incorporation, or of any changes in these objectives through supplementary letters patent;
 - broadening the base of information required in applying for incorporation, and in the filing of annual company returns to include details on the real and equitable ownership of the company;
 - providing checks to discourage attempts to obscure operations or to circumvent land use controls;
 - instituting mechanisms in government to coordinate and cross reference information obtained on corporations;
 - require all corporations to establish an office in the Province, containing the same information found in the head offices of Island companies, and filing the same information in annual returns as is required of domestic companies.
 20. A limitation of 200 acres should be placed on the landholdings of all corporations - held directly or indirectly without the consent of the Lieutenant-Governor-in-Council.
 21. With the exception of corporations and partnerships, the present acreage and shore frontage restrictions on non-resident land purchases be removed at such time as:
 - an enforceable coastal land use plan has been prepared, accompanied by improved subdivision requirements, as recommended under 4, 14 & 15 (above);
 - a minimum maintenance requirement has been introduced, as recommended under 18 (above);
 - the necessary legal machinery has been enacted to enable a large degree of community participation, as recommended under 5 and 6 (above).

22. Attempts to curb the ribbon development of housing along Island highways should be strengthened through the provision of low cost land and services within established urban areas.
23. To sustain the central and integral role of Charlottetown in the Island economy and way of

life, and to enable future development in keeping with the aesthetic and historical importance of its urban core, the City should be considered for very substantial financial assistance from the provincial government.

APPENDIX V

UPDATE ON 1990 ROYAL COMMISSION ON THE LAND RECOMMENDATIONS

CURRENT SITUATION:

1. THAT government develop and implement consistent and cohesive land policies that are fairly and evenly applied and uniformly enforced.

See recommendation 2

2. THAT one of the cornerstones to these land policies is the adoption of a comprehensive set of land use plans for the entire province.

Government did adopt a Land Use Policy in 1991 as a statement of general intent but the Policy did not include a commitment to develop land use plans. The Planning Act provides Government with very broad powers including the power to “adopt provincial land use development policies” (clause 7(1)(a). Although Government has established minimum development standards under the Planning Act for such things as subdivisions and resort developments, there cannot be said to be a “comprehensive set of land use plans (that apply) for the entire province.” In fact, as reported in the “White Paper on Governance and Land Use on Prince Edward Island” approved by Executive Council on December 2, 2008, only 10% of the Island’s land mass is covered by a municipal land use plan. The remaining 90% is subject only to the basic provincial planning regulations, with limited planning guidance. Furthermore, of the 31 municipalities with an official plan, only four have full-time planning staff. The other 27 depend on administrators, councillors, contract consultants or other individuals for their planning expertise. In summary, the current Planning Act Regulations establish minimum lot sizes, road access restrictions and some basic environmental controls, nothing more.

AGRICULTURAL PRESERVATION:

3. THAT the province recognize its agricultural land base as its most important natural resource and coordinate government policies towards the

preservation of agricultural land.

See recommendation 8

4. THAT a comprehensive set of land use plans include a central objective aimed at keeping the most productive farmlands in agricultural use.

See recommendation 8

5. THAT, as part of this land use planning exercise, a study be undertaken to identify vacant farmland, including all land with agricultural potential that is not being so used and farmland that is now being ill-used.

See recommendation 8

6. THAT agricultural land in public ownership be subject to restrictions on its use and tenure before control through leasing or ownership is transferred to the private sector.

See recommendation 8

7. THAT the Agricultural Development Corporation, in particular, and the province, in general, adopt a land policy that avoids the fragmentation of agricultural lands.

See recommendation 8

8. THAT the Agricultural Development Corporation institute and promote a long-term “Humpty Dumpty” project (that is, of land assembly) within its own holdings and the agricultural community.

With regard to preserving the agriculture industry as it existed in 1990 and, more specifically, maintaining agricultural land in food production, the work of the Commission on the Future of Agriculture and Agri-Food on Prince Edward Island is the most recent attempt to chart a new course for the industry http://www.gov.pe.ca/photos/original/af_commo_fagri.pdf. The Commission’s interim and final reports provide an excellent overview of what has happened over the past twenty years since the Royal Commission on the Land reported.

For example, the number of farms has decreased by approximately 40%, the size of the average farm has increased and the total area in agricultural production has remained relatively stable with the Island continuing to be what the Commission calls “a million acre mixed farm”. While primary agriculture as measured by farm cash receipts continues to be a significant contributor to provincial GDP, its share of GDP is declining. Of far greater concern on the issue of agricultural preservation is the fact that net farm income continues to decline and, since 2001, has been negative. This means that many farmers are living off their equity or borrowed money. Put a different way, in 1928 a farmer earned 60 cents for every dollar of revenue from the sale of farm products while in 2007, a farmer lost 10 cents on every dollar of revenue earned. The Commission’s report charts a new course for Island agriculture, setting out a new vision together with ambitious goals and specific industry targets.

With specific reference to recommendations 2 to 8 above:

- *Government policies have not been aimed at keeping land in agricultural use. It would be more accurate to say that the market has determined to what use agricultural land has been put.*
- *The Agricultural Development Corporation ceased to function in 1994. Responsibility for the management of the 550 hectares or 1,362 acres of publicly-owned agricultural land now rests with the Minister of Transportation and Public Works. In this regard, it would be fair to say that recommendations 6 and 7 have been implemented but not recommendation 8.*

RURAL VERSUS URBAN:

9. THAT the right-to-farm principle be adopted as part of a comprehensive land use policy.

See recommendation 10

10. THAT the province obtain further information on right-to-farm legislation used in other jurisdictions with a view towards implementing immunity from legal liability and injunctive

relief remedies in private nuisance law suits involving noise and odor complaints for agricultural producers carrying on farming operations in conformity with permitted land use provisions.

The issue of managing conflict between farmers and their non-farming neighbours was considered by the Round Table on Land Use. While no “comprehensive land use policy” exists on Prince Edward Island, the Farm Practices Act does recognize the principle of right-to-farm and it does contain provisions protecting farmers from legal liability and injunctive relief where they are carrying on an operation that falls under the category of “normal farm practice” or where the practice complies with an approved “code of practice”.

LAND OWNERSHIP VERSUS LAND USE:

11. THAT the quantum limits on land ownership, as contained in the *Lands Protection Act*, continue to form part of land policies.

The Lands Protection Act continues to impose quantum limits on land ownership at the same level as they were in 1982: 1,000 acres for an individual and 3,000 acres for a corporation.

12. THAT the province commit itself to the active and ongoing administration and enforcement of the *Lands Protection Act*.

As evidenced by amendments to the original Act and by consistent and strong enforcement efforts, even when these were controversial, Government remains committed to acreage control.

13. THAT the province initiate an immediate and thorough investigation of all persons and corporations having a landholding in excess of 750 acres to determine if there are reasonable and probable grounds to issue orders pursuant to Section 12 of the *Lands Protection Act* and, where such grounds exist, utilize the enforcement procedures contained in the legislation.

Although it has never been invoked, section 10 of the Act currently permits a request for disclosure by the Minister where a person is

believed to hold more than 750 acres or where a corporation is believed to hold more than 2,250 acres.

14. THAT the *Lands Protection Act* be amended to ensure that the interests of both the lessee and the lessor fall within the definition of “landholding”.

In accordance with clause 1(3)(b) of the Act, land under lease to another person or corporation is deemed to be in the possession of both the lessor and lessee.

15. THAT the *Lands Protection Act* be amended to require that all leases and land management agreements must be written and registered to be valid, without limiting the term to any prescribed length of time.

There is no requirement to register leases under the provisions of the Lands Protection Act. Section 18 was repealed in 1995. While section 5.3 requires the filing of a disclosure statement regarding leases with the Island Regulatory and Appeals Commission (IRAC), leases entered into by resident persons with an aggregate land holding of less than 750 acres are not disclosed.

In accordance with section 5 of the Land Identification Regulations agreements for non-development use must be entered into between the purchaser and the Minister and identified as such on the deed when it is registered in the Registry of Deeds. These agreements are no longer entered into between the purchaser and the Minister as set out in clause 5(1)(a) of the Land Identification Regulations; rather, identification for non-development use more commonly proceeds by way of clause 5(1)(b) of the Land Identification Regulations. The identification for non-development condition is imposed by Executive Council pursuant to clause 9(1)(b) of the Lands Protection Act.

16. THAT the *Lands Protection Act* be amended to increase fines so that the current prescribed maximum fines are converted to minimum fines.

In 1995 the Lands Protection Act was amended to increase the maximum penalties for persons, including corporate officers, to a fine of up to \$250,000 and imprisonment for up to 2 years or to both fine and imprisonment. Corporate liability is to a fine of up to \$250,000. There are no prescribed minimum penalties. To date, no one has been fined under the Act.

17. THAT Section 14 of the *Lands Protection Act* be amended to include employees and mortgagors.

There is no prohibition against an employee per se holding lands if a corporate employer also holds lands, but if the employee holds the lands for the employer, then both are caught by subclause 1.1(1.1)(4) of the Act.

ROADS:

18. THAT land use policies recognize the importance of roads in effective land use planning.

As with so many of the recommendations in this report, this one and others in this series hinge on the adoption of recommendations 1 and 2 which call for a province-wide land use plan. No such plan exists.

19. THAT the province develop a transportation plan which can be utilized as part of a comprehensive land use plan to better plan future development activities both on a provincial basis and in conjunction with municipalities, other interested groups and the general public.

See recommendation 18

20. THAT land use policies recognize the arterial highway system as a vital element in maintaining the social and economic fabric of the province and maintain that system to provide the highest level of mobility, dependability, economy, comfort and beauty available.

In this chapter of its report, the Royal Commission highlighted the need to strike the right balance between traffic movement and land access as these two sometimes competing objectives apply to the highway system and, in particular, the arterial highways. Many of the Commission's recommendations are meant to protect the traffic movement objective by further restricting access and improving the safety and efficiency of all highways.

A highway classification system existed in 1990 that allowed the Lieutenant Governor in Council to designate any highway as Controlled Access as well as to classify all other roads as Arterial, Collector, Local, Seasonal, or non-essential. Although the Roads Act enabled the

classification of all public roads in 1990, it was not until 1995 when the Highway Access Regulations (HAR) were introduced that all public roads were actually classified. Since the introduction of the HAR in 1995 there have been no less than 50 amendments to the Regulations. Some of the amendments were required to correct highway classification errors or omissions. Others involved changes that either strengthened or weakened the ability of the Department to control the creation, or change of use, of land access to the highway network.

Statistics maintained at ten permanent work stations by the Department of Transportation and Public Works show that overall traffic volume on Island highways has increased by approximately 42% since the 1990 report, and this increase would have a bearing on the efficiency of the network.

In summary, it is difficult to say to what degree the situation described in the 1990 Report has changed for better or worse. On the one hand, important physical improvements to the highway system have had a positive impact on efficiency and safety, and these may outweigh any negative impacts caused by the approval of new uses, or changes of use, on properties adjacent to the highways. On the other hand, it stands to reason that increasing the number of access points to a highway will increase the potential for vehicular conflict, simply because this leads to an increase in turning movements.

21. THAT additional access to the arterial highway system be eliminated.

This recommendation was not implemented. At the time of the Royal Commission on the Land Report in 1990 development along the arterial highway network was controlled by the Planning Act Regulations. These regulations did not allow for the creation of new accesses (driveways) on arterial highways except to serve an existing parcel of land (in existence prior to February 3, 1979), a farm (parcel of land greater than 10 acres in size), or to serve a new lot that in the opinion of the Minister constituted infilling on one side of the highway within a built-up community. The Regulations also allowed for the creation of a new lot adjacent to an arterial highway that was served by an existing farm home access driveway, and for a developer to create a subdivision of five

lots or more, where these lots were served by a public road that connected to the arterial highway. As well, the regulations allowed that the use of an existing access could be intensified if approved by the Minister.

Since 1995 highway access has been controlled by the Roads Act Highway Access Regulations. It would be interesting to compare data on level of service of the arterial highway system in 1990 and 2009 to see if it has gotten better or worse over that period of time but, unfortunately, none are available.

22. THAT existing access to the arterial highway be eliminated where an alternative access to the highway system is available.

This recommendation has been partially implemented (section 21 of the Highway Access Regulations) in that the regulation states that the Minister "...may determine that no entrance way permit shall be issued to allow access to the arterial highway". However, the possibility exists to allow issuance of an entrance way permit to an arterial highway even where an alternative access is available to the landowner.

23. THAT existing access to the arterial highway be stringently controlled to prevent a change of use that would increase the use of the adjacent property.

This recommendation was not implemented. In fact, the Highway Access Regulations (HAR) have been amended since 1990 to add several new allowances: the creation of a new entrance way, the change of use of an existing entrance way, or the intensification of the use of the adjacent property. For example, subsection 20 (1) of the HAR allows:

- *A commercial operation to expand to 100 square meters or by 100% of the existing floor space;*
- *Allow the establishment of a new industrial or commercial operation if deemed by the Lieutenant Governor in Council to be in the best interest of the Province;*
- *Allow the establishment of a new institutional use on an arterial highway that lies west of the intersection of Rte 2 and Rte 124 in Prince County or east of the intersections of Rte 1 and Rte 3 or Rte 2 and Rte 6 in Queens County if deemed by the Lieutenant Governor in Council to be*

- in the best interest of the Province;*
- *Nineteen arterial highway “infilling” areas were created within built up and lower speed areas, that essentially allow any development to be approved regardless of the number of lanes or traffic volumes; and*
- *An Arterial Class II Highway classification was created that allows for more uses than would be approved under the arterial highway classification; this classification applies presently to one section of the TCH from Orwell (Rte 210) to the Wood Islands Ferry terminal.*

It should be noted that subsection 4.(b) of the Regulations does restrict some development on all highways (arterial or otherwise) with more than two-lanes, except those designated as arterial infill.

24. THAT the collector highway system be studied to determine its existing role and future potential in the transportation system.

There is no evidence that a study was undertaken.

25. THAT the local highway system have safe access standards for all uses and higher standards for more intensive uses with appropriate legislative changes to prevent abuses that impinge upon safety standards.

In 1990 the Planning Act Regulations contained “minimum” and “desirable” (10 - 40 meters longer) sight distance requirements for the three basic road classifications (arterial, collector and local). The current Highway Access Regulations (HAR) include the same “minimum” sight distance requirements for arterials, collectors and local Class I and III highways as were in effect in 1990, and these have been extended to apply to seasonal highways, subdivision streets and other classifications within municipalities. However, the “desirable” distances have been removed from the HAR. The “desirable” sight distance requirements in the Planning Act Regulations, which ranged from 10 to 40 meters more than the “minimum”, would have provided an added measure of safety.

26. THAT land use policies restrict development on unpaved, seasonal or non-essential roads where the change of use would result in increased public costs that outweigh, in the long-term, the

public benefit of the development.

This recommendation was not implemented. In 1990 the Planning Act Regulations allowed for development on unpaved roads, but an existing lot that was to be subdivided needed to have frontage of at least 200 feet which would allow for the residual and new lot to have at least 100 feet of frontage each. In order to sever two or more lots, the existing frontage needed to be at least 20 chains (1320 feet) and then only one lot could be severed for each 10 chain increment. This was similar to the requirements on a collector highway. There was also a restriction that subdivisions on unpaved roads, other than single lots, would not be approved unless they were within 500 feet of a paved road.

Since the introduction of the current Highway Access Regulations the requirements have been eased on unpaved roads such that the only highway related restriction on unpaved local Class III highways is that the access must meet the “Safe Stopping Sight” requirements. Development on seasonal unpaved roads is also allowed and again the requirement is that the access meets safe stopping sight distance. An entrance way permit (EWP) is issued by the Department of Transportation and Public Works and registered against the property deed stating that the road is only maintained seasonally, from May 1st to October 31st. This has not deterred people from building year round homes on seasonal roads, and there have been a number of requests by the public to open some non-essential roads for development. In response, the Department has put in place a “Development and Maintenance Agreement for Non-Essential Roads” that allows adjacent landowners to develop their property, but at no risk or cost to the Province.

27. THAT the scenic heritage road program be re-named to “rustic roads” to avoid confusion with the scenic drive program.

This recommendation was not implemented. The Roads Act Highway Access Regulations provide for the designation of roads as “Scenic Heritage Roads”, and these are listed in Schedule E.

28. THAT, to preserve our traditional heritage, many more such roads be designated, particularly in Prince and Kings counties.

This recommendation was not implemented. The 1990 Royal Commission report makes reference to a study prepared for the Island Nature Trust in 1988 and the subsequent designation of sixteen roads under the Planning Act: three in Prince County, nine in Queens County and four in Kings County, representing a total of 50 to 60 kilometres. Scenic Heritage Roads are now listed under Schedule E of the Highway Access Regulations which lists two roads in Prince County, seven in Queens and three in Kings, representing a total of 32.8 kilometres. The Roads were formerly designated under the Planning Act Highway Access Regulations. When responsibility was transferred to the Roads Act in 2007 a review showed that the number of roads meeting the criteria had declined.

29. THAT the views of local residents be sought and respected in choosing such roads, and that some means be devised to involve local residents in the clean-up of such roads similar to the existing roadside clean-up program.

This recommendation was implemented. There is a process whereby the views of local residents are sought and considered before a recommendation is presented to the Minister.

30. THAT these roads be inspected and maintained in accordance with the objectives of the program.

Part IX of the Highway Access Regulations makes it illegal to cut or remove trees, shrubbery or plant life within the right-of-way, or to alter the landscape of a scenic heritage road without the permission of the Minister (subsection 38(3)).

31. THAT the start and finish points on scenic drives be better delineated.

Since the Royal Commission reported in 1990, the scenic drives have been reconfigured and renamed.

32. THAT portions of the Blue Heron Drive, now routed along Route 6, be re-routed to bypass North Shore traffic congestion.

See recommendation 31

33. THAT land use policies take scenic drives into consideration by subjecting adjacent areas with careful development controls to curtail extensive

ribbon development and cottage subdivisions.

This recommendation was not implemented.

COMMUNITIES:

34. THAT a comprehensive land use plan for the province include municipal reform.

Although the Municipalities Act has been reviewed, it cannot be said that there has been an attempt to bring about municipal reform, and no significant changes have been made to the Municipalities Act or the Planning Act since this recommendation was made.

35. THAT community improvement committees be abolished with appropriate amendments to the *Municipalities Act*.

This recommendation was partially implemented. The Municipalities Act defines "municipality" as either a "town" or a "community" and the term "community" includes villages and what were known formerly as community improvement committees. In 1990 there were 7 towns, 30 villages and 49 community improvement committees. In 2009, Schedule 1 of the Act lists 6 towns, 21 villages and 41 community improvement committees. A number of the villages and community improvement committees listed in 1990 were absorbed into the City of Charlottetown or the City of Summerside or the new Towns of Stratford and Cornwall when these were created in 1995.

36. THAT the boundaries of incorporated areas be reviewed for the annexation or amalgamation of adjacent land in order to encompass growth settlements; to take into account areas where land use plans have been effectively developed by community improvement committees; to plan for future municipal expansionary needs and effective infrastructure development or other long-term requirements; and to rationalize boundaries with natural and non-natural divisions in each area.

