



The Best Place on Earth

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Contact: Derek Lefler, Stewardship Forester  
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May 9, 2011

## REGISTERED MAIL

Newland Enterprises Ltd.  
P.O. Box 286  
Fort St. James, British Columbia  
V0J 1P0

Dear Roy Willick:

**Re: Contravention Determination under Section 35(3) of the *Forest Planning and Practices Regulation, Forest and Range Practices Act (FRPA)* on Timber Sale License (TSL) A82938, Block 2.**



This is further to your opportunity to be heard on March 17<sup>th</sup>, 2011 in Fort St. James, BC respecting the alleged contravention of Section 35(3) of the *Forest Planning and Practices Regulation, Forest and Range Practices Act* on Timber Sale License A82938, Block 2. I have now made my determination in this matter, as described below.

### Authority

The Minister of Forests, Lands, and Natural Resource Operations has delegated to me, under section 2(2) of the *Forest and Range Practices Act (FRPA)*, the authority to make determinations with respect to contraventions and administrative penalties under Section 71 of FRPA.

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**Summary of the evidence and findings of fact**

The hearing (opportunity to be heard) occurred on March 17, 2011 at the Fort St. James Resource District Office. Providing evidence at the opportunity to be heard were Eric Lytle and Matt Schooley of the Compliance and Enforcement Branch, Vanderhoof Field Unit, as well as Steve Willick of Newland Enterprises Ltd.

Based on the evidence, I am satisfied that the following facts are **not** in dispute:

- Newland Enterprises Ltd. was the holder of Timber Sale License A82938 and conducted the harvesting operations on the area in question exclusively.
- The Eastern portion of TSL A82938, Block 2 was harvested in August 2009, while the Western portion was not harvested until the winter of 2009/10. All of Block 2 is covered by Standards Unit (SU) 1.
- On April 21, 2010, Nathan Bauman, RPF, accredited soil surveyor, conducted a walkthrough soil disturbance survey and concluded that, "There is a high disturbance level in the summer harvested portion of Block 2, but over the large SU the level falls below the allotted 10%."
- On June 4 and 8, 2010, Karen Krushelnick, RFT, accredited soil surveyor, conducted a full plot soil disturbance survey, and concluded that the total percent disturbance for SU 1 is 12.5%.
- On July 12, 2010, Newland Enterprises Ltd. was notified by Compliance and Enforcement Branch that an investigation had been initiated regarding soil disturbance exceeding the maximum allowable limit on TSL A82938. Newland Enterprises Ltd. took no action in response to the investigation or alleged contravention.

In turn, Steve Willick of Newland Enterprises Ltd. presented the following evidence and considerations during the opportunity to be heard:

- Newland Enterprises Ltd. was aware of the potential soil disturbance hazard, and as such low ground pressure skidding equipment and designated skid trails were utilized to minimize the impact of harvesting operations on the soil.
- A section of Permanent Access Structure (haul road) was not built. Theoretically, if the road had been built, the area covered by the road and roadside work area would eliminate 4 hectares from the survey area and may have reduced the soil disturbance percent. However, Newland Enterprises Ltd. chose not to build the road, thereby reducing the non-productive area total for the block.
- Harvesting operations were ceased prior to harvest completion due to concerns of increased soil disturbance. The decision to return to the block during frozen ground conditions was made despite having to bear the costs of mobilizing and de-mobilizing the harvesting equipment.
- Letters of reference speaking to high environmental compliance and due diligence in past operations were provided from Conifex Timber Inc., East Fraser Fiber Co. Ltd., and Pope and Talbot Inc.

Having regard to the facts of this case, I have decided the contravention is not trifling, but I have decided not to levy a penalty. My reasons are as follows:

- (a) There have been no other contraventions.
- (b) While a significant portion of this block has been disturbed by harvest operations, the gravity and magnitude of the contravention is unclear in terms of the long term soil productivity and the availability of plantable spots. The professional opinion of a soils expert may provide clarity in this matter.
- (c) The contravention was repeated within the confines of the summer harvested portion of the block, but there is no evidence that it was repeated elsewhere.
- (d) The contravention does not appear to be deliberate, although Newland Enterprises Ltd. personnel were aware of increasing soil disturbance leading up to the cessation of harvest operations.
- (e) There was no economic benefit derived directly from exceeding the maximum allowable soil disturbance limits. However, Steve Willick did make reference to continuing harvest operations despite increasing soil disturbance in order to deliver the timber to the sawmill and receive payment.
- (f) Newland Enterprises Ltd. has been cooperative.
- (g) There are no other considerations prescribed by the Lieutenant Governor in Council.

