MINISTRY OF FORESTS, LANDS, NATURAL RESOURCE OPERATIONS AND RURAL DEVELOPMENT
INFORMATION NOTE

Date:
File: 19620-25/ A91559
280-40/ A91559
CLIFF:

PREPARED FOR: Chris Stagg, Assistant Deputy Minister, Timber Operations, Pricing and First Nations Division

ISSUE: TSL A91559 - Request for Extension Fee Waiver

BACKGROUND:

Applicant:

Alistair Schroff_
s.22

Background:

The Babine Timber Sales Manager (TSM) issued Timber Sale License (TSL) A91559 to , 593299 B.C. Ltd. on September 29, 2016, for a term of 23 months expiring on August 29, 2018, authorising the harvest of approximately 9136m^3. This TSL is located approximately 47 km west of Burns Lake, within the Nadina Natural Resource District, Lakes Timber Supply Area and the Babine Business Area.

Nature of Request:

As stated in the letter dated September 26, 2018, and an opportunity to be heard (OTBH) on October 5, 2018 the Licensee contends that extension fee waiver is warranted due to:

- Unprescedented wildfire season in 2018
- High fire danger followed by the wildfires and resulted in abnormal amount of downtime and lost production leading up to the TSL expiry.
- Fire Danger ratings of 4 and 5 were recored at the end of June.
- Although the TSL contains a summer harvest prohibition, arrangements were made with the local rancher so that blowdown could be harvested in snow-free conditions.
- All operations were fully shutdown soon after the Shovel Lake Fire started on July 27 and did not resume until September.

- Most local workers were occupied fighting fires , evacuating their homes or preparing to do so under emergency order.

BC Timber Sales Evidence as Provided by Business Area Staff:

- TSL A91559 is a cruise based TSL, authorizing the harvest of approximately 9136m^3 of timber that is located approximately 47 km west of Burns Lake, within the Lakes Timber Supply Area, Nadina Natural Resource District and the Babine Business Area.
- The TSL is comprised of one cut block, with approximately 6411 m^3 of Lodgepole pine (70 percent), 2725m^3 of Spruce (30 percent).
- The licence area has been attacked by Mountain Pine Beetle where the net merchantable volume that is red or gray attacked is approximately 55% percent.
- The term of this TSL is 23 months and doesn't prohibit an extension.
- The upset value for this TSL is $182,537.28.
- On September 15,2016 applications and tenders closed for TSL A91559. There were three (3) applications and tenders received. The application and tender submitted by 593299 B.C. Ltd. (the Licensee) contained the eligible highest bonus offer in the amount of $203,548.73. The next highest eligible tendered bonus offer was $130,828.68.
- The total TSL value is $386,086.01.
- On September 29, 2016 the TSM awarded TSL A91559to the Licensee, 593299 B.C. Ltd (Alistair Schroff).
- The TSL has an effective date of September 29, 2016 and with an initial expiry date of August 29, 2018.
- There has been no pre-work for TSL A91559 at the time of the request.
- On July 27, 2018 the first significant wildfire (Shovel Lake) started in the Nadina Resource District. Numerous evacuation alerts and orders where issued around the Northwest Fire Centre Region over the course of the 2018 fire season but not in the vicinity of the TSL A91559.
- Due to fire risk rating harvesting operations ceased during the months of July and August through out the Nadina Natural Resource District.
- On July 27, 2018, the Licensee applied for a one (1) year extension to the TSL.
- On August 22, 2018 the Licensee paid for the one (1) year extension.

Licensee's Evidence:

Reference the Licensee's request letter dated September 26, 2018, appended to this briefing note.

Extension Fee Waiver Amount: $19,304.30. The payment number is ID#1874

_____ _____

ACKNOWLEDGED **DATE SIGNED**

Chris Stagg
Assistant Deputy Minister
Timber Operations, Pricing and First Nations Division

Prepared by:
Name: Mike Watson, Woodlands Manager
Business Area: Babine
Phone: 250-692-0614

Appendices

1. Licensee's letter dated September 26, 2018 requesting extension fee relief.

MINISTRY OF FORESTS, LANDS, NATURAL RESOURCE OPERATIONS AND RURAL DEVELOPMENT
INFORMATION NOTE

Date:
File: 19620-25/ A91588
280-40/ A91588
CLIFF: 244743

PREPARED FOR: Chris Stagg, Assistant Deputy Minister, Timber Operations, Pricing and First Nations Division

ISSUE: TSL A91588 - Request for Extension Fee Waiver

BACKGROUND:

Applicant:

West Point Rail & Timber Co Ltd.
PO Box 320
Houston, British Columbia
V0J 1Z0

Background:

The Babine Timber Sales Manager (TSM) issued Timber Sale License (TSL) A91588 to West Point Rail & Timber Co Ltd. on November 11, 2016, for a term of 21 months expiring on August 17, 2018. This licence authorizes the harvest of approximately 67,218 m^3 of timber that is located approximately 45 km west of Smithers, within the Nadina Natural Resource District, Lakes Timber Supply Area and within the Babine Business Area.