Amalgamations took place in 1995 which resulted in an expansion of the Cities of Summerside and Charlottetown and the creation of the Towns of Stratford and Cornwall. These changes are outlined in the

City of Summerside Act and the Charlottetown Area Municipalities Act. No other significant changes have taken place to municipal boundaries since 1990.

Annexation, which involves taking currently unincorporated areas into a municipality, requires notification of the potentially affected landowners, a council resolution, a public hearing by IRAC, and a set of criteria to be considered by Cabinet. Amalgamations or mutual boundary adjustments, where the areas in question involved municipalities, require a resolution in favour by both parties, which can be difficult to get from the smaller municipality, but does not require a public hearing.

37. THAT the province review the services it provides unincorporated areas in its role as the municipality for these areas and, in conjunction with such a review, examine the feasibility of revising its property tax structure.

Program reviews have taken place but it is not clear that they were in response to this recommendation or that they led to significant changes.

38. THAT the province, in conjunction with the municipalities, explore ways to provide more cost-effective servicing and enhanced capacity for both the municipalities and their personnel.

Program reviews have taken place but it is not clear that they were in response to this recommendation or that they led to significant changes.

CHARLOTTETOWN:

39. THAT the urban area for the capital of the province be placed under the jurisdiction of a single municipality by appropriate legislative amendments enacted in 1992 to enlarge the boundaries of the City of Charlottetown to include as a minimum, the suburbs of Sherwood, Parkdale, East Royalty, Hillsborough Village and West Royalty as well as any incorporated or unincorporated areas necessary to ensure the new capital area includes the urban core bounded by the York and Hillsborough Rivers and that, in the interim, the province assist the six municipal units in negotiating the details of whatever transitional provisions are necessary to achieve

this unification.

This recommendation was implemented. An amalgamation took place in 1995 which resulted in an expansion of the City of Charlottetown. The changes are outlined in the Charlottetown Area Municipalities Act which lists the municipalities absorbed into the new City of Charlottetown: Town of Parkdale and Communities of Sherwood, West Royalty, East Royalty, Hillsborough Park and Winsloe.

40. THAT the enlarged capital jurisdiction have a land use plan with sufficient visionary outlook to retain ample open space, greenery zones and agricultural use areas for the enjoyment of future generations; that it contain a greater enhancement of the heritage component, that it provide for future urban growth in all sectors of land use including provision for a heavy industry (rough yard) industrial park, and that it provide for future urban transportation needs, including pedestrian-oriented components and an examination of public transportation needs.

This recommendation was implemented.

41. THAT the areas around the enlarged capital city be designated as a buffer zone extending at least 5 miles and preferably 10 miles from the nearest urban boundary and that there be stringent growth management controls imposed in this buffer area, for a ten-year period including a total moratorium on all major developments within the buffer zone; a moratorium on all residential housing starts except on serviced lots in municipally-incorporated areas with the exceptions of replacement units for housing that has been destroyed by fire or other disasters, providing such replacement has been commenced within a one-year period; a prescribed limit to the number of housing starts that may be undertaken in each year in municipally-incorporated areas in the buffer zone; a limit on the expansion permitted existing developments and new small-scale development in the buffer zone, with the exception of additional structures for agricultural operations; and stringent highway access limitations for all major routes into the urban area, include Routes 1 (Trans Canada Highway), 2 (Hunter River to Charlottetown and Mount Stewart to Charlottetown) and 15 (Brackley Point Road), accompanied by access modifications for presently existing accesses to these highways.

While the boundaries of the Special Planning Areas created at the time of the 1995 amalgamation may not conform precisely to the area described in the above recommendation, it would be fair to say that the intent of the recommendation has been respected. Three Special Planning Areas were designated in the areas adjacent to and extending approximately three miles outward from the boundaries of the Towns of Stratford and Cornwall and the City of Charlottetown. These Special Planning Areas are provided for under the Planning Act (section 8.1) and are further described in the Planning Act Regulations (section 63 and appendix A: maps 8, 9 and 10). The stated objectives of the Special Planning Area designation with respect to controlling development are as described in section 63 of the Regulations:

- (a) to minimize the extent to which unserved residential, commercial and industrial development may occur;*
- (b) to sustain the rural community by limiting future urban or suburban residential development and non-resource commercial and industrial development in order to minimize the loss of primary industry lands to non-resource land uses; and*
- (c) to minimize the potential for conflicts between resource uses and urban residential, commercial and industrial uses.*

The original “temporary” Special Planning Area Regulations were modified before being made final in 1998 by adding provisions for lots for children (assuming a farmer owner) in subsection 63.(5) and later to allow one lot for each of the uses listed in subsection 63.(4) rather than just one lot for one use.

CAVENDISH:

- 42. THAT the *Municipalities Act* be amended to repeal the concept of “resort area” or “resort municipality”.

This recommendation was not implemented. The Resort Municipality designation continues to be an integral part of the Municipalities Act (section 8) and it applies in the case of the Stanley Bridge-Hope River-Bayview-Cavendish-North Rustico area which was

incorporated as a Resort Municipality in 1990. The designation has not been applied to any other area. The objections of the Royal Commission are laid out quite clearly in its report: first, that it adds another category of municipality to an already confusing array and, second, that it confers the status of voter and decision maker to temporary residents. A third reason for the Royal Commission’s response is linked to the fact that Government passed the enabling legislation before the Commission tabled its final report. In fact, today, the Resort Municipality operates much like any other rural municipality and provides a similar range of services, the only exception being that not all of its residents are permanent.

There continue to be concerns within the Resort Municipality regarding the potential for seasonal residents and business owners to gain control of Council. To illustrate, Council consists of seven members including the Chair; only two members have to be permanent residents, defined as six months plus a day (subsection 15(1.1)). It is conceivable therefore that Council could fall under the control of non-residents and individuals whose only interest is a business they operate for two months a year. The issue has been raised with Government but has not been resolved.

- 43. THAT the province determine its policies for the tourism industry in relation to land use issues.

There is no evidence that the province’s tourism policy is linked to land use issues.

- 44. THAT future growth in Cavendish be controlled in the context of such a policy.

The Resort Municipality has had an official plan since it was incorporated in 1990 and the local tourism group actually began work on the first plan in 1988. It was developed in much the same manner as other municipal plans, was approved by Council, has been updated every five years and is submitted to the Minister responsible.

- 45. THAT until such time as the province has determined its policies for tourism in relation to land use issues and until such time as the water and waste water management problems in Cavendish have been resolved, the province place a moratorium on seasonal and/or tourism-related growth in Cavendish.

The Resort Municipality commissioned its sewage treatment facility in 1993. Since the Resort Municipality was incorporated in 1990 and its official plan approved by the Minister of the day, there has not been any moratorium on property development.

SHOPPING CENTRES:

46. THAT a comprehensive land use plan continue to include provisions regulating land use in relation to major retail development and that the sunset provision contained in Section 43 of the *Planning Act* must be repealed.

Part VII (sections 40 - 43) of the Planning Act was repealed in 1991.

47. THAT the regulatory controls relating to major retail development be revised so that major retail development projects are restricted to incorporated municipalities with official plans that contain provision for major retail development.

There is no evidence that this recommendation was implemented. As a matter of fact, although most major retail development projects have occurred in incorporated municipalities, there is at least one example where retail development was allowed to take place outside the boundaries of neighbouring incorporated municipalities, that being the case of Bloomfield Corner on Highway 2.

48. THAT the province accept the responsibility for approval of all major retail developments.

Responsibility for approving major retail developments rests with the municipality where the municipality has an official plan. Where this is not the case, the province has responsibility.

49. THAT approval from the municipality where the development is to be located be a prerequisite to approval by the province.

See recommendation 48

50. THAT an impartial impact statement be prepared for the province at the developer's expense.

See recommendation 48

51. THAT the essential components of an impact statement be included in the legislation and mandate a review of land use impacts and public costs arising from the development.

See recommendation 48

52. THAT the required elements of a development agreement be included in the legislation.

See recommendation 48

53. THAT any such agreement be a tri-party agreement between province, municipality and developer.

See recommendation 48

54. THAT the developer be required to bear the indirect public costs arising from the impact of the development.

See recommendation 48

55. THAT landscape/design standards be among the components of any development agreement.

See recommendation 48

56. THAT the appeal procedures in relation to major retail development and other major developments be synchronized.

See recommendation 48

57. THAT the definition of major retail development be revised to prevent evasion of the regulatory controls.

See recommendation 48

58. THAT the legislation contain strengthened mechanisms to place and enforce terms and conditions on development, including the explicit power to issue demolition orders where necessary.

See recommendation 48

SUBDIVISIONS:

59. THAT the province examine the public costs of residential development at different levels of housing density.

This recommendation was not implemented.

60. THAT, pending the completion of such a study, there be no approvals granted for any major subdivisions outside the boundaries of towns and villages unless the property is first annexed to the adjacent municipality.

This recommendation was not implemented.

61. THAT the province study the economic impact of recreational residences in relation to the tourism industry and the public costs associated with this form of housing.

This recommendation was not implemented.

62. THAT, pending the results of such a study, the province approve no major summer cottage subdivisions unless the development is accompanied by an agreement that calls for quality development, including the installation of centralized sewer and water services, underground utilities, cables for telephone and electricity, design standards for housing, quality roads, and adequate security for performance.

While no study was done, changes made to the Subdivision and Development Regulations under the Planning Act have tightened up the road requirements, but not servicing or design standards. Subdivision agreements were abandoned several years ago by the Department of Communities, Cultural Affairs and Labour because they were deemed too cumbersome for Planning and Inspection Services staff to manage properly.

63. THAT the province review all summer cottage subdivisions and institute a program of sunset provisions that would cause approvals on unmarketed subdivisions to lapse after a reasonable period of time.

This recommendation was not implemented as it was deemed to be illegal.

NON-RESIDENT OWNERSHIP:

64. THAT the Lieutenant-Governor-in-Council alter its current policy with respect to the perfunctory exercise of its discretion towards excess land purchases by non-residents pursuant to the *Lands Protection Act* to one of granting permission

only in pre-determined or most exceptional circumstances.

Applications to purchase by non-residents are seldom denied, but land identification agreements prohibiting development are routinely required. IRAC estimates that 1-4 denials would occur per year out of approximately 100 applications. Denials occur primarily where the applications involve large acreages and where a prospective purchaser who has no intention of becoming a resident is involved, and also in situations where the property involved is in an area which already has a high density of non-resident owners. Other reasons for denial may include: failure to comply with advertising guidelines and proposed land uses that are incompatible with the surrounding land uses.

65. THAT the *Lands Protection Act* be amended to require the Lieutenant-Governor-in-Council to table annually in the Legislative Assembly the amount of land owned in the province by non-residents, the amount of shore frontage owned by non-residents, the transactions to which it has given consent pursuant to the *Lands Protection Act* and the reason(s) why consent was given in each instance.

This recommendation was implemented. The Commission reports to the Legislative Assembly through its Annual Report which includes the following information: the amount of land owned in the province by non-residents, the amount of shore frontage owned by non-residents and a general summary of the Commission's recommendations and Executive Council disposition of these applications.

The only requirement for tabling in the Legislature appears in subsection 17(2) which pertains to exemptions granted by the Lieutenant-Governor-in-Council pursuant to the Lands Protection Act Exemption Regulations. Subsection 17(2) requires the Minister to table the reasons for any landholdings being exempted from the general application of the Act, although conditions may be attached to the exemption.

66. THAT the *Lands Protection Act* be amended so that the Lieutenant-Governor-in-Council has the power to issue a divestment order in respect of any aggregate landholdings in excess of five acres or 165 feet of shore frontage where the

property was acquired during a short period of residency but the owner can no longer meet the residency criteria in the Act.

Section 5.2 provides that a resident who acquires more than 5 acres and more than 165 feet of shore frontage may continue to own the property without a permit even if he/she ceases to be a resident. Subsection 12(2) permits divestment orders for non-compliance with Ministerial orders, but there does not appear to be any authority for the Minister to issue an order where residency ceases after a short term of residency.

67. THAT the province adopt a land policy in respect to the leasing or sale of Crown lands to non-residents that would permit such transactions only when they are in the public interest.

There appears to be no written Government policy in relation to sale or lease of Crown lands to non-residents. It would be IRAC's function to process any such application.

68. THAT the Land Use Commission commence the active monitoring and enforcement of covenants included in land identification agreements.

IRAC does not actively monitor or enforce covenants included in land identification agreements. However, when an application for a non-compliant use is filed with the Department of Communities, Cultural Affairs and Labour, employees consult a database of identified properties and contact the Commission for clarification when required.

69. THAT the Department of Finance proceed with implementing a Geographic Information System with a data base that would enable it to effectively monitor and analyze patterns of land ownership and land use, together with other variables.

This recommendation was implemented. Provincial Treasury is responsible for the Geo-link service. IRAC uses a combination of Geo-link and MapInfo GIS layers to determine all the relevant factors required by the Commission in its assessment of an application.

70. THAT as soon as the GIS is available, the province undertake a study on non-resident land ownership in conjunction with recommended

studies on vacant farmland and seasonal residences, taking into account soil, water and other conservation issues and data.

This recommendation was not implemented; see recommendation 69

71. THAT, upon the completion of the GIS-based studies of non-resident ownership, the province determine whether it is in the public interest to restrict further or otherwise alter the existing provisions of the *Lands Protection Act* in relation to non-resident ownership of land in the province.

There do not appear to have been any additional restrictions placed on ownership of land by non-residents since the above recommendation was made.

OFF-SHORE ISLANDS:

72. THAT a comprehensive land use plan include a firm, consistent policy with respect to the off-shore islands.

See recommendation 74

73. THAT this policy prohibit any further development on any of the off-shore islands.

See recommendation 74

74. THAT this policy include protection for wildlife and other natural features of the islands.

There is a long history of interest in and opposition to the development of off-shore islands beginning with the 1977 "Offshore Islands Study" commissioned by the province. Government's first response to the issue of protecting off-shore islands was section 64 of the Subdivision and Development Regulations of the Planning Act implemented by Order-in-Council in 1989. Since that date, there have been no substantive changes to the list of islands or the restrictions on development. Essentially, a property owner is allowed only to construct a summer cottage. What has changed significantly is the degree of protection under the law and the title to property on the off-shore islands. To illustrate, the Island Nature Trust has acquired 69% of Bunbury/Courtin Island and is negotiating for another parcel that would

bring its holdings to 85%; it owns 17% of St. Peters Island and 100% of Bird, Little Courtin, Herring and Gordon's Islands. The province now owns all of Boughton Island and Cherry Island and is in the process of designating these under the Natural Areas Protection Act. The Nature Conservancy of Canada has also been quite active and successful in acquiring property on the offshore islands, including approximately 80 hectares or 200 acres on Boughton Island which it has transferred to the province.

COASTAL ZONE:

75. THAT the province endorse a coastal zone policy applicable to the whole province.

Government introduced a new Coastal Development Policy in 1992 (EC158-92) and made a series of related amendments to the Planning Act Regulations. In 2000, the subdivision and development provisions applying to coastal areas were incorporated into the Subdivision and Development Regulations (section 16). The most significant feature of the Regulation is the requirement to set aside a 60 foot (18.3 metre) buffer where a subdivision is adjacent to a beach or sand dune. Opinions vary on whether the current restrictions on subdivision development comply with the stated objectives of the 1992 Coastal Development Policy.

76. THAT urban municipalities with well-developed areas within the coastal zone should conform with the rules developed for the coastal zone for the province as a whole.

Municipalities are authorized to develop their own land use plans and the rules they adopt may be more or less restrictive than those that apply to unincorporated areas under provincial legislation. They must however comply with any setbacks from watercourses and sand dunes under the Environmental Protection Act.

77. THAT land use planning include water resources such as bays, rivers and streams.

Again, in the absence of a comprehensive land use plan for the province the only available tools, setbacks primarily, are found in provincial legislation or municipal land use

plans. Since this recommendation was made, Government has strengthened legislation protecting watercourse buffer zones under the Environmental Protection Act.

78. THAT greenbelts for areas adjacent to rivers and streams be included in comprehensive land use plans.

This recommendation was not implemented.

79. THAT the province encourage community groups, including youth groups, to adopt a stream in their local area.

There are several examples of where Government actively encouraged and supported such volunteer groups through programs such as the Watershed Management Fund, the Greening Spaces Program, the Environment Futures Program and the Wildlife Conservation Fund. The federal government makes funding available through various programs as well.

80. THAT the province rigorously enforce measures designed to protect beaches and sand dunes, particularly those aimed at preventing vehicular damage.

The Environmental Protection Act (section 22) prohibits the operation of a motor vehicle on a beach or sand dune in all instances except activities related to the legal harvesting of a fishery resource or the legal removal of beach material. This provision dates from 1991.

81. THAT the province utilize the educational aspects of its beaches and sand dunes through an interpretative centre.

This recommendation was not implemented.

82. THAT the province ensure the long-term preservation of the Greenwich area in its natural state under public ownership.

Significant progress was made in this regard with the creation of the Greenwich sector of Prince Edward Island National Park and the designation of a significant tract of land within the Greenwich Special Planning Area.

83. THAT comprehensive land use plans include areas for natural preservation.

This recommendation hinges on the adoption of a comprehensive land use plan for the province. It was not implemented although progress has been made on designating natural areas (see analysis of recommendation 81 of the Round Table Report).

84. THAT the province continue to encourage and support volunteer groups whose aims and objectives assist in preserving and enhancing natural areas.

See recommendation 79

PLANNING:

85. THAT the province develop a more pro-active, creative stance towards land use planning.

While there may have been efforts in this regard during the period following release of the report, recent efforts by Government have been very low key and, at best, reactive.

86. THAT public participation, including widespread use of the local media, be a central feature of land use planning.

There has been little improvement in the area of public disclosure and participation in land use planning, except in the case of those municipalities that have official plans. In the case of areas of the province not covered by official plans, residents have been generally critical of the development approval process adopted by Government. For example, there is no requirement for Government to disclose any information about development applications. Section 11 of the Subdivision and Development Regulations allows the Minister to do so but the current policy of the Department of Communities, Cultural Affairs and Labour is not proactive in this regard.

In practice, this means that neighbours and area residents are more likely to find out about new developments after approval has been granted. In October 2009 the provincial and municipal governments launched a new internet-based information system called "PEI Planning Decisions" which will be used to post all building permits.

87. THAT the province, particularly the Department

of Community and Cultural Affairs, adopt a more realistic approach to public awareness of land use planning, including the preparation of pamphlets and other materials for user groups, the use of computers to illustrate alternative planning mechanisms, a regularized program of public education through conferences, community schools and other forums and periodic displays on land use planning concepts at fairs, exhibits and trade shows.

See recommendation 85

88. THAT legislation, regulations and other written materials associated with land use planning be prepared, as much as possible, in simple terms that can be readily understood.

There has been some progress of late as evidenced by more clearly worded regulations.

