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June 23, 2020

File Number:

**Decision:**

It is appropriate to disestablish the 67 km portion of the Columbia and Western Rail Trail (CWRT) depicted on the map that is marked as appendix A to this document, in accordance with section 56(1)(c) of the *Forest and Range Practices Act* (FRPA).

**Reasons for Decision:**

The Minister of Forests, Lands, Natural Resource Operations and Rural Development has delegated to me, under section 120.1(1) of the FRPA, the authority to disestablish interpretive forest sites, recreation sites, and recreation trails pursuant to section 56(1)(c) of the FRPA.

After considering the information presented to me, and for the reasons below, I am ordering that the described 67 km section of the CWRT be disestablished.

I have thoroughly reviewed the information provided to me for consideration. This information includes, but is not limited to, the following:

- Relevant strategic and operational policies that guide decision making on Crown land including the following allocation principles:
  - Crown land values are managed for the benefit of the public;
  - economic, environmental and social needs and opportunities are identified and supported;
  - the interests of First Nation communities are recognized and accommodated, when appropriate;
  - decisions are made in a timely, well-considered and transparent manner; and
  - public accountability is maintained;
- First Nations Consultation Record for the CWRT;
- Disestablishment Proposal prepared by Recreation Sites & Trails Branch (RST);
- Maps of the CWRT including the proposed Exhibit A to the Ministerial Order, various section maps and overview maps;
- A decision note prepared by RST including background information, considerations, summary information and recommendations; and
- A summary of responses from stakeholders and the public on the proposal in a document titled “Columbia and Western Rail Trail Proposal for Disestablishment, What We Heard Compendium”.

I have also visited the CWRT and have had extensive discussions with staff from RST and Regional Operations of the Ministry of Forests, Lands, Natural Resource Operations and Rural Development.

Deciding whether to disestablish a portion of the CWRT requires me to assess the applicable legal principles and to consider multiple competing interests. I recognize that it is not possible in the circumstances to make a decision that will satisfy everyone. That said, the FRPA provides me with broad discretion to make the decision that I consider to be in the public interest, which is the primary factor driving my decision.

## **Background**

In 1998, the Trans Canada Trail Foundation acquired the Columbia and Western rail corridor from the Canadian Pacific Rail Company (CPR). In 2004, the Trans Canada Trail Foundation transferred the rail corridor to Tourism BC, a former Crown corporation, to be developed as a world class rail trail. The rail corridor would form part of the Trans Canada Trail, later renamed as The Great Trail of Canada.

Tourism BC acquired the former rail corridor so that it could be developed as a non-motorized recreation trail consistent with the Trans Canada Trail vision. While the trail was managed for non-motorized use and some efforts were made to limit motorized use, no legal prohibitions were put in place to restrict non-motorized use and Tourism BC or the Province did not make significant enforcement efforts.

In 2011, following the dissolution of Tourism BC, the CWRT became RST's responsibility and was legally established as a recreation trail pursuant to section 56(1)(a) of the FRPA. At that time, RST also established the Kettle Valley Rail Trail (approximately 500 km) and the Slocan Valley Rail Trail (50 km) as recreation trails.

The CWRT spans 162 kilometres from Castlegar to Midway in southeastern British Columbia and is contiguous with the Kettle Valley Rail Trail, which extends from Midway to near Hope.

The *Forest Recreation Regulation* allows RST to authorize industrial use on legally established recreation sites, trails and interpretive forests. Industrial use includes, for example, use of a trail for transporting timber. RST has authorized the periodic industrial use of various portions of the rail corridors for timber hauling. RST's authorizations have generally been for a short term (e.g.: 1-6 months) and over a relatively short distance (e.g.: simple crossings or a few kilometres of the rail grade).