Nature of Request:

As stated in the letter dated August 30, 2018, sent on your behalf by Groot Bros Contracting Ltd., contends that extension fee waiver is warranted due to:

- Harvesting was restricted to winter only.
- The Licensee did not delay in starting with a pre-work for this licence on November 28, 2016. The land use letter was sent out on November 14, 2016, with a proposed start date of operations of November 30, 2016.
- With an increased in the use of the balsam fir increased the volume harvested greater than expected.
- With the assistance of two (2) harvesting contractors, harvesting commenced with the first delivery of timber made between December 3, 2016, and January 13, 2017.

Commented [KPF1]: What is a land use letter? I have not heard that term before

Commented [WMTF2]: I have to assume this is the Notice to stakeholders such as guides and trappers. Mandatory 14 day notive in our TSL's

- Harvest operations resumed in the fall of 2017, with skidding completed on May 18, 2018, with processing of the timber completed by July 18, 2018.
- The road ban were two (2) weeks longer than unexpected which delayed the recommencement of hauling between July 14, 2018, and August 17, 2018.
- At the time of extension request approximately 29 loads or 1 ½ days of hauling remain on the licence.
- The Licensee was called to action the various fires in the region, the Torkelson Fire started on August 5, 2018, the Gilmore Lake Fire that started on August 7, 2018, and the Nadina Fire that grew in size significantly.
- Unable to meet the deadline to have harvesting complete due to extremely dry conditions with winds of 30 km/hr making it risky to continue with harvesting operates.
- Operations ceased for the three (3) days, August 8, 9 and 10, 2018, due to high temperatures and winds. Hauling would have been completed if it was not for the three (3) shutdown of hauling.

BC Timber Sales Evidence as Provided by Business Area Staff:

- Timber Sale License (TSL) A91588 is a scale based licence that authorize the harvest of approximately 67,218 m^3 of timber. This licence is located approximately 45 km west of Smithers within the Bulkley Timber Supply Area, Skeena-Stikine Natural Resource District and within the Babine Business Area.
- The TSL is comprised of two cut blocks with approximately 36,763 m^3 of Balsam fir (55 percent), 19,714 m^3 of Lodgepole pine (29 percent), and 9,308 m^3 of Spruce (14 percent).
- What did the safety and highlights report say about harvest restrictions and what are they? Did the TSL agreement have any conditions about harvest restrictions? The reasons is that the Licensee says that this is winter only harvest.
- The term of this TSL is 21 months and doesn't prohibit extensions.
- The upset stumpage rate for this TSL is \$23.66/m^3.
- On October 27, 2016, applications and tenders closed for TSL A91588. There were four (4) applications and tenders received. The application and tender submitted by West Point Rail & Timber Co. Ltd. (the Licensee) contained the highest eligible bonus bid for the amount of \$10.55/m^3. The next highest eligible tendered bonus bid was \$5.39/m^3.
- The total stumpage rate for this TSL is \$34.21/m^3.
- On November 11, 2016, the Timber Sales Manager awarded TSL A91588 to the West Point Rail & Timber Co Ltd.
- TSL A91588 has an effective date of November 17, 2016, and with an initial expiry date of August 17, 2018.

Commented [WMTF3]: Block 3 has "winter harvest recommended" Block 1 has Temporary skid trails through special management zone that requires rehabilitation. Block 1 has special screening requiremenst fron exiasting roads. No processing or decking within RMZ's