89. THAT the province undertake greater inter-departmental coordination in respect to the development, administration and application of policies and standards relating to land use.

According to Government officials, interdepartmental collaboration has declined in recent years. An example of this is the inactivity of the Land Use Coordinating Committee and its replacement by a body that has a very limited mandate (see analysis of recommendation 85 of the Round Table Report) and which reports to the Minister of Transportation and Public Works.

90. THAT comprehensive land use plans for the province include a municipal planning exercise such that those municipalities which now have official plans commence a planning exercise. In all instances, this municipal planning must be accompanied by the boundary rationalization and/or annexation/amalgamation of adjacent areas (or community improvement committees).

This recommendation has been partially implemented in that municipalities with official plans and bylaws do review them regularly. However, annexation and amalgamation, where it has occurred in the past, has not always come about as a result of a "municipal planning exercise".

91. THAT the province establish a realistic target date for the attainment of such a goal by all municipalities, with the proviso that

municipalities which do not have official plans in place at that time endanger their eligibility for provincial grants pending the adoption (or revision) of official plans.

This recommendation was not implemented.

STRUCTURES:

92. THAT the Land Use Commission retain its present role as an appellate body.

In 1991 the Island Regulatory and Appeals Commission Act was passed, whereby IRAC replaced the Land Use Commission as the administrative tribunal responsible, among other things, for determining many land use and land ownership issues including those involving non-residents and corporations. That latter function was assumed by the Lieutenant-Governor-in-Council by an amendment to the Lands Protection Act in 1992. Under the Lands Protection Act, IRAC now acts in an advisory capacity to the Lieutenant-Governor-in-Council.

By virtue of Section 5 of the Island Regulatory and Appeals Commission Act, IRAC has the authority to hear appeals on numerous matters. In relation to land use and disposing of applications respecting acquisition of land by non-residents and corporations, by subsection 5(b), IRAC has authority “(b) to hear and decide matters...where so required by any Act.” IRAC also has the authority under subsection 5(d) “to perform such other functions as may be conferred on the Commission under any enactment.”

Under section 28 of the Planning Act, appeals from decisions of municipal councils or the Minister in relation to the administration of regulations or bylaws made pursuant to the Planning Act may be heard by IRAC except in the circumstances set out in subsection 28(4) of the Act.

IRAC also hears appeals under the Environmental Protection Act, section 29.1 as of November 2008.

Under the Unsightly Property Act, IRAC under section 7 hears appeals from clean-up orders of inspectors. By section 10, IRAC may

confirm, rescind or vary an order.

IRAC is also authorized, under section 5 of the Heritage Places Protection Act, to hear appeals from a decision by the Minister to designate a property as a heritage property. This rarely, if ever, happens.

93. THAT this role be extended to allow the Land Use Commission to operate as an appellate body from land use decisions made by all municipalities in the province.

Subsection 28(1) of the Planning Act authorizes appeals to IRAC from a decision of a council on planning matters. Under subsections 1(b) and (f) of the Planning Act “council” includes all incorporated municipalities including Charlottetown, Summerside, Stratford and Cornwall. The limitations set out in subsection 28(4) of the Act apply, i.e., there is no appeal to IRAC from final approval of a subdivision if the grounds of appeal could have been heard and determined at the preliminary approval stage of the subdivision application.

94. THAT any and all legislation and policies aimed to excluding the Land Use Commission from adjudicating on land use issues - including environment issues - be repealed.

Under subsection 29.1(1) of the Environmental Protection Act, IRAC has limited authority to hear appeals arising from environmental protection orders issued by the Minister of Environment, Energy and Forestry.

95. THAT future appointments to the Land Use Commission endeavour to provide a broader representation of socio-economic interests, including persons with previous experience or interest in municipal matters.

The current IRAC board includes the former chair of the West Royalty Council, a Co-op Manager, a retired airman, an employee in the private sector, a retired RCMP officer, a former senior provincial bureaucrat, a businessman, and a former broadcaster and bureaucrat. The Chair does not participate in the appointment of other board members. The criteria for appointment of part time commissioners are spelled out in clause 3(1)(d) of the Island Regulatory and Appeals Commission Act.

96. THAT the Land Use Commission be given the power to impose conditions on its approvals and the means to ensure conditions are met.

Executive Council imposes conditions on its approvals pursuant to the Lands Protection Act. IRAC attempts to ensure compliance with the conditions where a breach of the condition has been brought to the Commission's attention.

97. THAT the Land Use Commission be given power to suspend a building permit until appeals have been exhausted.

This recommendation was not implemented. IRAC does not have authority under the Planning Act to suspend a building permit pending an appeal and officials of IRAC are not aware of any authority derived elsewhere.

98. THAT the Land Use Commission be given the power to issue demolition orders.

This recommendation was not implemented. IRAC does not appear to have the authority to issue demolition orders in cases where construction has gone ahead without a valid permit. The Minister issues building permits pursuant to section 31 of the Planning Act Subdivision and Development Regulations. Municipalities may also issue building permits pursuant to their respective land use and development bylaws. Under section 24 of the Planning Act the "appropriate authority" may enforce regulations or bylaws made under the Act by application to the Supreme Court for a declaration, injunction or order for compliance. The Minister or municipal council, and not IRAC, under the current legislation would appear to be the "appropriate authority."

99. THAT the Agricultural Development Corporation be given the resources needed to implement responsible land stewardship requirements; to resume its role as a true land banking agency; and to exercise its mandate on "rural" development.

The Agricultural Development Agency was absorbed into the PEI Lending Authority effective April 1, 1992. (The Agricultural Development Corporation Act was repealed effective June 1, 1994.) The Province had provided assistance to farmers through a "Lease to Vendor" program whereby land was

transferred to the province and leased back to farmers who could not otherwise meet their financial obligations. If a farmer recovered sufficiently to be able to finance a repurchase of this property, the province conveyed it back to him. If the farmer defaulted on his rent, the province could evict him and have title to the land. What the Lending Agency found was that some of the land it was acquiring in this fashion was "farmed out" to the point that it had little value. Government therefore discontinued leasing. Five year leases entered into as of May 1, 1995 were not renewed for a further term. Leases for 5 years entered into on earlier dates, e.g., February 1995, were permitted to be renewed on their expiry for a further 5 years, in other words, with a final expiry date of February 2005. Land which came into the ownership of government in this manner was sold off to others.

The Department of Transportation and Public Works manages agricultural land owned by the province and leases the 551 hectares or 1,362 acres under leasing arrangements with farmers. In summary, recommendations 99-102 appear basically to have been ignored.

100. THAT the Agricultural Development Corporation commence a land management program for all of its properties.

See recommendation 99

101. THAT the Agricultural Development Corporation establish itself as a role model for proper land management.

See recommendation 99

102. THAT the Agricultural Development Corporation impose appropriate conditions on the sale and rental of its properties to encourage proper land management and preclude both land speculation and fragmentation, including conservation covenants, non-development measures, the acquisition of the right of first refusal to the Crown on any subsequent resale by a purchaser and/or prohibitions against further subdivision by purchasers.

See recommendation 99

LANDSCAPE:

103. THAT the landscape be of paramount consideration in government activities.

See recommendation 110

104. THAT the integrity of the landscape be an essential component in land policies.

See recommendation 110

105. THAT the province promote greater public appreciation of the role of the working landscape in the provincial economy.

See recommendation 110

106. THAT the province retain the services of a landscape architect/planner to facilitate better land use planning and design.

See recommendation 110

107. THAT the province prepare an extensive inventory of special landscapes, that encompass both vistas and seascapes, with widespread input from the general public and form community groups and organizations.

See recommendation 110

108. THAT a comprehensive set of land use plans include protective mechanisms for these special landscapes, using such means as limitations, or, where appropriate, prohibitions against any form of built development.

See recommendation 110

109. THAT the province designate a generous number of scenic lookout points along roadways, particularly those roads that are included in the scenic drives and those which are major highways, and, as road construction occurs near any designated point, construct appropriate places where motorists can park off the highway to view the scenery.

See recommendation 110

110. THAT the province undertake special measures to enhance the landscape at the entry points of the province, particularly at the Albany interchange.

With the notable exception of recommendation 109 which calls for the designation of scenic lookout points, none of the above recommendations was implemented. As for the scenic lookouts, they are as much a highway safety measure as an attempt to promote the landscape. The report of the Round Table on Resource Land Use contains a chapter on "Managing Landscape and Biodiversity" which addresses some of the same issues as the Royal Commission on the Land (refer to recommendations 68, 69, 70, 71, 74, 75 and 76).

HISTORIC PRESERVATION:

111. THAT historic preservation of our built environment be an essential component of land use planning policies.

As there is a lack of integration of the various land use planning policies, legislation and regulations adopted by Government from time to time, it cannot be said that this recommendation was implemented. Whatever integration takes place occurs at the staff level and it relies on expert knowledge and the quality of working relationships between individuals and Government agencies.

It is worthwhile to note that Government commissioned a public review of heritage resources in 2008. Government has chosen to act on a number of the report's recommendations, the chief one being that it develop a heritage strategy. This is being done under the guidance of an inter-departmental committee. It is intended that the heritage strategy will include needed linkages to land use planning, and more particularly, to development. As well, Government announced some time ago that it intends to establish a provincial museum.

112. THAT the P.E.I. Museum and Heritage Foundation embark on a province-wide recognition program for all older structures in the Province to promote awareness and pride in buildings that have been part of the Island landscape for the last 50 years or more.

This recommendation was implemented. At the time it was made, the PEI Museum and Heritage Foundation was the only organization promoting awareness. Since the Heritage

Places Protection Act was proclaimed by Government in 2004, the Department of Communities, Cultural Affairs and Labour has become more active through the registration and designation of Heritage Places. The Heritage Places Protection Act creates a legislative regime for both protection and promotion of historic places.

113. THAT the P.E.I. Museum and Heritage Foundation proceed with despatch on completing an identification of heritage groupings and areas (including churches and graveyards) which contain an unusually high proportion of heritage building stock in a relatively unspoilt environment and that the Province provide adequate resources to the Foundation to ensure this identification is completed as soon as possible.

This recommendation is being implemented with the assistance of a number of historical preservation groups such as the PEI Genealogical Society, the PEI Museum, the Alberton Museum, and the Garden of the Gulf Museum. Heritage places are identified through the on-line PEI Register <http://www.peihistoricplaces.ca/>. There is also a national register called 'Canada's Historic Places' <http://www.historicplaces.ca>

114. THAT heritage buildings, heritage groupings and heritage areas identified in these survey projects be marked and, if necessary, legislative provisions be enacted to provide for this marking project.

The Heritage Places Protection Act empowers the Minister of Communities, Cultural Affairs and Labour to preserve, study, interpret and promote heritage places. There are two levels of recognition under the Act: 'registered' places are honorific, while 'designated' places have legal protection and are eligible for a plaque and financial aid.

115. THAT there be a heritage review process linked to the issuance of building permits such that proposed renovations or additions to identified heritage buildings or new construction within identified heritage groupings or areas would be subject to review and that there be some discretion to refuse the issuance of building permits where proposed changes or new construction conflict with the goals of heritage preservation.

The Heritage Places Protection Act and Regulations address this for the most part in the case of buildings that are 'designated'. In the case of buildings that are 'registered', the restrictions do not apply. The cities of Charlottetown and Summerside have their own heritage protection and preservation bylaws and these are deemed by the Minister to provide an adequate level of protection under the Act. Additional information is available on-line in the Standards and Guidelines for the Conservation of Historic Places in Canada.

116. THAT the P.E.I. Museum and Heritage Foundation be provided with sufficient resources to upgrade its architectural conservation services.

The architectural conservation service which existed at the time this recommendation was made was later discontinued for financial reasons. The Department of Communities, Cultural Affairs and Labour has participated in the development of, and has adopted, the Standards and Guidelines for the Conservation of Historic Places in Canada. This, together with the Museum and Heritage Foundation's Institute of Island Architectural Studies and Conservation, and the Heritage Places Advisory Board, provides a number of avenues for architectural conservation information.

117. THAT historic preservation of archaeological remains be an essential component of land use planning policies.

The legislative framework was found to be very weak in 1990. The old Archaeological Sites Protection Act was repealed in 2006 and a new Archaeology Act was brought in. In 2009, the position of Provincial Archaeologist was created, the first time such a position has existed within the provincial public service. However, as no province-wide comprehensive land use policy exists, it cannot be said that this recommendation was fully implemented.

118. THAT the province proceed with the recommendations made to the Ministerial Committee on Heritage and Museum Policy in relation to archaeological remains.

This recommendation was implemented, although only through a recent Government decision. The new Archaeology Act makes it clear that all archaeological remains belong to the province. Officials acknowledge that the

Act will need to be skillfully and diplomatically interpreted; otherwise an important segment of the heritage community could be alienated. This is because, in many ways, most of the collectors are providing a service by 'rescuing' archaeological finds from beaches which would otherwise be lost. These same individuals also monitor and report activities, including local development and active erosion. It is therefore deemed important to retain them as partners.

119. THAT a provincial strategy on the exploration of the Island's archaeological resources include components that coordinate educational and tourism opportunities and local development possibilities.

The province is responsible for the coordination and management of archaeological investigation and dissemination of information to the public. Archaeological resources will be interpreted in the provincial museum, a Government project now in the planning stages. Parks Canada, through its programming, interprets archaeological resources within national historic sites and parks for the benefit of Islanders and visitors.

RAILS TO TRAILS:

This issue falls outside the Commission's mandate.

120. THAT in the event the ownership of railway lands is acquired by the Province of Prince Edward Island, title should remain in the public domain and ownership rights should not be transferred by gift, sale or otherwise to private owners.
121. THAT title to the rail lands be vested in the Agricultural Development Corporation and that this agency have the responsibility for management of these lands.
122. THAT the lands belonging to the rail corridor be used for linear recreational purposes.
123. THAT the trail project be planned and coordinated through the Agricultural Development Corporation.
124. THAT the Agricultural Development Corporation be given sufficient resources to hire

staff on a short-term basis during the planning stages of this project to plan and coordinate the project.

125. THAT the trail coordinator/planner work with local community organizations, municipalities and individuals to initiate participation and cooperation with such a project and to take an active role in planning the project.
126. THAT the trail project be developed with a heavy emphasis on voluntarism as an essential component for its development and maintenance.
127. THAT the trail coordinator/planner, with the assistance of the private sector, develop suitable standards for the trail, rules for user and participating groups, and common themes to unify the project throughout the Province.
128. THAT the project have the support of government expertise and resources to augment the private sector in this endeavour.
129. THAT in the development of the rail line corridor for linear recreation, priority be given as much as possible, to areas that lie to the east of Charlottetown and to the west of Summerside.
130. THAT the rail line corridor be leased to private sector organizations for public recreation under specific terms and conditions once the planning phase has been completed.
131. THAT once leasing has been completed, A.D.C. continue to retain a general managerial and supervisory role to ensure leasing conditions are fulfilled and, if necessary, to find new sponsors for the trail corridor or portions of it.

TREES:

132. THAT one of the components of a comprehensive land use plan include the identification of lands best retained for forestry usages.

This recommendation was not implemented

133. THAT the Crown adopt a policy of assembly of larger blocks of forested land over time.

After public consultation, Provincial Forests were proclaimed in 2000 and a number of areas

were designated by Order-in-Council under the Forest Management Act (see analysis of recommendation 78 in the report of the Round Table on Resource Land Use).

134. THAT in some areas, vacant farmland be dedicated for forest usage, even if the soil classification is Class II or Class III, and, be preserved for this usage for an extended number of years.

This recommendation was not implemented

135. THAT the *Forest Management Act* be amended to require public review of the State of the Forest Report.

Government reports to the public on the status of various forest indicators by means of the State of the Forest report, the most recent being the 2002 version which covers the period 1990 to 2000 and which was released publicly. There is no specific requirement in the Act for public review of the State of the Forest Report.

136. THAT the regulations required for effective administration and enforcement of the *Forest Management Act* and the standards associated with forestry incentive programs be put in place.

No changes were made to the Regulations under the Forest Management Act as a result of this recommendation.

137. THAT government adopt a more balanced approach to individual rights and obligations under the *Forest Management Act* with government adopting a more pro-active approach towards land stewardship in relation to woodlot owners.

The Royal Commission report observed that "...the Forest Management Act has not adopted a balanced approach with respect to dealing with difficult issues". The point made was that, while the Act gave Government the power to regulate forest management activities on public and private land, Government seemed interested only in exercising its power on public land. As the report of the Round Table on Resource Land Use demonstrated, the reluctance of Government to regulate the harvest on private land during a period when sawlog harvest levels clearly exceeded sustainable levels, showed that Government's position had not changed. This is still the case

today since the Forest Management Act gives Government little authority to do anything but provide incentives to private land owners through the Forest Renewal Program.

138. THAT there be firmer policies in providing forestry incentives to prevent abuses and ensure long-term stewardship of land that has benefitted from public funds.

This recommendation was not implemented. The Forest Renewal Program Regulations made under the Forest Management Act in 1996 do not set out penalties for non-compliance by private landowners who enter into agreements with the Department involving incentives for forest management activities. Agreements signed by landowners under the Forest Renewal Program state that the property must be maintained in forest production for a period of 15 years from the date of the subsidized treatment and that, if the use of the treated portion of the property changes, the owner must repay the amount of the incentive received from Government. Under the new incentive program launched in 2008, the Forest Enhancement Program, landowners must maintain the area treated in forest production for 15 years but there is no requirement to repay the Government incentive. In fact, program guidelines state that there is no "retention period", only that "...in order to qualify for the incentive all work must be done to the required standard."

<http://www.gov.pe.ca/envengfor>

139. THAT government provide more public education on land stewardship in relation to forested land, including the obligations imposed by the common law upon property owners.

This recommendation was partially implemented in the sense that the Forests, Fish and Wildlife Division has an active public information program and did consult broadly in 2005 before Government released the current Forest Policy. However, there is no evidence that the Division made any special effort to inform forest land owners of their obligations under the common law.

140. THAT incentives available through property tax rates for land dedicated to long-term forestry use under management plans be examined.

This recommendation was not implemented

141. THAT much more Crown land be dedicated to model tree plots, including plots that include a variety of non-commercial species.

The 2006 Forest Policy contains a comprehensive section on the strategies and actions planned for the management of public forest lands (for more information see pages 4-7 of the Policy)

<http://www.gov.pe.ca/photos/original/EEF-ForPol-Eng.pdf>

142. THAT government must continue and intensify its efforts on forest rehabilitation but that its policies must be combined with more recognition for the non-commercial benefits of trees.

The 2006 Forest Policy represents a shift of Government policy in the direction suggested by this recommendation. The objectives of the new Forest Enhancement Program also suggest this to be the case.

<http://www.gov.pe.ca/envengfor/index.php3?number=72560&lang=E>

143. THAT there be greater emphasis on hardwood management in the Province, particularly in the provision of hardwood species for plantations.

This issue was raised by the Round Table on Resource Land Use as well (see analysis of recommendation 50 in the report of the Round Table on Resource Land Use).