### **Remediation**

Under Section 74 (1) of the *Forest and Range Practices Act*, I am authorized to order a holder of an agreement under the *Forest Act* or the *Range Act* that has contravened a provision of this Act or a regulation or standard, to do work reasonably necessary to remedy the contravention.

This remediation order is stayed until the professional opinion of a soils expert has been obtained and reviewed.

Please note that this determination does not relieve you from any other actions or proceedings that the government is authorized to take with respect to the contravention described above.

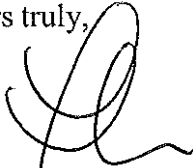
### **Opportunity for correcting this determination**

For 15 days after making my contravention determination under Section 71, I am authorized under Section 79 of the *Forest and Range Practices Act* to correct certain types of obvious errors or omissions. I may do this on my own initiative or at your request. If you think there are valid reasons to correct the determination, you may contact me at (250) 567-6363 within this 15 day period.

**Determination is stayed pending review or appeal**

Under Section 78 of the *Forest and Range Practices Act*, my contravention determination and penalty determination under Section 71 are stayed until you have no further right to have this determination reviewed or appealed, after which time they take immediate effect.

Yours truly,

A handwritten signature in black ink, appearing to be 'Lynda Currie', written over a horizontal line.

Lynda Currie, C.E.C.  
District Manager  
Vanderhoof/Fort St. James District

bpc: Compliance and Enforcement Branch, Box 9505, Stn Prov Govt, Victoria, BC V8W 9C1  
Forest Practices Board, PO Box 9905, Stn Prov Govt, Victoria, BC V8W 9R1



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Distribution: DVA, Dave Banham R.C.L., Guy Brownlee, Legal Counsel, Forest Practices Board  
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May 20, 2011

## REGISTERED MAIL

Newland Enterprises Ltd.  
PO Box 286  
Fort St. James, British Columbia  
V0J 1P0

Dear Sir:

**Re: Contravention Determination under Section 35(3) of the *Forest Planning and Practices Regulation, Forest and Range Practices Act (FRPA)* on Timber Sale License A82938 Block 2.**



This is further to my letter of May 9, 2011, in which I found, under section 71(1) of the Forest and Range Practices Act (FRPA), Newland Enterprises Ltd. (the "Company") in contravention of section 35(3) of the Forest Planning and Practices Regulation (FPPR), and issued a remediation order against the Company under section 74(1) of FRPA.

It has since come to my attention that the Company was not subject to section 35(3) of the FPPR because the BCTS Forest Stewardship Plan (FSP) under which the Company operated included, at 5.2.1 of the FSP, a result or strategy that exempted it, by operation of section 12.2(3) of the FPPR, from section 35(3).

As such, it was not within my jurisdiction to find the Company in contravention of section 35(3). Accordingly, I hereby withdraw my determination of contravention against the Company.

Further, because my determination under section 71(1) of FRPA was invalid, I had no jurisdiction to make a remediation order under section 74(1) of FRPA, as orders under section

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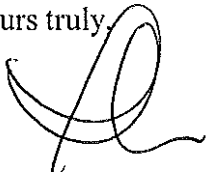
74(1) are contingent on the existence of a valid determination under section 71. I therefore withdraw my order under section 74(1) as well.

Both the contravention determination and the remediation order should therefore be considered nullities and should be ignored.

Finally, I wish to advise you that the Compliance & Enforcement program may re-visit this matter to determine whether there is an appropriate section under which to allege a contravention against the Company for the soil disturbance on TSL A82938 Block 2. If so, it will be the lead investigator's decision whether to bring that allegation forward for a new determination.

If you have any questions about this letter, please do not hesitate to call me at 250-567-6363 in Vanderhoof, or 250-996-5241 in Fort St. James.

Yours truly,

A handwritten signature in black ink, appearing to be 'Lynda Currie', with a large, stylized loop at the end.

Lynda Currie, C.E.C  
District Manager  
Fort St. James/Vanderhoof Resource District