- When was a pre-work held?
- Is there documentation that says that Groot Bros is an agent for the Licensee? If so, what are the terms and conditions of this authorization?
- When did the Licensee commence harvest operations for the 2017 season(s) and when did they cease operations?
- What was the Licensee's production like during the 2017 harvest season?
- On July 7, 2017, the Province of British Columbia declared a state of emergency in response to the level of wildfire activity within British Columbia. The state of emergency ensured a co-ordinated response to the current wildfire situation and ensured public safety. The state of emergency gave agencies such as Emergency Management BC, the Fire Commissioner, the Ministry of Forests, Lands, Natural Resource Operations and Rural Development, and the RCMP authority under the Emergency Program Act to take every action necessary to fight these wildfires and protect residents and their communities.
- Did the Licensee have to cease operations due to extreme fire danger class and if so how many dates and between what period of time for the 2017 fire season?
- When did the Licensee commence harvest operations for the 2017/2018 season(s) and when did they cease operations?
- What was the Licensee's production like during the 2017/2018 harvest season?
- On July 31, 2018, a lightning storm started a fire that is known as the Nadine Fire. This fire is located approximately 40 km southwest of Burns Lake. The size of this fire is approximately 86,766.0 hectares is size.
- On August 4, 2018, a lightning storm started a fire that is known as the Nadine Fire. This fire is located approximately 20 kilometers south of Fort Babine. The size of this fire is approximately 2,524.0 hectares is size.
- On August 7, 2018, a lightning storm started a fire that is known as the Gilmore Lake Fire. This fire is located approximately 2.5 kilometers south of Gilmore Lake and 8 kilometers southwest of Topley. The size of this fire is approximately 216 hectares is size.
- The Regional District of Bulkley-Nechako issued numerous evacuation alerts and orders for the various fires in the region, however, these alerts and orders did not cover this licence.
- On September 16, 2017, the state of emergency for wildfires ended.
- Did the Licensee have to cease operations due to extreme fire danger class and if so how many dates and between what period of time for the 2018 fire season?
- On August 14, 2018 the Licensee applied for a one (1) year extension to the TSL.
- On August 15, 2018 the Licensee paid for the one (1) year extension.
- On August 15, 2018 the Timber Sale Manager granted a one (1) year with a new expiry date of August 17, 2019.

Commented [KPF4]: Need to answer

Commented [KPF5]: Need to answer

Commented [KPF6]: Need to answer

Commented [KPF7]: Need to answer

Commented [KPF8]: Need to answer

Commented [KPF9]: Need to answer

Commented [KPF10]: Need to answer

3 of 2

- On August 15, 2018, the Province of British Columbia declared a state of emergency in response to the level of wildfire activity within British Columbia. The state of emergency ensured a co-ordinated response to the current wildfire situation and ensured public safety. The state of emergency gave agencies such as Emergency Management BC, the Fire Commissioner, the Ministry of Forests, Lands, Natural Resource Operations and Rural Development and the RCMP authority under the Emergency Program Act to take every action necessary to fight these wildfires and protect residents and their communities.
- On September 7, 2018, the state of emergency for the wildfires ended.

Licensee's Evidence:

Reference the Licensee's request letter dated August 30, 2018, appended to this briefing note.

Extension Fee Waiver Amount: $11,497.64. The payment number is ID#1820

_____ _____

ACKNOWLEDGED **DATE SIGNED**

Chris Stagg
Assistant Deputy Minister
Timber Operations, Pricing and First Nations Division

Prepared by:
Name: Mike Watson, Woodlands Manager
Business Area: Babine
Phone: 250-692-0614

Appendices

1. Licensee's letter dated August 30, 2018 requesting extension fee relief.

MINISTRY OF FORESTS, LANDS, NATURAL RESOURCE OPERATIONS AND RURAL DEVELOPMENT
INFORMATION NOTE

Date:
File: 19620-25/ A92837
280-40/ A92837
CLIFF:

PREPARED FOR: Chris Stagg, Assistant Deputy Minister, Timber Operations, Pricing and First Nations Division

ISSUE: TSL A92837 - Request for Extension Fee Waiver

BACKGROUND:

Applicant:

William Miller
s.22

Background:

The Babine Timber Sales Manager (TSM) issued Timber Sale License (TSL) A92837 to , William Miller on April 7, 2016, for a term of 28 months expiring on August 6, 2018, authorising the harvest of approximately 5532m^3. This TSL is located approximately 45 km west of Burns Lake, within the Nadina Natural Resource District, Lakes Timber Supply Area and the Babine Business Area.

Nature of Request:

As stated in the letter dated September 26, 2018, and an opportunity to be heard in the Nadina Natural Resource District office on October 5, 2018 the Licensee contends that extension fee waiver is warranted due to:

- Unprescedented wildfire season in 2018
- High fire danger followed by the wildfires and resulted in abnormal amount of downtime and lost production leading up to the the TSL expiry.
- Due to wet spring condition only the right-of-way was completed in June 2018.
- Local fire danger ratings were monitored and harvesting was suspended.
- All operations were fully shutdown soon after the Shovel Lake Fire started on July 27 and did not resume until September.
- Most local workers were occupied fighting fires , evacuating their homes or preparing to do so under emergency order.