144. THAT government spearhead a program, extended over several years, for dead tree removals, particularly in areas adjacent to roads, in hedgerows and in other areas of high visibility.

This recommendation was not implemented

145. THAT there be prohibitions against clear-cutting along all waterways in the province and enhanced restrictions against clear-cutting along roadways.

Changes were made to the Environmental Protection Act restricting tree harvesting activities within a 15 metre buffer zone (see analysis of recommendation 25 in the report of the Round Table on Resource Land Use).

146. THAT forestry policies allocate a greater priority to those components that operate as an adjunct to

agriculture, including more attention to the preservation, enhancement and management of hedgerows and other shelter belts.

The Forests, Fish and Wildlife Division does offer assistance to landowners, as does the Department of Agriculture, in the form of tree planting subsidies. However, anecdotal and visual evidence would suggest that the area of hedgerows and shelterbelts has declined considerably as farm fields have gotten bigger.

147. THAT the province, in conjunction with municipalities and community groups, develop and implement imaginative schemes to prompt more emphasis on the non-commercial aspects of forestry, including the planting of hardwood belts along roadways, the use of more trees in the landscaping of public buildings and in the symbols used to mark special events.

In this regard, the Forests, Fish and Wildlife Division offers two programs, the Greening Spaces Program and the Hedgerow and Buffer Zone Planting Program.

148. THAT more funding and publicity be provided to the Landscape Assistance Grant Program with municipal and community groups being used to participate on a wider basis.

See recommendation 147

WATER AND SEWAGE:

149. THAT the Province of Prince Edward Island provide the necessary leadership to ensure long-range water and sewer services for the greater Charlottetown area, including a commitment to share costs with the various jurisdictions and to promote a co-ordinated effort to ensure a regionalized and standardized service under an expanded water authority that uses the long-standing expertise of the Charlottetown Water Commission.

This recommendation was implemented. In the early 1990's discussions were held between the former communities of Charlottetown, West Royalty, East Royalty, Parkdale, Sherwood, Bunbury and Southport regarding the establishment of a single water utility for the region. Subsequently, the Charlottetown Water and Sewer Utility was established, and it now

services the amalgamated communities of the City of Charlottetown. It is noted also that similar steps were taken in the Summerside region, with a new regional utility being established to service the former communities of Sherbrooke, Wilmot, Linkletter and St. Eleanors.

In 1995, the Charlottetown Area Municipalities Act and the City of Summerside Act resulted in the formation of the new Cities of Charlottetown and Summerside as well as the new Towns of Cornwall and Stratford. As a result several small water and sewer utilities were amalgamated to service much larger areas, resulting in a more coordinated approach to water and wastewater management.

150. THAT a province-wide plan be developed to ensure communities and other densely-populated areas have adequate off-site water and/or sewage systems, where required, whether through expansion or upgrading of present infrastructure or new development.

This recommendation was implemented. Since 1990, a number of new municipal water utilities have been established, serving essentially urban areas that formerly relied on on-site servicing, including Tignish, Borden-Carleton, Cornwall, Stratford (Bunbury and Southport) and Montague. In addition, the development of regional water supplies in both Charlottetown and Summerside resulted in expanded service areas in both of these communities. These municipalities have been expanding their wastewater servicing areas to their current boundary limits. New sewer utilities have also been formed in Murray Harbour, Hunter River and the Resort Municipality.

Since 1995, the management and planning of central water and wastewater infrastructure has evolved substantially. In 2001, the Province announced "A Drinking Water Strategy for PEI" which included a number of central and specific on-site infrastructure initiatives that again enhanced water and wastewater servicing in the Province.

151. THAT the province commit more adequate resources for the improvement and/or expansion of water and sewer infrastructure so that a more intensified program, based on the plan, is cost-shared with the municipalities.

This recommendation was implemented. A series of federal/provincial infrastructure funding programs have been accessed by municipalities since 1990 to bring about substantial improvements in system integrity and expansions to existing serviced areas. These investments have been made by the three levels of Government, each contributing one-third of the cost.

152. THAT those municipalities which require off-site servicing and that cannot receive ratepayers' support for participation in the provincial plan to improve water and sewer infrastructure become ineligible for any provincial funding to cost-share subsequent remedial actions and that such a freeze be imposed for a long-term period of 10 years.

This recommendation was not implemented.

153. THAT the participants in this plan to improve water and sewer infrastructure examine new means of meeting this challenge, including consideration of the "Self Help" program; and that, as a minimum, the Department of Community and Cultural Affairs (in conjunction with the P.E.I. Public Utilities Commission and the Federation of Municipalities) prepare informational materials and provide these to all municipalities so there is a clear understanding among the volunteer laypeople involved in municipal government and local residents of the necessary legal, financial and practical steps involved in undertaking a capital expenditure project of this type and the alternatives open to them through such devices as large lot subdivision requirements.

This recommendation was implemented.

154. THAT provincial policies, including the location of public buildings and the issuance of building permits for new construction, should seek to enhance communities that have taken steps to preserve the quality of their water resources.

Some progress has been made through the Drinking Water Strategy and the Department of Environment, Energy and Forestry's efforts to promote a more community-based watershed planning and management program approach.

155. THAT measures prohibiting raw sewage from entering streams and rivers and measures involving standards for the installation and

maintenance of on-site wells and septic tanks be publicized and strictly enforced.

This recommendation is being implemented. Government has revised the Environmental Protection Act Regulations and upgraded construction standards for wells and on-site sewage disposal systems, and through continued enforcement, has dealt with issues of non-compliance. A protocol for the investigation of Escherichia coli contamination of private wells includes an inspection of on-site sewage disposal systems, with mandatory replacement of sub-standard or faulty system components.

156. THAT the respective roles and functions of the Public Utilities Commission, the Department of Community and Cultural Affairs and the Department of the Environment in regard to sewer and water issues be clearly defined and appropriate changes in legislation be made where necessary.

This issue continues to evolve through various initiatives like the public consultations on “managing land and water on a watershed basis”, the Drinking Water Strategy, Alternative Land Use Services Program and the work of the Commission on Nitrates in Groundwater, all helping to define roles and responsibilities and set future direction for various Departments through public, community and user group engagement.

157. THAT appropriate measures be taken to ensure better coordination mechanisms in order to streamline sewer and water planning, development and regulation between departments and the Public Utilities Commission, as well as between and among various jurisdictions, other utilities and other agencies.

See recommendations 149 and 150. On the issue of rate setting, this responsibility was transferred from the former Public Utilities Commission to the cities and towns at the time of the 1995 amalgamation.

158. THAT the Department of Community and Cultural Affairs, in conjunction with the Department of Agriculture, develop greater public awareness on the means of preventing point source contamination of groundwater, particularly where such contamination stems

from hazardous waste and/or agricultural practices.

The lead department on issues addressed by this recommendation has been the Department of Environment, Energy and Forestry. Progress has been made through the Drinking Water Strategy that included revisions to water well and on-site sewage disposal system regulations, the establishment of regulations for central water supply and wastewater systems (including provisions for well field protection), as well as the underground tank program, and an on-going pesticide monitoring program. Other important measures include steps by the Department of Agriculture to provide technical and financial assistance to farmers for environmental improvements through various programs. One of the key successes in this regard was a substantial improvement in manure storage facilities. It cannot be said however that these initiatives have resulted in significant improvement to key indicators of surface and groundwater quality (see Appendix VII).

159. THAT the comprehensive land use plan for the province include developmental controls for the protection of watershed areas in order to preserve water quality.

Government has adopted the watershed as the basic water management area and has placed a high priority on community-based watershed planning and management. This approach was supported through the Department of Environment, Energy and Forestry’s public consultation on watersheds as well as by the Commission on Nitrates in Groundwater. The Department continues to explore opportunities with community groups involving the application of the “watershed” as the basis for local governance structures.

GARBAGE:

This issue falls outside the Commission’s mandate.

160. THAT the derelict car program be given greater prominence and, in particular, that its availability be more widely publicized and that a renewed effort be made to have public cooperation in removing abandoned car bodies from the Province.

161. THAT the existing provisions of the *Automobile Junk Yards Act* be strictly enforced to ensure that collections of derelict car bodies are removed through the derelict car program or located in a properly licensed junk yard and that automobile junk yards and their contents are entirely screened from view in accordance with the legislation.

162. THAT the penalties in the *Automobile Junk Yards Act* be amended so that the fine for the first offense is not less than \$100 and not more than \$1000 (with imprisonment of not more than 30 days in default of payment) and so that the fine for the second and subsequent offenses is not less than \$1000 and in default of payment not less than 90 days imprisonment.

163. THAT derelict farm implements and machinery be part of the recycling program now involving derelict motor vehicles.

164. THAT the *Automobile Junk Yards Act* be amended to include farm implements and machinery within its provisions.

165. THAT the Department of the Environment develop a program on the disposal of hazardous waste and that such a program include both consumer education on what constitutes hazardous household waste products and an immediate and ongoing system for the collection and disposal of this type of waste.

166. THAT the Minister of the Environment review the effect of the Litter Control Regulations after one year of operation and, if littering from fast-food sources has continued to be a problem, that the Province of Prince Edward Island should consider the imposition of more stringent measures, such as a financial levy of five (5) cents per item for each disposal container, package or utensil used by fast-food take-out establishments, a ban on the use of certain types of disposable containers, and/or substantially increased financial penalties for littering.

167. THAT the Province call upon the Government of Canada for measures to reduce effectively junk mail volume.

168. THAT the Province review all its paper requirements with a view to eliminating waste and, wherever possible, participating in paper recycling programs and generating demand for recycled papers. In particular, to demonstrate

political leadership, stationery and greeting cards used by the Premier and members of the Cabinet should utilize recycled paper and the practice of widespread circulation of greeting cards at Christmas should be eliminated. In addition, government publications that receive a high public profile, such as tourism literature and annual departmental records, should use recycled paper, wherever possible.

169. THAT the Province ask the U.P.E.I. Faculty of Business Administration to have students prepare projects that examine potential recycling industries that would be feasible for Prince Edward Island.

CHEMICALS:

170. THAT the Province undertake a comprehensive survey of pesticides to determine exactly which pesticides are used, by whom, how frequently, at what application rates, on how much acreage, where and in what quantities, whether used on the farm, in the forest or in residential settings.

This recommendation has been partially implemented. Farmers and commercial pesticide applicators are required under the Pesticides Control Act to keep a record of all pesticide applications in a manner prescribed by the Regulations (subsection 9(1)).

171. THAT licensed sellers be required to maintain records regarding the sale or other disposition of pesticides, that these records identify exactly which pesticides are involved (and not just such composite categories of insecticides, herbicides and fungicides), that annual reporting of such data be mandated, and that the Province institute a data bank which would include such information.

As a condition of licensing, vendors must report sales of all pesticides to the Department of Environment, Energy and Forestry annually (section 12 of the Regulations). The report produced by the Department is available to the public and lists sales by active ingredient grouped into three categories: herbicides, insecticides and fungicides.

172. THAT the Province plan and implement a phased-in system of tighter regulatory controls in relation to chemicals that are used as pesticides

and that such a plan include a mandatory licensing system for all users and compulsory safety courses as a prerequisite for obtaining or renewing licenses.

New Regulations under the Pesticide Control Act came into effect in 2005. A number of the changes were made in response to the February 2004 report of the Environmental Advisory Council. Among the changes made is a clear indication that pesticide standards are those established under the federal Pest Control Products Act.

173. THAT government make users of pesticides aware of their potential liability position under the common law.

The issue of liability is covered in mandatory training programs offered to farmers, vendors and commercial applicators. There is no evidence that Government has done the same for users of “domestic” class pesticides used for cosmetic purposes on a private property.

174. THAT the Pesticides Control Act Regulations provide standards for ground spraying.

Section 39 in the Regulations made under the Pesticides Control Act includes a maximum wind speed standard for ground spraying. A number of other sections of the Regulations cover such things as the maintenance of buffers, filling and washing, certification and record keeping.

175. THAT the Pesticides Control Regulations include measures relating to the safe use of chemicals in residential settings.

Progress has been made in this area. The present Regulations apply to the display and sale of ‘domestic’ class pesticides and state clearly that they are to be used in accordance with the label, covered under the federal Pest Control Products Act. Sections 24 and 25 of the Pesticide Control Act Regulations require mandatory posting and notification for residential landscape and structural pesticide applications made by a licensed applicator. Finally, Government announced recently that it would introduce legislation banning the sale of “cosmetic” pesticides starting in 2010.

176. THAT the data bank on pesticides include such information on farm chemicals as compatibilities

and incompatibilities, “cocktail” effects, biomagnification and other data that would assist producers in providing and improving their food safety assurances.

The federal Pesticide Management Regulatory Agency maintains such a data bank. Training here for all certified applicators includes instruction on compatibilities and incompatibilities as well known cocktail effects, biomagnification, etc.

177. THAT the Province continue and accelerate its programs of public awareness and education in connection with the healthy and safe usage of all chemicals, including measures aimed at casual users of both pesticides and household chemicals.

There is little evidence that the Island Waste Management Corporation or the Department of Environment, Energy and Forestry have increased educational efforts in this regard. The Department is developing a CD for homeowners on the proper use and disposal of domestic class pesticides.

178. THAT there be a province-wide compendium of fertilizer and limestone usage, prepared and, based on its findings, that standards for the protection of groundwater (including, where necessary, the designation of watershed areas within which the use of soil additives is curtailed or eliminated) be developed.

Please refer to the “Report of the Commission on Nitrates in Groundwater” <http://www.gov.pe.ca/photos/original/cofNitrate.s.pdf>. The report calls for significant changes to farming practices, including mandatory three-year crop rotation and a nutrient management/accounting system for all crop and livestock producers. The provincial government is analyzing the report and officials are working on a five-year implementation plan for the 43 recommendations. However, Government has not announced its plans publicly.

179. THAT there be more public education focused on the best use of fertilizers and lime and the problems that unwise usage can create for the environment.

See recommendation 178

WEEDS:

180. THAT the Province of Prince Edward Island conduct an immediate war on weeds through a variety of measures, including the implementation of laws to obliterate any weeds detrimental to the agricultural community; the development of a public awareness campaign on the adverse effects of weeds; the implementation of measures to control weeds on public lands, particularly those owned or leased by the Agricultural Development Corporation; the provision of some incentive or award for praiseworthy efforts in weed control in conjunction with any private sector organization(s) dedicated to beautification objectives; and the encouragement of municipal measures to control weeds in areas within municipal jurisdiction.

There is no evidence that this recommendation was acted upon by Government and the agricultural industry. The Weed Control Act and Regulations give the power to the Minister of Agriculture to declare an organism a “noxious weed”. The only species covered by a specific Regulation is the purple loosestrife, declared a noxious weed in 1987.

SOIL EROSION AND DEGRADATION:

181. THAT all Agricultural Development Corporation leases contain provisions regarding soil conservation measures that outline the obligations of landlord and tenant. As a minimum, these leases should clearly specify the crop rotation cycle required of the tenant, the preservation of green belts around streams and other waterways and any areas of the property requiring special land management practices, such as contour ploughing and harvesting, or the establishment, preservation or enhancement of hedgerows.

This recommendation was implemented. The form of lease used by the Department of Transportation and Public Works for agricultural land states that the land is to be cultivated, used and managed in a “proper husbandlike manner” and in compliance with the Agricultural Crop Rotation Act and the buffer zone provisions of the Environmental Protection Act. The lease also states that an

erosion control plan must be completed for the property within the first year of the lease.

182. THAT all mortgages given to the Agricultural Development Corporation and the Prince Edward Island Lending Authority should contain covenants that spell out appropriate conservation measures and enforcement procedures to ensure these provisions are honoured.

See recommendation 181

183. THAT all funded programs for the agricultural community be reviewed and, where possible, revised so that selective soil conservation practices become tied obligation(s) to specific funded programs. As a starting point, eligibility for crop insurance should depend on suitable crop rotation practices by an applicant and the limestone subsidy should be available only to applicants prepared to enter into an agreement for green belt preservation along waterways.

This recommendation was not implemented in the case of crop insurance eligibility. This being said, the Canada - Prince Edward Island Agriculture Stewardship Program provides technical and financial assistance to farmers for environmental initiatives. One of the eligibility criteria is the completion of an Enhanced Environmental Farm Plan within the past five years. Compliance with the Plan by the farmer is voluntary however and the financial assistance is not conditional.

184. THAT the Department of Agriculture, in cooperation with the Agricultural Development Corporation, develop a simple model lease agreement which incorporates basic soil conservation measures and encourages the parties to land rentals to use written leases which could be derived from this model. In addition, the Department of Agriculture and the Agricultural Development Corporation should provide information for both landlords and tenants of farm land on landlord/tenant compensation for land deterioration and for unused benefits arising from long-term tenant investment in the land.

This recommendation was implemented. The form of lease used by the Department of Transportation and Public Works for agricultural land states that the land is to be cultivated, used and managed in a “proper husbandlike manner” and in compliance with

the Agricultural Crop Rotation Act and the buffer zone provisions of the Environmental Protection Act. The lease also states that an erosion control plan must be completed for the property within the first year of the lease.

185. THAT any special concessions in property taxes relating to the agricultural use of land require landlords to have long-term, written leases with soil conservation provisions in order to qualify for such concessions.

This recommendation was not implemented. However, the province does provide property tax relief under the Environmental Property Tax Credit Program to landowners who are required by law to set aside agricultural land which is greater than a 9% slope or which falls within a watercourse buffer zone, or who choose to install certain “environmentally beneficial farm structures”.

186. THAT the Agricultural Development Corporation should examine its inventory of land to determine parcels on which suitable long-term conservation measures would be meaningful and should then determine priorities for accomplishing such measures, so that these parcels could serve as demonstration projects for the agricultural community. Such demonstration projects should be cost-shared by written agreement between tenant and owner with the financial obligations determined by such factors as the term of the lease and the value of such improvements at the end of the term of the tenancy.

This recommendation was not implemented.

187. THAT a recognition program should be developed to acknowledge the efforts of farmers who practice good soil conservation methods. Successful recipients should be given signs they could affix to the property that has benefitted from the conservation practices.

The Federation of Agriculture and the PEI Soil and Crop Improvement Association have established programs and awards to encourage the adoption of better soil conservation practices.

188. THAT the Agricultural Development Corporation and the Department of Agriculture should develop and promote a land exchange program that would encourage more farmers to

trade parcels of land for short-term exchanges in order to facilitate greater crop rotation and otherwise improve land management practices.

This recommendation was not implemented.

189. THAT awareness on soil conservation problems should be extended to all members of the public, rather than be isolated as an agricultural issue, and that this goal be accomplished through a variety of means, including: the preparation of a brochure on soil erosion for all property owners, which should be included in annual property tax bills; the distribution of the model lease agreement to all property owners who own more than 5 acres of land; the encouragement of local media participation in bringing this issue to the attention of the public.