Forest licensees have made multiple requests to RST for long-term industrial use (e.g.: 10-20 years) over longer sections of the easternmost 67 km section of the CWRT. BC Timber Sales (BCTS) and Interfor have regularly expressed an interest in using the 7 km section of the CWRT between Paulson Bypass (Detour) Road and Dog Creek Road. BCTS has also expressed an interest in using the section of the CWRT between Dog Creek Road and the Shields Creek area (approximately 30 km in length) to manage forest health and fire salvage work. RST also receives regular requests for industrial use of the CWRT from the Castlegar side of the trail to

access the Shields Creek Forest Service Road (FSR) prior to snow melting at higher elevations.. Interfor currently holds a road permit over a 12.5-km section of the CWRT near the in the McCrae Creek drainage and has further plans to apply for a road permit to build a new road to access the CWRT further east increasing their use of the corridor over the next decade.

In addition to the authorized industrial use, individuals use the CWRT to access private land and homes in the communities of Shields, Coykendahl and Brooklyn. These communities have numerous private lots and homes that are used either as recreational properties or as permanent residences. Even though these properties are mostly (or perhaps exclusively) deeded as water access only, owners have been accessing their properties via the CWRT with increasing frequency. Their preferred access appears to be the east portal of the trail near Castlegar since it tends to be snow free earlier in the year than other options (i.e.: Shields Creek FSR or Highway 3).

There is also a key section of the CWRT (the easternmost two kilometres closest to Castlegar) that CPR owns. Access to the CWRT is controlled through a CPR-administered gate and the Province has been unable to negotiate a public or provincial access agreement.

### **Analysis of relevant information**

I have taken what I believe to be the most practical approach to reviewing and considering the information in support of and in opposition of disestablishing this part of the CWRT. The main factors that I am taking into consideration in my decision are the use of the CWRT, RST's mandate and liability concerns.

I am giving considerable weight to the use of the trail and how consistent its designation as an established recreation trail is with its current use and planned future use. For example, this 67 km section of the CWRT has seen regular on-highway vehicle use for public recreation, private property access, and industrial purposes since the Trans Canada Trail Foundation acquired the trail. This kind of use has been increasing over the last five years.

I have found that some of the public comments opposing disestablishment misunderstand the current use of the CWRT and the reality of what it means to have it established as a recreation trail. Many of the respondents opposing disestablishment appear to believe that the trail is only for non-motorized recreational use without realizing that motorized use of the trail for recreation, private property access, and industrial purposes has been occurring for decades.

I want to be clear that I appreciate the interest that people and groups, both locally and otherwise, take in this important feature, as well as in the provision of recreation opportunities generally. I understand that decisions of this nature give rise to strong emotional reactions. People are passionate about rail trails and the value that they bring to the province and have strong opinions on the issue of motorized versus non-motorized use of these trails. Regardless of the value of this debate, the decision that I am making is an administrative one. The establishment of a recreation trail is important to bring the regulatory regime associated with the *Forest Recreation Regulation* into force and to give the ministry the ability to enter 'stewardship agreements' under

section 118 of FRPA to enable volunteer maintenance. For this 79 km section of the CWRT, the recreation trail designation is inadequate for addressing the complexity of the corridor.

The structure of the corridor itself and the associated infrastructure is far more complex than the recreation trails typically managed within the *Forest Recreation Regulation* regime and is beyond the scope of volunteer maintenance. The rail corridor was constructed to maintain a maximum 4% grade which is steep for railways and requires massive fill slopes, large trestles and retaining walls beyond what would be seen on any resource road in similar terrain and well beyond the complexity of any recreation trail. Disestablishing the CWRT will create an opportunity for more appropriate designations for road like infrastructure and provide a more practical management regime.

The factors described in the bullet points that follow reflect what I see as the main public interest issues:

### *Use of the trail*

- Disestablishing this section of the CWRT will have a minimal impact on continued recreation use along this section of the trail and will not affect the status of the CWRT as part of The Great Trail. Many sections of the Great Trail are located along active industrial roads and public highways. Maintaining and managing the corridor to a road standard after the trail is disestablished will not limit or restrict recreation use and will enhance the Province's ability to better manage the safety of recreation users where motor vehicle use is already occurring and will likely occur in the future.
- When the CWRT was transferred to the Province, there was a general expectation amongst the public that the trail would be managed for non-motorized use as per the original vision of the Trans Canada Trail Foundation. However, the trail was never designated by law as non-motorized and a comprehensive system of access control measures was not put in place. When the Province acquired the corridor, it did not make any formal commitments in this regard and it is unknown whether the Province would have agreed to any if they had been required as a condition of acquiring the corridor.
- The sections of the CWRT that have industrial and on-highway vehicle use should be managed and maintained to road standards with a corresponding designation. Managing industrial and on-highway vehicle traffic requires maintenance and management standards that are different than for recreation trail use to appropriately manage risks and ensure public safety. The Province's position is that recreation trail designations should not overlap road designations or tenures.
- The Columbia and Western Trail Society (CWTS) exists in part to promote the use and maintenance of the CWRT for the benefit of all users. The CWTS supports the use of this railway corridor for all types of uses. The CWTS has a significant history of rail corridor maintenance activities which continue to this date. The society has submitted letters to the Province advocating for multiple uses of the rail corridor including

industrial use and use by on-highway vehicles, off-road vehicles (ORVs), cyclists, and pedestrians.

- The CWTS has negotiated an access agreement with CPR for the privately owned two-kilometre section of land adjacent to the Castlegar trailhead. CWTS controls access to this area. While access remains open to the public, the CWTS has control over the gate keys. On-highway vehicle access appears to be limited to society members, many of whom are private property and home owners in the communities of Shields, Coykendahl and Brooklyn.

### ***Mandate of Recreation Sites and Trails Branch***

- The long-term interests of the forest industry and individuals who use on-highway vehicles to access properties along the CWRT are placing management pressures on the easternmost 67 km section of the trail that are beyond the capabilities and mandate of RST, which does not include the management of resource roads, public roads, or private land access roads.
- RST has a mandate to manage public recreation on Crown lands outside of provincial parks and to manage legally established recreation sites, trails and interpretive forests as a priority. RST does not have the mandate to manage resource roads, public roads, or private land access roads. Management of the easternmost 67 km of the CWRT should reflect current use patterns that include recreational use, industrial forestry activities, and public access by on-highway vehicles. These types of multiple uses are typically managed through the ministry's Regional Operations.
- RST does not have the resources or capacity to continue managing and maintaining the easternmost 67 km section of the CWRT. That section of the trail contains many engineered structures such as large steel trestles, hard rock tunnels, major culverts and fill slopes, and retaining walls that are atypical for most recreation trails.
- The easternmost 67 km section of the CWRT requires a road management framework to address the significant use pressures from on-highway vehicles that industry and private landowners are putting on the trail. Resource road management is subject to specialized legislation and requires specific authorizations, expertise, systems, resourcing, and tools. RST, as an entity, does not have the resources, capacity or mandate to manage roads.

### ***Liability Concerns***

- Forest licensees are required to hold permits to use resource roads, in part, to ensure that they meet maintenance obligations. Where forest licensees use recreation trails without permits, the liability associated with their use relative to the ministry's liability for maintaining trails becomes unclear. The ministry's liability risk can be managed when licensees only use small sections of a trail over a short term. However, when licensees use a trail longer term and over longer portions, it is important that maintenance obligations and associated liability are clear between the licensees and the Province.



- Maintenance and management standards need to be appropriate for the level and type of use. Where industrial traffic and on-highway vehicle traffic are present, a recreation trail standard is not appropriate.

### **First Nations Consultation**

The Province consulted with eleven First Nations in relation to this decision.

The Ktunaxa Nation (KN) has traditional territory across southeastern British Columbia and responded to the proposal referral with four specific concerns:

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### **Determination**

Having considered all of the available information, I am satisfied that disestablishing the easternmost 67 km section of the CWRT is in the public interest. Pursuant to section 56(1)(c) of the FRPA, I will order that the 67 km section of the CWRT, as depicted on appendix A, is disestablished as a recreation trail.

### **Timing and Methodology of Disestablishment**

The order to disestablish the recreation trail will be published according to the procedure for Ministerial Orders

I am grateful to have received genuine and thoughtful comments and data when making my decision.

Signed