This recommendation was not implemented

PROPERTY TAX:

190. THAT the Department of Finance review the present property tax regime with particular regard to identifying the various effects of adopting a revenue-neutral alteration in the commercial tax levy so that a single provincial-municipal rate is adopted on a province-wide basis with redistribution of the municipal portion of the tax among municipalities in accordance with population proportions; and that the findings of such a review be subject to public discussion before changes are implemented.

This recommendation was not implemented. In 1990 there was a uniform commercial and non-commercial provincial property tax rate of \$1.50 per \$100 of assessment. Residents of PEI received a \$0.75 credit on the non-commercial assessments. Each municipality sets its own commercial and non-commercial rates based on services provided. Other than the credit being changed from \$0.75 to \$0.50 the situation is at it was in 2009.

191. THAT the province retain Section 5 of the *Real Property Tax Act* and, in the event that the provisions of Section 5 are successfully invalidated through legal proceedings, then the province move to replace any lost revenues through the introduction of an alternative form of taxation.

Section 5 of the Real Property Tax Act has survived a number of legal challenges and continues to apply.

192. THAT the special considerations now granted farm property and *bona fide* farmers under the provisions of the *Real Property Assessment Act* and the *Real Property Tax Act* be granted only where the taxpayer has filed with the province a statutory declaration as to the taxpayer's eligibility for such special considerations and the taxpayer's compliance with the provisions of the *Lands Protection Act*.

This recommendation was implemented

193. THAT land use policies for the long-term preservation of farmland for agricultural use should be linked to these taxation measures.

There is no land use policy encouraging the long-term preservation of farmland for agricultural use.

194. THAT the Department of Finance follow the provisions of the *Real Property Tax Act* in respect to the sale of land in satisfaction of overdue property taxes, that such sales not be halted simply because of legal defects in title and that the *Real Property Tax Act* be amended to clarify that the *bona fide* purchaser at a tax sale acquires title from the Crown and not the title of the defaulting taxpayer.

Subsection 17(3) of the Real Property Tax Act states that the purchaser is receiving clear title to the property free of any encumbrances. The current tax deed (Form H of the Regulations) clearly indicates that the property is being deeded by the Provincial Treasurer to the purchaser. There has been no change to the practice of putting a tax sale on hold pending clarification of title.

SIGNAGE:

This issue falls outside the Commission's mandate. The Commission notes however that Government commissioned a comprehensive review of its signage policy by the Signage Policy Review Committee. The Committee reported its findings in 2001.

195. THAT the Province examine its traffic signage at its entry points with the objective of attempting to reduce, wherever possible, the signage impact now existing in these areas.

196. THAT government review its directional signage in the Province and, in particular, that distance information be provided on directional signs as these are being repaired or replaced; that research be conducted to find a safe and effective way to provide route numbers on utility poles with the results being used to increase route signage, particularly on rural, non-arterial roads; that directional signs indicating distant major centre(s) include more of the towns and villages located on that route; that directional signs, particularly those marking communities, be reviewed for appearances and, where necessary, be repainted or otherwise improved in appearance and/or positioning; and that more rivers, streams and rural roads be signed with small markers.

197. THAT the Province clarify the area over which it retains jurisdiction for signage control and amend its legislation to reflect a consistent position.

198. THAT the Highway Advertisements Regulations be amended to exempt from licensing requirements small signs that identify heritage sites or convey historical information, family signs that identify householders, signs that indicate field trials, conservation projects or other types of land-oriented demonstrations and signs that announce some form of recognition, award or merit; and that both the public and private sectors encourage more usage of quality signage for these purposes.

199. THAT the Highway Advertisements Regulations be reviewed to clarify the relationship between Sections 4 and 4.1 and to identify the rationale for different size and height standards in these provisions and that appropriate amendments to these Regulations be made.

200. THAT signs which were of the mobile type and which have now been attached to a permanent base not be licensed in the province and that any signs of this nature now in use be removed through the enforcement process.

201. THAT the prohibition with respect to mobile signs be imposed on a province-wide basis.

202. THAT the Highway Advertisements Regulations be amended to remove the exemption from licensing now accorded advertisements relating to federal, provincial, municipal or regional school board elections; that licenses for such advertisements be available, without fees, on condition that the applicant(s) be personally responsible for the removal of such signage following the relevant election; and that such provisions be strictly enforced.
203. THAT the *Highway Advertisements Act* be amended to provide for the removal of not just the “advertisement” (as now provided in Section 4 of the Act) but any structural devices or supports used in connection with the advertisement portion of the signage and that, following such amendment, any enforcement of the legislation that requires removal of an advertisement also include removal of the structure(s) or support(s) used in conjunction with the advertisement.
204. THAT the Highway Advertisements Regulations be amended to provide that all signs are licensed on condition that the signs are not to be abandoned or neglected; that revocation of a license for breach of any conditions can take place, at any time, on notice; that the sign must then be repaired or replaced in order to have the license reinstated and that failure to do so can cause removal of the signage in the same way as if the sign was never properly licensed.
205. THAT the province encourage real estate firms to take a more responsible position in limiting real estate signs and, in particular, to remove these signs promptly once a property has been sold, to replace signs that are faded or otherwise in poor condition, and to use small directional maps in their weekly bulletins as an alternative to the widespread use of directional signage in rural areas.
206. THAT the *Highway Advertisements Act* be amended to establish within the law that the public interest requires that protection be given to rural and urban landscapes; to give legal status to the Highway Information Sign System; to show the goals and objectives of the Highway Information Sign system program (including its aim of providing alternative signage for directional information and not roadside advertising); and to include the rules under which applicants may be refused signage or denied the number of H.I.S.S. signs for which application has been made.
207. THAT the Department of Tourism and Parks provide a standard provincial road map in a poster format to each service station operator in the province with the request that the map be displayed in a window location such that it may be examined from the exterior; that the Department encourage local tourist and other commercial organizations to supplement this map program with more local maps or other promotional materials featuring directional information for businesses to operate as an alternative to directional signage for local businesses.
208. THAT the province promote greater signage control by providing certain additional minimal standards that would include all municipalities (except Charlottetown and Summerside); that municipalities be able to have signage control greater than these minimal standards; that Charlottetown and Summerside be included within these minimal standards if they have not accepted comparable ones within 24 months; and that the province assist municipalities in the development of model signage control bylaws.
209. THAT in addition to current minimal standards, there be a complete prohibition on exterior rate signs and outdoor flashing signs.
210. THAT the availability of H.I.S.S. signs as driveway markers be discouraged unless highway safety or locational obscurity render the signage necessary or advisable; and that the H.I.S.S. program be severely curtailed in areas where the density of commercial businesses does not merit the widespread usage of directional/distance information and/or where the number of businesses would result in corridors of H.I.S.S. signs along the roadway.
211. THAT the province continue to work with commercial organizations in providing business owners with information on good signage and the importance of signage control.
212. THAT the public and private sectors develop more signage with flowers and other natural vegetation.
213. THAT the prohibition against placing signs on highway shoulders (particularly of the makeshift “New Potatoes 4-Sale” type) be rigidly enforced.

FIXED LINK:

This issue falls outside the Commission's mandate.

- 214.THAT, in the event that the Government of Canada proceeds further with a fixed link project, the Province of Prince Edward Island undertake a critical evaluation of its future highway needs to determine not only appropriate compensation for the impact of increased traffic on the province's highway system but also to plan the changes necessary to that system in order to meet these needs.
- 215.THAT, in the event that the Government of Canada proceeds further with a fixed link project, the province endeavour to ensure appropriate high quality standards for the maintenance of the link's appearance over a thirty-five year timespan be included in the agreement between the developer and the Government of Canada.
- 216.THAT, in the event that the Government of Canada proceeds further with a fixed link project, the province ensure it has the necessary legislative measures in place to regulate dredging spoils in such a fashion that the integrity of the landscape is preserved and the environment is protected.
- 217.THAT, in the event that the Government of Canada proceeds further with a fixed link project, the province assume a pro-active role to ensure aesthetic deterioration caused by the pre-

construction and construction phases of the project is minimized.

- 218.THAT, in the event that the Government of Canada proceeds further with a fixed link project, the province recognize the special needs of the Borden area in relation to its infrastructure, particularly in regard to the establishment of a water supply system, and respond in a positive way to assist the community in meeting these needs.
- 219.THAT, in the event that the Government of Canada proceeds further with a fixed link project, both the province and the local governments in the Borden area adopt an intensive, pro-active stance towards land use planning in the area.
- 220.THAT, in the event that the Government of Canada proceeds further with a fixed link project, the province provide immediate and extensive land use planning assistance for the Borden and surrounding area, including the professional services of a land use planner and a landscape architect and that these professionals have some expertise in either rural land use planning and/or in mega-project planning.
- 221.THAT, in the event that the Government of Canada proceeds further with a fixed link project, the province institute comprehensive contingency planning, closely aligned with its comprehensive land use plan, in order to accentuate the positive aspects of this project and to mitigate the potential negative effects.

APPENDIX VI

UPDATE ON 1997 ROUND TABLE ON RESOURCE LAND USE AND STEWARDSHIP RECOMMENDATIONS

SOIL QUALITY

1. We recommend that the responsibility for maintaining soil quality, for controlling erosion risk and for establishing riparian (buffer) zones be vested in the landowner, not the tenant or the lessee, and that this responsibility be recognized in law. All programs, policies and legislation implemented by government and industry groups must respect this principle.

This recommendation was made by the Round Table as a “general” statement meant to highlight the need for the landowner to accept responsibility for soil quality. A review of programs, policies and legislation introduced since the Round Table reported indicates that this principle is recognized and respected by Government at least.

2. We recommend that the federal and provincial governments provide the necessary financial support so that farm organizations can promote the Environmental Farm Plan Initiative and offer plans to all farmers by the end of calendar year 2000.

The Enhanced Environmental Farm Plan is the successor to the initiative referred to in the above recommendation and was launched in 2004. While it remains a voluntary program, the completion of a Plan is a prerequisite to accessing financial incentives offered through various government-sponsored environmental management programs. The program is administered by the Federation of Agriculture <http://www.peifa.ca/>.

3. We recommend that Government, together with the potato producing and processing sectors, develop an awards program, to be called “The Lieutenant Governor’s Award for Soil Conservation.”

In response to this recommendation, the Department of Agriculture and the Federation of Agriculture created an award program, now called the “Honourable Gilbert R. Clements

Award for Excellence in Environmental Farm Planning”.

4. We recommend that Agriculture and Agri-Food Canada’s Charlottetown Research Station place a higher priority on research and demonstration of better soil conservation practices for potatoes, specifically:

- research into other appropriate cash crops for potato rotations;
- research into the impact of various potato rotation regimes on levels of soil organic matter;
- research into reduced-tillage potato production; and
- demonstration of soil conservation practices on private farms.

Agriculture and Agri-Food Canada’s Crops and Livestock Research Centre in its program overview lists soil and water conservation and sustainable production systems as among its priorities

http://www4.agr.gc.ca/resources/prod/doc/science/pdf/CLRC-CRCB_e.pdf. There is no evidence that these areas of research have expanded or that they will expand in the future.

5. We recommend that the Department of Agriculture and Forestry and Island farm organizations continue to support the efforts of the Eastern Canada Soil and Water Conservation Centre, particularly those efforts that have practical application to soil and water conservation on Prince Edward Island.

The most recent annual report of the Centre (2006-2007) shows that it remains active in soil and water conservation research and technology transfer. Prince Edward Island is represented on the Board of Directors by Government and industry representatives and a number of Centre-sponsored projects are underway here, particularly in the area of agro-forestry, nutrient management and soil conservation <http://www.ccse-swcc.nb.ca/>.

6. We recommend that the Department of Agriculture and Forestry increase the operating budget of the Soil and Water Unit and of the Soil and Feed Testing Laboratory by increments of 25 per cent in the fiscal years 1998-99 and 1999-2000; that funding be targeted to soil conservation and improvement; and that it be maintained at this increased level.

Budgets have remained fairly constant since this recommendation was made.

7. We recommend that the Department of Agriculture and Forestry complete work on the Soil Erosion Risk Index so that it is ready for use by the 1998 field season.

This recommendation was implemented, and the Enhanced Environmental Farm Planning process makes use of the index in the farm self-assessment process.

8. We recommend that the Department of Agriculture and Forestry make the necessary improvements to the Geographic Information System so that the following parameters can be measured and reported on an ongoing basis, with a degree of accuracy of ± 10 per cent, beginning with the 1998 field season:

- area of land by major crop and forest cover type;
- area of farm land with acceptable soil conservation practices;
- level of compliance with the mandatory riparian (buffer) zone; and
- level of compliance with a potato crop rotation standard.

The intent of this recommendation was to encourage Government and the agricultural industry to use the Geographic Information System as a management and enforcement tool. While the GIS has the capability to measure the parameters listed above to a degree of accuracy of $\pm 10\%$, the data are not compiled or used for reporting purposes or for determining level of compliance with the Environmental Protection Act buffer zone Regulations or the Agricultural Crop Rotation Act. This is because the level of accuracy is not considered to be acceptable by the courts.

Nevertheless, GIS has become a very valuable management and planning tool and reports on a property level are made available to

individual land owners upon request. The availability of new LIDAR (Light Detection and Ranging) imagery will improve the accuracy of the Department of Agriculture's GIS topography layer which is used for soil conservation planning at the farm level and for the detection of areas with greater than a 9% slope. The GIS stream layer was redone recently, and there is a layer showing land which has received some form of soil conservation treatment.

The Department of Agriculture estimates that, of the 100,000 hectares (250,000 acres) in potato production, 20% has received some form of soil conservation treatment, 40% requires little treatment and 40% is not up to standard. The area of land in potato production that has received some form of soil conservation treatment since this recommendation was made in 1997 has doubled.

In summary, until Government and the agricultural industry agree on the need to collect land use information directly from farmers, it will not be possible to measure accurately the parameters identified in this recommendation.

9. We recommend further that information be collected directly from farmers on their soil conservation practices and that it be used to verify the accuracy of information obtained from the Geographic Information System.

This recommendation was not implemented mainly because the agriculture industry has not accepted that soil conservation practices should be regulated in any way.

10. We recommend that the federal and provincial governments introduce a successor to the Green Plan to provide cost-shared technical and financial assistance for soil conservation projects. Program details must be developed in consultation with industry. Completion of an Environmental Farm Plan must be a pre-condition for funding, and assistance should be targeted to the following:

- soil stabilization for fields in row-crop production;
- establishment of hedgerows and shelter belts;
- establishment of permanent vegetative cover in riparian (buffer) zones;

- manure storage and handling systems;
- fencing and watering systems for livestock; and
- establishment of permanent pasture, forest cover or other appropriate crops for land that has a slope greater than nine per cent.

This recommendation was implemented. The Canada - Prince Edward Island Agriculture Stewardship Program

<http://www.gov.pe.ca/af/agweb/> is the latest federal-provincial successor to the Green Plan. It provides technical and financial assistance to farmers for all of the initiatives listed above, as well as others not listed. One of the eligibility criteria is the completion of an Enhanced Environmental Farm Plan within the past five years. In order to qualify for assistance, the issue to be addressed must be identified in the Plan.

In addition, the Alternative Land Use Services (ALUS) Program provides financial incentives to landowners and farmers to establish trees in buffer zones, and to retire land for the purpose of expanding buffer zones, for establishing permanent grassed headlands, and for taking high-sloped land out of production. Financial incentives are also provided for land taken out of production for soil conservation structures. The incentives offered are in the form of an annual per hectare payment. Program details are found at the following website address: <http://www.gov.pe.ca/af/agweb/>.

11. We recommend that the federal and provincial governments work with the livestock and potato sectors to implement actions proposed in the Livestock Industry Strategic Plan to increase the level of cooperation between the two sectors.

There is no evidence that this recommendation was implemented.

12. We recommend that the soil conservation code of practice for potato production as outlined in Tables 3 and 4 be adopted immediately and that it form the basis for all government and industry efforts to improve soil quality on potato land.

A guide entitled “Best Management Practices - Soil Conservation for Potato Production” was released by Government in 1998 and is available from Island Information Services. The press release made reference to the Round Table recommendations on soil quality,

included a statement from the Potato Producers Association, and mentioned that the manual would serve as a companion to the Environmental Farm Plan. The Code is used for educational purposes but it was never adopted formally by the Potato Producers Association or as an approved code of practice under the Farm Practices Act.

13. We recommend that the industry adopt a mandatory crop rotation standard for potatoes based on the following principle: that potatoes are to be grown no more frequently than one year in three, unless the producer has an alternative plan that will maintain soil quality. Such a plan must be approved by a qualified Government soil engineer.

The Agricultural Crop Rotation Act came into effect in 2001. One of its objectives is “to preserve soil productivity”. It states in part that: “...no grower shall plant and no landowner shall permit regulated crops to be planted on any area of land greater than 1.0 hectare at any time for more than one calendar year in any three consecutive calendar years”.

There are however exceptions to this rule. If a grower’s approved management plan allows for a different crop rotation or if the regulated crop is to be grown on land that was in sod for a significant period of time, the rotation can be shortened so that a regulated crop can be planted legally more often than one year in three. There is even a section in the Regulations (section 6) that allows a grower to “deviate from a management plan”.

The Act is enforced by the Department of Environment, Energy and Forestry and the Department of Agriculture is responsible for approving management plans. To date, no charges have been laid successfully under the crop rotation sections of the Act and evidence shows that fewer potato producers are registering management plans with the Department of Agriculture.

The report of the Commission on Nitrates in Groundwater recommends that the Act be enforced more stringently and that there be no exceptions allowed to mandatory three-year crop rotation. Consultation with Government officials indicates that this and other matters raised in the Report are currently being considered by Executive Council.

In 1997, on average, potatoes were grown 1 year in 2.4 years. There is no evidence that the Act has led to an increase in the area of land in three year rotation in the case of potato production or that it has had any impact on the average length of the potato rotation. Over this period, the acreage in potato production has declined by approximately 20%, and this may have had an impact on the average rotation.

14. We recommend that the federal and provincial governments immediately begin to enforce those sections of the *Fisheries Act* and the *Environmental Protection Act* that protect watercourses against contamination from agricultural soil erosion and that they take appropriate measures to correct any deficiencies.

It is important to note that the intent of this recommendation was to encourage regulatory agencies to focus more attention on watercourse siltation resulting from uncontrolled soil erosion, not contamination from agricultural chemicals. There is no evidence that agencies responsible for the enforcement of these two acts have made any special efforts to investigate or lay charges against landowners who are responsible for contaminating watercourses from soil runoff. Any measures taken by governments have focused rather on preventive approaches.

15. We recommend that Section 37 of the *Roads Act* be amended to establish a permanent “no-cultivation” zone within the public right-of-way and that the Department of Transportation and Public Works make every attempt to establish and maintain a permanent vegetative cover in ditches and along roadsides.

Although the Department acknowledged the problem of farmers cultivating the public right-of-way at the time of the release of the Round Table report and may have become more vigilant in restricting this practice, no change was made to the Roads Act in response to the recommendation. The Environmental Management Section of the Department of Transportation and Public Works was established to provide environmental quality control and assurance for Department activities and initiatives. The Section is responsible to ensure continued environmental management and regulatory compliance during construction and maintenance works performed by the

Department or by others within the Provincial right-of way. The Section also plays a key role in addressing a variety of public issues relative to environmental management including environmental assessments and studies, and program / policy development.

16. We recommend that the *Environmental Protection Act* be amended to make it illegal for all forms of livestock to have access to watercourses and to travel within the designated riparian (buffer) zone.

This recommendation was implemented.

17. We recommend that the *Environmental Protection Act* be amended to make it illegal to produce any row crop on land with a slope greater than nine per cent (i.e. a nine-foot vertical rise over one hundred feet of distance, measured horizontally). Pasture, forage and cereals would be allowed.

This recommendation was partially implemented. The Environmental Protection Act was amended (Part VIII of the Watercourse and Wetland Protection Regulations) to make it illegal to grow a row crop on land with a slope greater than 9%, unless the landowner does so under the terms of a management plan approved by a “management specialist”, defined in the Regulations as an agrologist or an engineer.

18. We recommend that organic matter content be adopted as the principal indicator of soil quality for Prince Edward Island and that three per cent be established as the minimum standard of good-quality agricultural land. We also recommend that the necessary changes be made to the provincial Soil and Feed Testing Laboratory in the fiscal year 1998-99 to enable the use of the method of complete carbon combustion for measuring organic matter.

In response to this recommendation and the two that follow, the Department of Agriculture released the “Prince Edward Island Soil Quality Monitoring Report 1999-2000” http://www.gov.pe.ca/photos/original/af_fact_soilq.pdf. The report presents results and analysis from three years of data collection. Its stated purpose was to develop baseline data and to determine if the indicators of soil quality proposed by the Round Table were suitable. The soil quality monitoring project is ongoing

and data for the 1998-2006 period have been analyzed. Although the results have not been published, some preliminary conclusions can be drawn:

- Organic matter, phosphorus content and cation exchange capacity are good indicators of soil quality; soil acidity is not;
- The 3% standard for organic matter is an indicator of good-quality agricultural land;
- The 3% level cannot be maintained if potatoes are grown more frequently than one year in three and if the rotation does not include a forage crop;
- Spring plowing and winter cover both have a positive impact on organic matter content; and
- Organic matter levels are dropping but not enough data are available to conclude that this is a trend.

19. We recommend that the Department of Agriculture and Forestry and Agriculture and Agri-Food Canada continue the development of a comprehensive soil quality index to include the following indicators: organic matter, soil acidity (pH), phosphorus content and cation exchange capacity, and that the index be in operation for the 1998 field season.

See recommendation 18

20. We recommend that the federal and provincial governments finance the initial establishment of a province-wide soil quality monitoring network and that this network be in operation by the 1999 field season.

See recommendation 18

WATER QUALITY

21. We recommend that the federal and provincial governments continue to provide financial and technical support to watershed improvement groups and, in particular, those that are:

- capable of demonstrating appropriate techniques in environmental management; and
- accountable in the areas of financial management, public education and the achievement of results.

The Department of Environment, Energy and Forestry's website lists 21 community watershed organizations. An excellent on-line tool, the "Guide to Watershed Planning on Prince Edward Island"

http://www.gov.pe.ca/photos/original/eef_water_guide.pdf is available on the website as well as a list of available financial assistance programs and Department staff who work as Watershed Coordinators in Montague, O'Leary and Kensington. A number of provincial government programs are available, including the Watershed Management Fund, the Greening Spaces Program, the Environment Futures Program and the Wildlife Conservation Fund. Federal programs are also listed on the website. Data for the Watershed Management Program show that 46 community watershed organizations have benefitted from the Program over the past five years and that in excess of \$900,000 has been contributed by Government to various projects. Expenditures have increased from \$100,000 in 2004-2005 to \$320,000 in 2008-2009. A searchable database lists projects ranging from less than \$2,000 to \$100,000. The 2007 annual report of the Wildlife Conservation Fund lists 27 projects under the general headings of habitat enhancement, education and research, and total expenditures of \$115,000

http://www.gov.pe.ca/photos/original/2007WCF_report.pdf.

22. We recommend that Government and waste management commissions increase educational efforts designed to inform Islanders about the dangers of common household chemicals and provide safer alternatives for their proper disposal.

There is little evidence that the Island Waste Management Corporation or the Department of Environment, Energy and Forestry have increased educational efforts in this regard. The Department is developing a CD for homeowners on the proper use and disposal of domestic class pesticides.

23. We recommend that Government provide adequate financial incentives and technical assistance for the construction of proper on-farm manure storage facilities for new and established livestock operations.

The provincial "Manure Management Guidelines" were updated in 1999 following a

round of public consultations in response to a discussion paper developed jointly by the Departments of Agriculture and Environment. The Guidelines contain numerous references to applicable provincial and federal legislation as well as Department of Agriculture policies and Ministerial orders. This was followed in 2001 by the release of "Best Management Practices - Agricultural Waste Management". The Canada - Prince Edward Island Agriculture Stewardship Program provides technical and financial assistance to farmers for:

- *Manure storage and transfer systems;*
- *Reducing water use and manure volumes;*
- *Farmyard runoff control;*
- *Covered feedlots; and*
- *Relocating livestock facilities from riparian zones.*

<http://www.gov.pe.ca/af/agweb/index.php3?number=1011900&lang=E:>

24. We recommend that local research efforts by federal and provincial government agencies be directed toward gaining a better understanding of the relationship between total nitrogen application on agricultural land and the contamination of ground and surface water by its nitrate form (NO₃). The results of this research should be used by Government and industry to develop practical remedies - legal and otherwise - to restore wells contaminated by excessive nitrate levels.

The "Report of the Commission on Nitrates in Groundwater"

<http://www.gov.pe.ca/photos/original/cofNitrate.s.pdf> contains an extensive list of reports as well as medical and environmental studies on nitrates, their impact and mitigative measures. The recommendations in the report call for significant changes to farming practices, including mandatory three-year crop rotation and a nutrient management/accounting system for all crop and livestock producers. The provincial government is analyzing the report and officials are working on a five-year implementation plan for the 43 recommendations. However, Government has not announced its plans publicly.

25. We recommend that the *Environmental Protection Act* be amended to establish mandatory riparian (buffer) zones adjacent to all watercourses as follows:

- having a minimum width of ten (10) metres, measured on the horizontal, from the edge of all intermittent streams and springs; and
- having a minimum width of twenty (20) metres and a maximum of thirty (30) metres, depending on surrounding topography, measured on the horizontal, from the edge of all permanently flowing watercourses.

We recommend also that the crossing of riparian zones established adjacent to intermittent streams be allowed only when the watercourse is dry and only by the owner of the land or the lessee, where this individual is engaged in farming or forestry operations, and only after the owner has first obtained a permit to do so under the provisions of Section 10 of the *Environmental Protection Act*. An annual and renewable Section 10 permit should be granted to certified forest contractors who are in compliance with the Code of Practice for Forest Contractors.

We recommend further that any activity permitted by law within the riparian (buffer) zone must not detract from its buffering ability, nor from the quality of wildlife habitat contained therein.

This recommendation was implemented. Significant changes have been made to the Environmental Protection Act since the Round Table made this recommendation. The minimum width of buffer zones is now set at 15 metres under the Act and the Watercourse and Wetland Protection Regulations (Part III). The legislation has been tested in the courts on several occasions. Also, the province provides property tax relief under the Environmental Property Tax Credit Program to landowners who are required by law to set aside agricultural land which is greater than a 9% slope or which falls within a watercourse buffer zone, or who choose to install certain "environmentally beneficial farm structures". In summary, it can be concluded that the above recommendation has been implemented.

26. We recommend that the *Environmental Protection Act* be amended to make it illegal to dump trash, garbage or rubbish on private land.

This recommendation was implemented. Section 24 of the Environmental Protection Act makes it illegal to "deposit litter upon any land not approved by the Minister for this purpose". The Waste Resource Management

Regulations, section 2 (1), also address this issue. A registry of all public dump sites (closed or active) was created.

27. We recommend that the *Environmental Protection Act* be amended to require the closure of all public dump sites, excepting those permitted under Section 18 of the Act.

This recommendation was implemented. There is now only one approved landfill site on Prince Edward Island, the East Prince Waste Management Facility in Wellington managed by the Island Waste Management Corporation. IWMC also manages six Waste Watch Drop-Off Centres which accept source separated materials from businesses and overflow materials from households. All community dump sites have been closed. Construction and Demolition (C & D) sites have been established under the Regulations of the Environmental Protection Act to handle “materials not of a hazardous nature which are normally used in the construction of buildings, structures, roadways, walls and other landscaping material, and includes soil, asphalt, brick, mortar, drywall, plaster, cellulose, fibreglass fibres, gyproc, lumber, and wood but excludes chemically treated lumber and wood”. The operation of C & D disposal sites is covered under Sections 59 to 64 of the Regulations.

28. We recommend that nitrate and pesticide concentrations in well water be adopted as the principal indicators of drinking water quality and that monitoring efforts be directed as follows:

- an Island-wide network consisting of a number of wells in each of the three index watersheds: Mill River, West river and Bear River;
- concentrated sampling of wells from watersheds that have already demonstrated nitrate levels greater than 6mg/l; and
- a research program designed to clarify the relationship between total nitrogen application and nitrate levels in groundwater, on a watershed basis.

This recommendation was implemented. In 2003, Government published its first “State of the Environment” report http://www.gov.pe.ca/photos/original/fae_soe_report.pdf. As recommended by the Round Table, Government selected a series of 33 indicators of change grouped into 11

categories: drinking water, surface water, climate change, energy use, air quality, biodiversity, pesticides, waste management, environmental stewardship, soil quality and land use. The Department of Environment, Energy and Forestry continues to track these indicators and plans to publish its second “State of the Environment” report in 2009.

29. We recommend that the Island standard for maximum nitrate concentration in drinking water be set at 10 mg/l, consistent with the Canadian Water Quality Guidelines.

The 10 mg/l standard was adopted and remains in effect and formed the basis for the “Report of the Commission on Nitrates in Groundwater”.

30. We recommend that the Department of Fisheries and Environment report publicly on the results of all pesticide studies carried out on drinking water, and that pesticide levels be reported, regardless of concentration. Reports of the results of pesticide sampling in drinking water should include the prevalence of negative samples as well as the percentage or prevalence of samples approaching and exceeding established public health guidelines.

This recommendation was implemented. The Department released its first comprehensive report on water quality in 2000 based on twenty years of collected data. This was followed in 2001 by the release of the province’s first Drinking Water Strategy as well as an action plan “10 Points to Purity”. The first point in the action plan called for: “expanding public information materials on water wells and sewage disposal systems and making them readily available at Access PEI locations, through service providers, and on the website.”

Pesticide monitoring on PEI has been a shared responsibility between the Department of Environment, Energy and Forestry and Environment Canada. The Department manages the groundwater pesticide monitoring program and reports these results annually. The pesticide research and monitoring program managed by Environment Canada is reported less often, however fact sheets of their results from 2003-2005 have recently been posted and can be found on the PEI government website at <http://www.gov.pe.ca/envengfor/index.php3?number=1024417&lang=E>. These fact sheets

cover pesticide monitoring of surface waters, sediments, finfish, shellfish and ambient air monitoring.

31. With respect to irrigation and its impact on the quantity of ground and surface water, we recommend that efforts be directed toward an Island-wide network, with continuous monitoring of groundwater levels at nine existing index stations across the province, and continuous monitoring of surface water levels on the three index watersheds, as well as the Dunk/Wilmot water management basin.

This recommendation was implemented. The province's groundwater level monitoring network was expanded from 13 to 16 long-term stations, and 9 more wells are to be instrumented on the Wilmot watershed in 2009 (equipment was purchased). Several stations have been upgraded to real-time monitoring and reporting. The long-term goal is to upgrade all the stations to real-time reporting. The stations at Baltic, Lakeside, and Wilmot are to be established specifically for irrigation monitoring. Stations in other watersheds serve to provide baseline data.

Until recently, the Department of Environment, Energy and Forestry had been manually monitoring irrigation activities in the system where irrigation permits were issued. The network of stream discharge monitoring was significantly upgraded in 2007-2008. The Department is maintaining 13 real-time gauging stations across the province and irrigation activities will be monitored and reported in a real-time fashion. In addition, five more hydrometric stations (monitoring stream level/discharge on daily basis) in the index basins are in operation under the Canada-PEI water agreement.

Besides monitoring the impacts of water extraction, the Department developed ground/surface water models to evaluate the potential impacts of high capacity wells (especially for irrigation purposes) on groundwater level and stream discharge in three representative watersheds (Mill, Wilmot and Winter) during 2003-2004. The models respected both long-term groundwater level and surface water discharge observations, where available, as well. The groundwater/surface water models have been adopted as a decision support tool for the allocation of water

resources in PEI. Reports are available upon request.

The Department spent approximately \$300,000 and contracted the Canadian River Institution (CRI) to study the impacts of surface water withdrawals for irrigation on aquatic habitat on PEI during the 2004 to 2007 period. The key objective was to answer what level of stream discharge reduction by pumping is acceptable for aquatic habitat protection in PEI and provide guidance for the allocation of water resources. CRI is currently preparing the final report.

32. In order to establish proper baselines, we recommend that a detailed inventory of groundwater levels, water withdrawal rates and stream flow be conducted in areas subject to high volume extraction for industrial, municipal or irrigation purposes, such as the Winter River and Barbara Weit River basins, and those areas of the Island where irrigation is most common.

This recommendation was implemented. Current Government policy states that groundwater allocation is limited to not more than 50% of the annual recharge within a given watershed. This assumes that the remaining 50% of the recharge is discharged as stream discharge (sustaining aquatic habitat), coastal seepage or evaporation. Water allocations to all existing high capacity wells have been calculated using a strict exploration and allocation permit system requiring that the impacts on both local water level and stream discharge were assessed, and these were recorded by the Department of Environment, Energy and Forestry.

Monitoring and studies by the Department have shown that under no circumstance has the 50% annual recharge criterion ever been violated by a permit holder. However, studies also showed that, while using up to 35% of mean annual recharge (i.e. the Winter River basin) can maintain aquifer flow balance at the watershed scale as calculated on an annual basis, it may not ensure sufficient in-stream flow in dry periods of the year, especially in the driest years. For this reason, the Department is considering revising its water allocation policy based on the recommendations of the CRI report rather than stick on the 50% annual recharge criterion.

Stream discharge, pumping rates and water level in the Winter River basin are closely monitored on a daily basis by the City of Charlottetown, as required by the Department. In the case of the Barbara Weit River, stream flow was monitored until 2004, and the Department has concluded that the level of groundwater extraction permitted by Cavendish Farms is sustainable. Once again, the Department has stated that the CRI report may influence the volume of groundwater extraction permitted, depending on its findings.

33. We recommend that suspended solids (silt), stream substrate fine sediment levels and nitrate concentration be adopted as the principal indicators of surface water quality in freshwater streams and that monitoring efforts be directed as follows:

- an Island-wide network consisting of surface water sampling stations in each of the three index watersheds, Mill River, West River and Bear River, as well as the two so-called management basins, the Dunk/Wilmot and Montague Rivers;
- continuous monitoring with data logging stations; and
- measurement of pesticide concentrations in surface water following heavy rainfall events.

This recommendation has been substantially implemented. The indicators proposed by the Round Table have been adopted by the surface water quality monitoring network. Data collection and analysis have been ongoing under the current Canada-PEI Water Quality Agreement since 1991. Continuous monitoring equipment is in place in three of the index watersheds (Mill, Bear and Wilmot), and a fourth site is located on the Souris River. Planning is ongoing to make this realtime monitoring available through a web based application. Pesticide sampling is ongoing for both surface and groundwater across the province. Responsibility for this work has been shared with Environment Canada.

34. We recommend that the Island standard for suspended solids be set at 100 mg/l, consistent with the Canadian Guidelines for the Protection of Aquatic Life.

This recommendation was implemented. The province currently uses the Canadian Council

of Ministers of the Environment (CCME) Guidelines to report on water quality. The current site specific guideline (1999) is a narrative statement which indicates that suspended sediments should not increase more than 25 mg/l above background levels for any short term exposure. Background concentrations have been calculated for PEI and do not exceed 4 mg/l under low flow conditions. The guideline value for PEI therefore becomes 29 mg/l. This guideline has been used for reporting on water quality in the province. Turbidity is also a useful indicator of siltation. Unlike suspended solids it can be measured using automated equipment. The Department believes turbidity would prove very useful as an indicator because siltation events are episodic and very difficult to capture under a traditional grab sample program. As is the case with suspended solids, there are site specific CCME guidelines for turbidity which could be developed and used for reporting on water quality.

35. We recommend that estuarine water be monitored in the Mill River, the Dunk-Wilmot River, the West River, the Boughton River and the Murray River based on the following indicators: salinity, temperature, dissolved oxygen, pH, ammonia, faecal coliform bacteria and chlorophyll 'a,' and that this information be used to establish an index of general water quality and ecosystem health in these estuaries. We recommend further that, once the index has been developed, the monitoring network be expanded to include other estuaries in watersheds exposed to heavy resource land use.

This recommendation was partially implemented. A network of stations in twenty-one Island estuaries was established in 1998. This was expanded to twenty-four in 2008. These are sampled on an annual basis during the first two weeks of August. A number of parameters are sampled (salinity, temperature, dissolved oxygen, pH, ammonia, nitrate, total nitrogen, total phosphorus, chlorophyll 'a' and suspended solids) which are useful for reporting on water quality. Three of these estuaries (Mill, West and Montague) are also sampled as part of the Canada-PEI water Agreement network up to eight times per year and, in addition to the above parameters, fecal coliform is also measured as part of this work. Although an index of general water quality and ecosystem health has not been developed work

is ongoing on establishing nutrient criteria for the estuaries making up this network.

36. We recommend that all information produced from the indicator-monitoring network be communicated to residents in the areas affected, through public meetings, and to Islanders generally, through regular press releases and publications. It is important that information be brought to the attention of residents in a timely manner, particularly when a problem occurs, and that progress on all indicators be reported regularly.

This recommendation was implemented. The last comprehensive report on water quality for the province was released in 1999. Since that time all surface water data collected across the Island has been made available on a publicly accessible webpage

<http://www.gov.pe.ca/envengfor/index.php3?number=1012573&lang=E>. Public meetings to discuss local water quality have been attended by Department officials. During the past two years press releases have been issued whenever there are incidents related to water quality like anoxia or anoxic events. Once nutrient criteria have been established these will be reported to the public as well.

PESTICIDE USE

37. We recommend that the potato industry develop better ways to communicate with the public on the issue of late blight control. These efforts must highlight the industry perspective and, above all, they must present the need for crop protection rather than a defence of fungicide use.

The potato industry has demonstrated initiative, and progress has been made in the area of public education on the need to use crop protectants in potato production. Industry and Government have collaborated in the development of information campaigns aimed at informing home gardeners of the responsibility they have to control the spread of late blight. A national trade organization called Crop Life Canada has developed information tools for explaining why growers have to rely on pesticides. The PEI Potato Board has organized sessions for individual growers to teach them how deal more effectively with media inquiries and questions from neighbours,

and how to be more effective in community meetings. The majority of potato growers are familiar with and apply integrated pest management principles to their production operations and employ crop scouts to help them decide when to apply crop protectants. Government and industry have refined forecasting models for the various pests that can affect potatoes, and the concept of thresholds for pesticide application in well established in the industry.

38. We recommend that the potato industry and the Department of Agriculture and Forestry continue to explore regulatory methods, including the *Plant Health Act*, for the prevention and control of all potato diseases. Specifically, we recommend that the *Act* be amended to give inspectors the power to order the destruction of any potato plants infected by late blight, at the owner's expense. We recommend further that work continue on the development of an economical post-harvest test for late blight.

There has been no change to the Plant Health Act as a result of this recommendation. The Department of Agriculture, in cooperation with the potato industry, is committed to enforcing the Act in a way that insures the best interests of the industry are taken into account. This includes an active inspection program and the issuance of destruction orders where these are warranted. The issue raised by the Round Table was an internal industry issue which has no impact on food quality, environmental integrity or human health. As for the development of a more economical post-harvest test for late blight, there has been no progress in this regard since 1997.

39. We recommend that the Department of Agriculture and Forestry develop a pesticide reduction strategy based on the IPM Continuum proposed by the Consumers Union, according to the following action plan:

- define an appropriate IPM Continuum for Prince Edward Island;
- establish at what stage we are now;
- establish realistic objectives, in consultation with all stakeholders; and
- recommend action to industry and to Government.

In 2001-2002, a group made up of officials of the Department of Agriculture worked on a

pesticide reduction strategy based on IPM principles and a reduction target of 40% over five years. The draft strategy was never made public. As a result, the dialogue envisioned by the Round Table between producers, environmental groups and other stakeholders never took place and this recommendation was not implemented.

40. We recommend that the Department of Agriculture and Forestry establish the new position of crop protection specialist and immediately recruit a professional with research and extension expertise in the area of bio-intensive integrated pest management (IPM).

This recommendation was implemented and the position of Integrated Pest Management Specialist was established. In addition, the Department created the position of Reduced Input and Industry Development Officer which administers the Organic Industry Development Program.

41. We recommend that responsibility for enforcing the *Pesticides Control Act* remain with the Department of Agriculture and Forestry, and that the Department increase enforcement activities.

Responsibility for the Pesticides Control Act was transferred to the Department of Fisheries, Aquaculture and Environment in 2003. The decision to do so was made by Order-in-Council without any public debate or consultation with commercial pesticide applicators, environment or agriculture industry groups. It was made because Government had reached the conclusion that it was no longer possible for the Minister responsible for the Agriculture portfolio to serve the interests of producers and, at the same time, enforce the Act. In other words, Government believed the Minister was in a conflict of interest.

Under the current structure, the Pesticide Regulatory Program Manager is responsible for the development of training and certification programs, monitoring pesticide use, and for providing policy advice, while the Investigation and Enforcement Section is responsible for enforcing the Pesticides Control Act. The human resource complement devoted to enforcement has increased substantially since 1997 and now includes three seasonal Pesticide Regulatory Inspectors and a Coordinator of Pesticide Monitoring and

Control plus the year-round complement of Conservation Officers who can also lay charges under the Act and Regulations.

42. We recommend that the Department of Agriculture and Forestry acknowledge its responsibility to enforce pesticide use standards according to the instructions contained on federally approved pesticide labels and provide notice to users of its intention to do so.

New Regulations under the Pesticide Control Act came into effect in 2005. A number of the changes were made in response to the February 2004 report of the Environmental Advisory Council

http://www.gov.pe.ca/photos/original/ee_pesticides04.pdf. Among the changes made is a clear indication that pesticide standards are those established under the federal Pest Control Products Act. A summary of the changes can be found in the information bulletin http://www.gov.pe.ca/photos/original/eef_agchallenges.pdf. It is important to note as well that, since the Round Table report was released, the federal Pesticide Management Regulatory Agency has established a staff presence on Prince Edward Island, including inspectors with the power to issue summary offence tickets under the federal Pest Control Products Act.

43. We recommend that farm organizations publicly state their support for a zero-tolerance policy when it comes to off-target pesticide drift, and develop educational material for farmers on how to accomplish this goal.

There is no evidence that farm organizations have taken the initiative in supporting a zero-tolerance target for off-target pesticide drift. As for Government efforts to deal with the issue of 'chemical trespass' in response to public pressure, the Investigation and Enforcement Section of the Department of Environment, Energy and Forestry is examining ways to improve enforcement by using spray collection strips on properties adjacent to crop spraying operations. Laboratory analysis of these collection strips after spraying events could then be used to document cases of off-target pesticide drift. The Department's position is that it will continue to research this approach and will consult with farm organizations before it is implemented.

44. We recommend that the Pesticide Certification Course be extended beyond the current one-day format, that it become mandatory for all first-time applicants, that there be a mandatory continuing education component and that licenses be provided with training in the use of alternatives to pesticides, safe handling and storage, and emergency response to spills.

The Pesticide Certification Course is still a one-day format; it is mandatory for first-time applicants; the license must be renewed after five years; and the course covers all topics noted in the recommendation and includes a strengthened environmental component. Additional information is included in the bulletin

http://www.gov.pe.ca/photos/original/eef_agchan ges.pdf.

45. We recommend that the Department of Agriculture and Forestry, and associated private-sector interests, disclose their plans for more widespread introduction of transgenic potato varieties on Prince Edward Island and allow for appropriate input before more public money is committed.

No transgenic potato variety is grown on Prince Edward Island and there are no plans to do so. This is an issue that fell by the wayside because of market pressures aligned against the introduction of transgenics generally.

46. We recommend that the Department of Agriculture and Forestry introduce a Certification program for all those involved in the sale of home and garden pesticides. We also recommend that the Pesticide Certification Course for applicators of home and garden pesticides be upgraded and made mandatory for all employees, including temporary staff.

Mandatory domestic pesticide vendor licensing was introduced in 2007 and, as a result, all sales staff have to be certified. Pesticides are separated in-store between lower risk (self-select) and higher risk (controlled purchase). The former can be displayed on an open shelf as before while the latter can only be displayed behind the counter or in a locked compartment which the consumer cannot access without assistance from the licensed sales person. The duties of the licensee selling home and garden pesticides are covered under the Pesticide Control Act Regulations (Section 20.1). As for

commercial applicators, the training program is mandatory. Finally, Government announced recently that it would introduce legislation banning the sale of 'cosmetic' pesticides starting in 2010.

47. We recommend that the Department of Agriculture and Forestry, working in cooperation with pesticide suppliers and retailers, improve its capability to track and report on pesticide sales so that figures on total usage for a crop year are reported to the public by the end of the same calendar year.

As a condition of licensing, vendors must report sales of all pesticides to the Department of Environment, Energy and Forestry annually (Section 12 of the Regulations). The report produced by the Department is available to the public and lists sales by active ingredient grouped into three categories: herbicides, insecticides and fungicides. Current year figures are compared to the previous year and to the base year, 1993. In the case of individual active ingredients, sales figures are reported by group: Group A lists sales of active ingredient greater than 50,000 kg., Group B lists sales between 10,001 and 50,000 kg., and Group C lists sales between 1,000 and 10,000 kg. Vendors must report by January 31 for the previous year and the report for 2007 is dated June 10, 2008.

48. We recommend that the Department of Agriculture and Forestry compile and report statistics on enforcement activity, tickets issued and the activity recorded on the toll-free pesticide number.

Statistics on enforcement activity are available from the Department of Environment, Energy and Forestry upon request but are not reported publicly. These show that enforcement activity, as measured by the number of warnings issued and charges laid under the Pesticides Control Act, has increased over the past five years. As well, enforcement has expanded as new sections of the Regulations come into effect. The toll-free pesticide number is in operation.

FOREST RESOURCES

49. We recommend that Government continue to support the Forest Partnership Council in its efforts to develop and implement the Code of

Practice for PEI Forest Contractors, we encourage the Council to introduce improvements to the Code in the area of alternative silviculture treatments and wildlife habitat enhancement, and we suggest that the Office of the Auditor General become involved in monitoring compliance with the Code.

A voluntary Code of Practice was introduced following the release of the Round Table report but the level of compliance by contractors was low. Consequently, Government moved in 1998 to adopt a regulated Code established under the Forest Management Act. Landowner resistance and lack of public support led Government to withdraw the proposal in early 2000. The Forest Partnership Council is currently inactive. The 2006 Forest Policy <http://www.gov.pe.ca/photos/original/EEF-ForPol-Eng.pdf> calls for contractor certification for operations on public lands but the requirement has not been put into practice.

50. We recommend that the Forest Nursery continue to expand the number of species it produces and that the ratio of hardwood to softwood species be increased significantly through the production of late successional hardwoods.

The number of hardwood seedlings, expressed as a percentage of total production by the J. Frank Gaudet Forest Nursery, has grown from less than 1% in 1999 to just over 8% in 2008. Overall, the number of seedlings produced and planted has declined significantly from a peak of 3.1 million per year in 2000 to 1.6 million in 2008. In the case of hardwood plantations, establishment success is the major limiting factor as there continue to be major problems with snowshoe hare predation.

51. We recommend that the Private Land Management Program be amended to include (or increase) incentives for the following treatments:

- selective, individual tree management in late successional hardwood stands;
- selective harvesting and thinning in mixed wood stands;
- treatments promoting the development of uneven-aged stands;
- strip-cutting and patch-cutting in pure softwood stands;
- techniques that promote natural regeneration;

- fill-planting in patch cuts; and
- under-planting of mixed wood stands.

There has been a significant shift in emphasis under the new Forest Policy from forest renewal to forest enhancement. The new incentive program for private land owners is described in the Ecosystem-Based Forest Management Standards Manual and it provides financial assistance for all of the above treatments

<http://www.gov.pe.ca/photos/original/ECOformansumm.pdf>. Whereas 90% of public investments in private land forest management went traditionally towards plantation establishment, the target is to shift the ratio to 50:50 over time so that more is spent on working with established and natural stands. This policy shift is partly in response to the Round Table recommendation and addresses concerns expressed by the public during consultations leading to the 2006 Forest Policy.

52. We recommend that the Private Land Management Program be amended to remove incentives for the following treatments:

- plantations containing a single species;
- any form of site preparation that involves slash burning; and
- plantations containing non-native species.

It is still possible to obtain an incentive for single-species plantations although more landowners are opting for mixed-species plantations. Slash burning is no longer covered under the incentive program. Plantations containing non-native species are no longer covered under the incentive program.

53. We recommend that the subsidized application of herbicides be reduced to a minimum and that this practice be restricted to those cases where there is no other way to protect the investment of public funds in a plantation.

Herbicide use on public lands is not allowed although this treatment is still covered under the incentive program for private land owners for both plantation establishment and plantation maintenance. The total cost of incentives paid to private landowners for herbicide treatment has averaged approximately \$87,900 per year over the past ten years; in 2008 it amounted to \$88,600.

54. We recommend that the “twenty-five-year clause” contained in Forest Renewal Agreements which limits a landowner’s right to alter a silvicultural treatment that has received Government financial assistance be replaced by a clause requiring the owner to repay the full amount of the subsidy, plus interest, if the stand or plantation so treated is destroyed prior to attaining maturity.

This recommendation was not implemented. It was made by the Round Table at a time when plantations that had been established on private land through the incentives program were being converted to blueberry production. The destruction of treated areas is no longer considered to be a problem.

55. We recommend that the current \$40 per acre charge levied for the establishment of a tree plantation be waived if the following conditions are met by the landowner:

- planting in a riparian (buffer) zone; or
- if the plantation is established under the supervision of a contractor who is in compliance with the Code of Practice.

There is no charge for seedlings acquired and planted by watershed groups for planting in riparian zones. For individuals, the charge has changed to a per-seedling rate of \$0.10, equivalent to the contractor rate. A new program has been introduced for farmers, the Alternate Land Use Services Program (ALUS) which pays farmers for planting trees in buffer zones.

56. We recommend that negotiations and discussions continue between industry and Government through the Forest Partnership Council, with the objective of introducing a system to provide for softwood harvesting controls and adequate reforestation by March 31, 1998. If an agreement is not reached by that date, Government should legislate controls immediately.

This recommendation was not implemented and Government took no action to control the level of softwood harvest. In fact, figures on annual softwood harvest levels show that these continued to increase until the rising Canadian dollar effectively eliminated markets for PEI-produced softwood lumber. As predicted, softwood lumber supply declined because of over-harvesting and would not now support

peak harvest levels reached during the 1997-2004 period. The extent of the decline in the standing softwood lumber inventory will be known when the next “State of the Forest Report” is released after 2010. In the present economic context of a relatively high Canadian dollar and the decline of the North American construction industry, the softwood lumber industry has collapsed here as elsewhere. A further illustration of the bleak prospects for the sector is that the largest sawmill operation in the province, the J.D. Irving mill in Georgetown, has closed and will not reopen.

57. We recommend that the Department of Agriculture and Forestry adopt the following indicators to determine the state of the forest resource and that the status of these indicators be reported to the public on a regular basis:

- percentage of productive forest area harvested and restocked successfully;
- five-year average timber harvest, as a percentage of sustainable harvest, for each of the four major cover types: softwood, softwood/hardwood, hardwood/softwood and hardwood;
- area, percentage and distribution of late successional hardwood cover types;
- area, percentage and representativeness of forest community types in protected areas;
- area of forest converted to other land uses, measured at five-year intervals; and
- value of forest production and employment in the industry, measured annually.

Government reports to the public on the status of forest indicators, including those identified above, by means of the State of the Forest report, the most recent being the 2002 version which covers the period 1990 to 2000 http://www.gov.pe.ca/photos/original/af_state_forest.pdf. Completion of the report every ten years is a requirement under the Forest Management Act. The status of selected indicators is reported annually to the National Forest Database <http://nfdp.ccfm.org/>. Statistics on forest production and the value of primary and secondary forest products are found in the “Annual Statistical Review” published by the Department of Provincial Treasury. In the case of employment, forestry is not reported separately.

REGULATING THE USE OF RESOURCE LANDS

58. We recommend that Government extend the time limit for the present Special Planning Areas, with the proviso that the affected communities be given the opportunity - and provided with the resources - to develop an acceptable land use plan for these Areas within a reasonable period of time.

This recommendation was partially implemented. Special Planning Areas remain as part of the Planning Act (Section 8.1) and the following Special Planning Areas have been established by Order-in-Council: Summerside Region, Cornwall Region, Charlottetown Region, Stratford Region, Borden Region, Greenwich, and Princetown Point - Stanley Bridge. At the time this recommendation was made, the Special Planning Areas were considered to be temporary. Unfortunately, although twelve years have passed, land use plans have still not been developed for these Areas.

59. We recommend that Government work with residents, landowners and municipal governments within the greater Kensington area to develop a comprehensive land use plan. more specifically, the plan should include the area bounded by Malpeque Bay, New London Bay to the Stanley River, Highway 8 and Highway 1A; it should include zoning of all land; and it should become official by January 1, 2000.

Following the release of the Round Table report, the Department of Community Affairs was directed by the Standing Committee on Community Affairs and Economic Development to consult with community organizations, municipalities, farmers and other residents of the greater Kensington area with the purpose of determining whether there was interest in developing a comprehensive land use plan. The process and conclusions are outlined in the Standing Committee's report "The Kensington Study Area Consultation Process". The report concluded as follows: "There is consensus among those who participated in the consultation that land use issues identified in the KSA are accurate and that these need to be addressed; and there is no consensus among those who participated in the consultation as to what planning tools or

mechanisms should be used to address these land use issues." No further action was taken by Government on this recommendation. Recent developments in the community such as the proposal to erect a wind farm in the Malpeque area have galvanized public interest and the Malpeque Community Council is developing a comprehensive land use plan for the area under its jurisdiction.

60. We recommend that the Taxation and Property Records Division immediately take steps to identify parcels of Class 2 and 3 agricultural land which have received subdivision approval and are owned by bona fide farmers and farm corporations, but upon which no development has taken place. We further recommend that all such parcels be taxed at the commercial rate for as long as the subdivision approval remains in effect.

This recommendation was partially implemented in that the rate of taxation was increased from the agricultural to the recreational land rate but at 50% of assessed value. Once a lot has been sold, it is taxed at the assessed value whether or not development has occurred.

61. We recommend that the *Planning Act* Regulations be amended to place a time limit of two years on all new subdivision permits on Class 2 and 3 agricultural land issued in areas of the province that have no official plan, whether they consist of a single or multiple lots. In other words, if no lot is built on and no infrastructure is developed within two years from the date the subdivision is approved, then the permit automatically terminates.

This recommendation was partially implemented in that the subdivision permit lapses unless the subdivision plan is approved within 2 years of application. In addition, building permits are restricted to 2 years from date of issue but there is no limit on the duration of a subdivision permit.

62. We recommend the creation of a Farm Practices Review Board. The Board, appointed by the Minister of Agriculture and Forestry, would include a majority of members nominated by the farm community as well as representatives of environmental groups, rural non-farm residents and municipal governments. The Board's mandate would include the following:

- establishing terms of reference for codes of practice covering all agricultural activities carried out in the province;
- reviewing, approving and amending agricultural codes of practice submitted to the Board by farm organizations;
- acting as public mediator and appeal body to resolve complaints occurring as a consequence of farming practices; and
- recommending farm practices regulations to the Minister.

Funding for the operation of the Farm Practices Review Board should be provided by the provincial government.

The Farm Practices Act became law in 1998 and it allows for the creation of the Farm Practices Review Board whose operation is funded by the Department of Agriculture. The Act generally complies with the above recommendation. However, to date, the Board has not developed codes of practice for any agricultural activities; it functions more as a body that attempts to mediate disputes related to farming practices on a case-by-case basis.

63. We recommend that all municipalities with an official zoning plan adopt a bylaw requiring developers to set aside sufficient land for a buffer where a proposed residential, commercial or industrial development borders on agricultural land, and that the Department of Community Affairs and Attorney General apply the same restrictions to building and subdivision permits in areas of the province where it has jurisdiction.

This recommendation was not implemented. There are two explanations for this. First, municipalities with an official zoning plan have little land available for development since their boundaries have not changed since the Round Table reported. Second, in areas where there is no official plan, Government has made no effort to impose additional restrictions on developments bordering on agricultural land.

64. We recommend that the Department of Community Affairs and Attorney General take the steps necessary to ensure that the area of the province covered by official zoning plans increases from the present 6 per cent to 25 per cent by the year 2000 and 50 per cent by the year 2003. We recommend further that Government assist communities by providing the services of

competent professional land use and landscape planners.

This recommendation was not implemented. At present, the area of the province covered by official plans stands at 10%. The Malpeque Community Council is considering adopting a land use plan; if this were to happen, the total would rise to 12%. Several other small municipalities are considering adopting plans, although implementation and enforcement are major issues for them. The Planning Act Minimum Requirements for Municipal Official Plans

<http://www.gov.pe.ca/photos/original/MA-EC640-97.pdf> states that municipalities are responsible for their own planning under section 15 of the Planning Act.

65. We recommend that the number of building permits issued for residential and all other forms of construction in areas not having an official zoning plan be reduced from the present level of 70 per cent of the provincial total to 25 per cent by the year 2000.

There has been no significant change in this indicator since the Round Table report was released largely because there has been little change in the area of the province covered by official zoning plans.

66. We recommend that Government develop a better system to track the loss of Class 2 and 3 agricultural land to non-resource uses, and that Government take the measures necessary to reduce the current rate of loss by 50 per cent by the year 2000.

This recommendation was not implemented. It is important to note that 90% of the Island's land base is classified as either Class 2 or 3 agricultural land. While farmers and farm organizations are committed to preserving the agricultural land base, successive Governments have judged that there is no support for a total ban on subdividing agricultural land for development purposes.

67. We recommend that Government direct the Farm Practices Review Board to complete the development of codes of practice for all significant agricultural operations carried out in the province by the year 2000, implementation by 2002.

To date, the Board has not developed codes of practice for any agricultural activities; it functions more as a body that attempts to mediate disputes over farm practices on a case-by-case basis.

MANAGING LANDSCAPE AND BIODIVERSITY

68. We recommend that governments increase their support for the Island Nature Trust in its efforts to preserve significant features of the Island landscape. Any financial support provided from the public purse should be directed toward the purchase of land, and not to the administration of the Trust. We recommend also that the provincial government exempt the Island Nature Trust from the land ownership limits under the *Lands Protection Act*.

The second part of this recommendation was indirectly but effectively implemented in December of 2007 when Government approved an exemption under the Lands Protection Act for any land designated as a "natural area" under the Natural Area Protection Act. The primary immediate beneficiary of that exemption was the Island Nature Trust. An exemption was also granted under section 5 of the Lands Protection Act regulations for land on Boughton Island owned by the Nature Conservancy of Canada.

69. We recommend that Government amend laws within its jurisdiction so as to make it easier - and more financially attractive - for landowners to donate development rights to the L. M. Montgomery Land Trust. We recommend further that Government assess all land upon which development rights are held by the Trust, at the farm or woodland rate, for property tax purposes.

This recommendation was implemented. Land owners who convey property development rights do receive a lower property assessment. If a property has been assessed for additional value as a result of potential development that additional value is removed when development rights are conveyed, and the assessment reverts to whatever value per acre would be applied to properties in the area that have no potential development.

70. We recommend that Government assist community and watershed groups, particularly in those areas that are under the greatest threat from deforestation, to develop and implement management plans which address the issue of maintaining minimum forest cover.

See recommendation 21

71. We recommend that Government retain property it owns in threatened watersheds and actively pursue opportunities to add to its holdings of forested land and wetland in these areas.

No direction was given by Government to the Land Use Coordinating Committee as a result of this recommendation. Its successor, the Provincial Land Review Subcommittee, has not received any direction in this regard either. No effort has been made to purchase land in threatened watersheds. Among the reasons given by officials within Government are the following: a) the various partners, including non-government organizations, have not made this a priority; b) land in these watersheds tends to be very expensive; c) not much land is available to purchase; and d) the threatened watersheds aren't priorities on Government's 'protected areas plan' which is where efforts to purchase are concentrated.

72. We recommend that the Minister of Fisheries and Environment inform agriculture and forestry groups when any species of wildlife is designated as endangered or threatened and that the impact of such a designation on the use of resources lands be made very clear to any landowner so affected.

The Wildlife Conservation Act contains a provision for the designation of endangered and threatened species and species of special concern. A Species at Risk Advisory Committee was established by government in 2003 but, to date, no species has been listed.

73. We recommend that the Department of Fisheries and Environment strengthen its staff capability by hiring a fisheries biologist and a non-game biologist.

A fisheries biologist was hired in response to the recommendation but no other staff have been added.

74. We recommend that individual farmers be provided with financial incentives to improve

existing hedgerows and to establish new ones and that a section on the benefits of hedgerows be included in the Environmental Farm Plan curriculum.

This recommendation was implemented. A variety of incentives are available to farmers to improve existing hedgerows and to establish new ones.

75. We recommend that the Department of Fisheries and Environment conduct a review of the Excavation Pits Regulations and develop better ways to ensure that operators holding permits restore abandoned pits to an acceptable condition, within a predetermined period of time.

There is no evidence of progress in this area and the lack of restoration of abandoned excavation pits continues to be a problem.

76. We recommend that the Department of Economic Development and Tourism assess the opinions of residents and visitors to Prince Edward Island regarding the quality and attractiveness of the landscape and the impact of changes thereto.

No research has been done into the opinions of residents regarding the quality and attractiveness of the landscape and the impact of changes thereto. When it comes to visitors, UPEI's Tourism Research Centre has published the 2007 report "A Profile of Overnight Visitors, By Origin". The report lists natural beauty and the pastoral setting as the primary feature attracting first-time visitors from other countries, including the United States. Beaches and coastlines were significant factors as well but they did not rate nearly as high among this group of visitors, which represented 10% of the total number of visitors in 2007. Among visitors from New Brunswick and Nova Scotia, which together represented 55% of main season travelers in 2007, natural beauty and the pastoral setting did not rate nearly as high, and beaches and coastlines were, surprisingly, quite far down the list of reasons for coming here. Visitors from Québec and Ontario who together accounted for 36% of visitors rated natural beauty, the pastoral setting, beaches and coastline as being of equal importance.

77. We recommend that Government adopt the following indicators of biodiversity and assign

responsibility and resources to the appropriate departments to ensure they are measured and reported adequately:

- size and representation of protected areas, with the objective of attaining the goal of seven per cent of the provincial land base;
- quality of aquatic habitat on index watersheds, including the Mill, West, Bear, Dunk and Wilmot rivers, based on an accepted set of parameters;
- relative abundance and distribution of the 13 forest communities on Prince Edward Island, as identified by the Island Nature Trust;
- ratio of wooded "edge" to total forest area;
- relative abundance of "forest interior" wildlife species - those that require large tracts of forest;
- a measure of soil microbial activity, preferably incorporated into the proposed soil quality index;
- kilometres of hedgerow per unit area of agricultural land;
- size and representation of individual categories of freshwater wetlands, salt marshes and sand dunes; and
- abundance over time of selected wildlife indicator species.

Statistics on the size and representation of protected areas appear in the 2003 "State of the Environment" report. Land can be protected under provincial legislation in several ways but the degree of protection varies depending on the nature and intent of the legislation: the Natural Areas Protection Act, the Wildlife Conservation Act, the Recreational Development Act or the Forest Management Act. Several of the indicators listed above have been adopted by government and are included in the "State of the Environment" report. The index watersheds mentioned are monitored regularly. Gaps remain, however, including the lack of wildlife indicator species.

PROVINCIAL LANDS

78. We recommend that Provincial Forests be designated under the *Forest Management Act* and that Government adopt the following general criteria for their management:

- management plans should first promote an increase in biodiversity; in practice, this means that the preferred treatments should be: small patch-cuts or shelterwood cuts, managing for natural regeneration and planting long-lived, native species of late successional hardwoods and softwoods;
Management plans are required and comply with the Ecosystem-Based Forest Management Standards Manual adopted by the Department.
- all Provincial Forests should be clearly identified with appropriate signage and access should be provided for the general public;
Signage has improved and will be completed on additional properties as budgets permit. In addition, Government recently published the “Prince Edward Island Public Land Atlas”.
- certain properties or portions thereof should be designated under the Natural Areas Protection Act or given equivalent protection under the Forest Management Act;
Thirteen new properties have been designated since the Round Table made this recommendation and eleven others are under consideration, with public meetings planned regarding the proposed designations.
- several large tracts should be retained or consolidated as permanent forest;
Provincial forest blocks are identified on the Department website and these have been protected by regulation under the Forest Management Act.
- management plans should be subjected to public consultation and input at five-year intervals and reports to the public should include a detailed account of work done in each Provincial Forest over the period;
Although there is no formal process of public consultation on management plans, public notification of 60 days is required before the Department carries out or contracts any work on Provincial Forest lands.
- work in Provincial Forests, which falls within the purview of forest contractors, should continue to be limited to certified contractors and subject to the Code of Practice;
Contractors have to be in good standing in order to qualify to do work on Provincial

Forest lands. The Department will work towards land certification and contractor certification under different certification methods.

- sawlogs should be processed on the Island, and standing timber and harvested wood containing sawlogs should be sold by invited tender;
Standing timber is sold by public tender but there are no plans to require that sawlogs be processed on the Island because to do so would go against interprovincial trade agreements.
- sales of other materials should be by public tender, and contracts for work on Provincial Forests should be by public tender;
All wood products on Provincial Forest lands are sold by public tender and all work is contracted following a public tender process.
- certain properties within Provincial Forests should be reserved for wildlife habitat research, for the establishment of experimental plantations of exotic species, for the production of seed, for public education and for other particular uses not primarily related to the production of wood fibre; and
This recommendation has been implemented.
- the Department of Agriculture and Forestry should provide for the adequate enforcement of the Forest Management Act in Provincial Forests.
This recommendation has been implemented.

After public consultation, Provincial Forests were proclaimed in 2000 and a number of areas were designated by Order-in-Council under the Forest Management Act. Government reviewed its land holdings and identified lands surplus to its needs. The revenues were reinvested in strategic land acquisition as suggested by the Round Table report. However, because these properties are designated by Order-in-Council, the decision can be reversed by Cabinet without any review or debate by the Legislative Assembly or the public. The number of community-level public forest partnerships, particularly involving forest recreation, has increased dramatically. In late 2005, the Department signed a 10-year agreement with the Environmental Coalition of Prince Edward Island allowing them to manage approximately 800 hectares or 2,000 acres of Provincial Forest

land in the Orwell/Caledonia areas. Presently, it is in negotiations with the Mi'kmaq Confederacy of Prince Edward Island for a similar agreement on land near the Lennox Island First Nation.

79. We recommend that the Department of Economic Development and Tourism conduct a public review of Provincial Parks, and that it consult with residents of affected communities and the Island Nature Trust prior to divesting itself of any parks property.

A review of Provincial Parks was conducted in 2001, and it included public forums. The report contains recommendations on protecting the natural values of provincial parks, improving community relations and communications, and laying out the procedure to be followed in the event of divestiture. With respect to Government efforts to consult with residents of affected communities before divesting itself of parks properties, results have been mixed. For example, Government announced in 2006 that, for financial reasons, it would transfer Strathgartney and Campbell's Cove Provincial Parks to private operators through a lease arrangement allowing them to operate the campgrounds located within these parks. Strathgartney has since reverted back to the province. This was done without any public consultation. In the case of Fishermen's Haven (Tignish Shore) and Victoria Provincial Parks, they were leased to and are now operated by local community organizations. With respect to the Round Table recommendation, it is fair to say that Government has not sold any Provincial Parks property in the interim.

80. We recommend that the Department of Fisheries and Environment proceed with plans to designate six additional Wildlife Management Areas, as follows: Saint-Chrysostôme, Dromore, Corraville-Martinvale, Southampton, Dingwell's Mills and Grovopine-Big Brook.

This recommendation was implemented in that the properties listed above were designated by Order-in-Council under the Wildlife Conservation Act. However, because these properties are designated by Order-in-Council, the decision can be reversed by Cabinet without any review or debate by the Legislative Assembly or the public. Properties are added to the Wildlife Management Areas as they become

available and Government is planning to designate a new Area at Portage.

81. We recommend that the Department of Fisheries and Environment proceed toward the goal of designating 70 sites under the *Natural Areas Protection Act* by the year 2000.

Significant progress has been made in this area. As of this date, 88 sites have been designated by the Minister under the Natural Areas Protection Act, covering a total of 6,404 hectares or 15,818 acres. Government recently announced its intention to designate 12 new sites under the Act, totaling 249 hectares or 615 acres and held public hearings on the question in April 2009. As well, Government approval is pending on several properties which were proposed in February. If all were to be approved, this would bring the total area designated to approximately 7,000 hectares or 17,275 acres.

However, in 2005, Government passed an amendment to the Natural Areas Protection Act giving the Minister the power to remove the designation of an area if it is located on Crown land and if, in the Minister's opinion, it should be removed. This represents a weakening of the Act as it applies to areas of provincial land.

82. We recommend that the Department of Fisheries and Environment, with the assistance of the Natural Areas Program Advisory Committee, undertake a more thorough review of Provincial Lands with significant natural features, particularly the 6,500 acres that have been designated as surplus by the Land Use Coordinating Committee.

A review was conducted in 1997 with a view to identifying properties with significant natural features. Some were retained, but the end result has been that Government has divested itself of approximately 80% of the 2,630 hectares or 6,500 acres held at the time the recommendation was made. As of April 1, 2009 only 59 properties (200 hectares or 495 acres) in Government inventory were considered surplus to provincial needs. The Resource Land Acquisition Fund, a revolving fund in the amount of \$250,000, was established to enable Government to sell surplus properties and to apply the proceeds to the acquisition of new properties.

83. We recommend that the Department of Transportation and Public Works assign a staff member to respond to public requests for information and assistance, regarding those Provincial Lands managed by the Department that are not part of the provincial highway system, such as public rights-of-way, beach access, old school properties, etc.

This recommendation was implemented. In fact, the Department has three positions identified – the Manager of Provincial Lands, the Supervisor of Land Administration, and the Supervisor of Roads and Rights of Way – whose responsibility it is to respond to public requests for information and assistance.

84. We recommend that Government establish a “no net loss” policy for Provincial Lands and that the present level of 9.2 per cent of the province’s land area be established as the minimum.

There is no “no net loss” policy in effect, and Provincial Lands now represent just under 7% of the province’s land area. Over the past ten years, title to significant parcels has been transferred to community pastures, non-profit organizations and municipalities, although Government has retained a right of first refusal if the land should ever be offered for sale. If this land were added back into the total, the area of Provincial Lands would not have changed significantly from the 1997 figure. Government recently published the “Prince Edward Island Public Lands Atlas”, a comprehensive compendium of public land assigned for management purposes to the resource departments. It shows the location of individual properties and contiguous blocks, what department is responsible for managing the property and whether it has been designated as a Provincial Forest, Wildlife Management Area, Provincial Park or Natural Area.

85. We recommend that Government table an annual progress report of the Land Use Coordinating Committee in the Legislative Assembly, detailing its work and accomplishments, as well as a record of the acquisition and disposition of Provincial Lands.

The Land Use Coordinating Committee has been replaced by the Provincial Land Review Subcommittee chaired by the Supervisor of Land Administration of the Department of Transportation and Public Works. The Subcommittee’s role is limited to reviewing offers to purchase and sell property; it does not operate as a policy-making body and holds no formal meetings. Provincial Lands property transactions are reported in the Department of Transportation and Public Works Annual Report.

OTHER ISSUES

86. We recommend that the Premier assume responsibility for implementing this report.

Formal responsibility for examining the report was assigned by the Premier to the Standing Committee on Agriculture, Forestry and Environment in the fall of 1997. The Standing Committee reported to the Legislature later that year stating that 31 of the recommendations would be simple to implement and that 8 would require amendments to legislation and the negotiation of renewed federal-provincial agreements. It concluded that 3 of the recommendations should not be implemented, and it referred the remaining 47 recommendations to the responsible departments for action. The last known report on the implementation of the recommendations of the Round Table is dated December 1998.

87. We recommend further efforts by the Department of Education in consultation with industry to incorporate into the school curricula, either through existing courses or by new offerings, educational material pertinent to the environmental, social and technical aspects of resource land use and stewardship.

There is no evidence that this recommendation resulted in action by the Department of Education although it can be said that the environmental, social and technical aspects of resource land use and stewardship do figure more prominently in school curricula today than they did in 1997.

APPENDIX VII

MEASURE OF CHANGE SINCE 1997 TO INDICATORS PROPOSED BY THE ROUND TABLE

| Indicator | Significance | Status of Indicator ³ | | | |
|---------------------------------|---|----------------------------------|-------|-----------|----------------------|
| | | Better | Worse | No Change | No Data ⁴ |
| Organic matter | Organic matter content as measure of soil quality | | X | | |
| Phosphorus content | Phosphorus content as measure of soil quality | X | | | |
| Cation exchange capacity | CEC as measure of soil quality | | X | | |
| Nitrate | Nitrate concentration in private wells | | X | | |
| <i>Escherichia coli</i> | <i>E. coli</i> concentration in private wells | X | | | |
| Pesticides | Pesticide concentration in drinking water | | | X | |
| Suspended solids | Turbidity in surface water as indicator of siltation | | | | X |
| Nitrate | Nitrate concentration in four rivers | | X | | |
| Pesticides | Pesticide use as measured by kg. of active ingredient | | X | | |
| Pesticides | <i>Pesticides Control Act</i> enforcement activity | X | | | |
| Pesticides | Number of pesticide-related fish kills | | | X | |
| Area of forest restocked | % of area harvested and restocked successfully ⁵ | | X | | |
| Timber harvest | Five-year average as a % of sustainable harvest | | X | | |
| Forest diversity | Area of undisturbed forest communities | | X | | |
| Protected forest | Representation of protected forest community types | X | | | |

³ The status of each indicator as shown refers to change between 1997, or the closest year to 1997 where data are available, and the most recent available data

⁴ The heading "No Data" means either that data are not available or that it is not possible to establish a trend based on available data

⁵ Refers to data from softwood harvest for the period 1990 to 2000 as taken from the *1990-2000 State of the Forest Report*

| Indicator | Significance | Status of Indicator ³ | | |
|---------------------------------|--|----------------------------------|---|---|
| Forest loss | Area of forest converted to other uses | X | | |
| Forest production | Value of forest production and employment | | X | |
| Official plans | Area of the province covered by an official plan | X | | |
| Building permits | Permits issued in areas not having an official plan | | | X |
| Agricultural land | Area of agricultural land converted to development | X | | |
| Codes of practice | Number of codes of practice adopted for agriculture ⁶ | | | X |
| Landscape attractiveness | Opinions of residents and tourists | X | | |
| Aquatic habitat | Habitat quality measured on index watersheds | | | X |
| Forest communities | Relative abundance of 13 forest communities | X | | |
| Area of wetlands | Size and representation of various categories | X | | |
| Indicator species | Relative abundance over time of selected species | X | | |
| Provincial Forests | Area designated under the <i>Forest Management Act</i> | X | | |
| Wildlife Mgmt. Areas | Area designated under the <i>Wildlife Management Act</i> | X | | |
| Protected land area | Area designated under <i>Natural Areas Protection Act</i> | X | | |
| Provincial Land | Total acreage of Provincial Land | | X | |

In summary, nine of the thirty selected indicators showed an improvement over the period, eleven got worse, four showed no change, and six could not be assessed because of insufficient data.

⁶ No codes of practice for agricultural were in effect in 1997; despite the introduction of enabling legislation, the *Farm Practices Act* in 1998, none have been adopted since