BC Timber Sales Evidence as Provided by Business Area Staff:

- TSL A92837 is a cruise based TSL, authorizing the harvest of approximately 5532m^3 of timber that is located approximately 45 km west of Burns Lake, within the Lakes Timber Supply Area, Nadina Natural Resource District and the Babine Business Area.
- The TSL is comprised of three cut blocks, with approximately 3472 m^3 of Lodgepole pine (63 percent), 2060m^3 of Spruce (37 percent).
- The term of this TSL is 28 months and doesn't prohibit an extension.
- The upset value for this TSL is $76839.48.
- On March 29, 2016 applications and tenders closed for TSL A92837. There were four (4) applications and tenders received. The application and tender submitted by William Miller (the Licensee) contained the eligible highest bonus offer in the amount of $133,250. The next highest eligible tendered bonus offer was $128,805.79.
- The total TSL value is $210,089.48
- On April 7, 2016 the TSM awarded TSL A92837to the Licensee, William Miller.
- The TSL has an effective date of April 7, 2016 and with an initial expiry date of August 8, 2018.
- A pre-work for TSL A92837 was conducted on May 2, 2018.
- Harvesting started on May 16, 2018.
- On July 27, 2018 the first significant wildfire (Shovel Lake) started in the Nadina Resource District. Numerous evacuation alerts and orders where issued around the Northwest Fire Centre Region over the course of the 2018 fire season but not in the vicinity of the TSL A92837.
- Due to fire risk rating harvesting operations ceased during the months of July and August through out the Nadina Natural Resource District.
- On July 21, 2018, the Licensee applied for a one (1) year extension to the TSL.
- On August 2, 2018 the Licensee paid for the one (1) year extension.

Licensee's Evidence:

Reference the Licensee's request letter dated September 26, 2018, appended to this briefing note.

Extension Fee Waiver Amount: $10,504.47. The payment number is ID#1794

ACKNOWLEDGED **DATE SIGNED**

Chris Stagg
Assistant Deputy Minister
Timber Operations, Pricing and First Nations Division

Prepared by:
Name: Mike Watson, Woodlands Manager
Business Area: Babine
Phone: 250-692-0614

Appendices

1. Licensee's letter dated September 26, 2018 requesting extension fee relief.

MINISTRY OF FORESTS, LANDS, NATURAL RESOURCE OPERATIONS AND RURAL DEVELOPMENT
INFORMATION NOTE

Date:
File: 19620-25/ A92849
280-40/ A92849
CLIFF:

PREPARED FOR: Chris Stagg, Assistant Deputy Minister, Timber Operations, Pricing and First Nations Division

ISSUE: TSL A92849 - Request for Extension Fee Waiver

BACKGROUND:

Applicant:

Coppermoon Contracting Ltd.
16341 Yellowhead Highway
Telkwa, British Columbia
V0J 2X0

Background:

The Babine Timber Sales Manager (TSM) issued Timber Sale License (TSL) A92849 to , Coppermoon Contracting Ltd. on September 20, 2016, for a term of 23 months expiring on August 19, 2018, authorising the harvest of approximately 36,799m^3. This TSL is located approximately 68 km north of Smithers, within the Skeena-Stikine Natural Resource District, Bulkley Timber Supply Area and the Babine Business Area.

Nature of Request:

As stated in the letter dated August 31, 2018, the Licensee contends that extension fee waiver is warranted due to:

- On August 5 the licensee was told to cease all logging operations because the block was located in the fire zone.
- 2 weeks prior to expiry BC Wildfire Services required access to the roads and landings within the block for firefighting efforts.

BC Timber Sales Evidence as Provided by Business Area Staff:

- TSL A92849 is a scale based TSL, authorizing the harvest of approximately 36,799m3 of timber that is located approximately 68km north of Smithers, within the Bulkley Timber Supply Area, Skeena-Stikine Natural Resource District and the Babine Business Area.
- The TSL is comprised of one cut blocks, with approximately 24,970m3 of balsam (68%), 10,908m^3 of spruce (30%) and 921m3 of pine (2%).
- The term of this TSL is 23 months and doesn't prohibit an extension.
- The upset value for this TSL is $20.21/m3.
- On August 23, 2016 applications and tenders closed for TSL A92849. There were three (3) applications and tenders received. The application and tender submitted by Coppermoon Contracting Ltd. (the Licensee) contained the eligible highest bonus bid with the amount of $8.02/m3. The next highest eligible tendered bonus bid was $6.57. One bid of $11.50 was deemed ineligible.
- The total TSL value is $28.23/m3.
- On September 20, 2016 the TSM awarded TSL A92849 to the Licensee, Coppermoon Contracting Ltd.
- The TSL has an effective date of September 20, 2016 and with an initial expiry date of August 19, 2018.
- Harvesting commenced on March 6, 2018.
- BCWS started action on Torkelsen Fire August 5, 2018.
- BCWS confirms that the Coppermoon Contracting Ltd. TSL was the closet active logging block to the fire (2km) .
- On August 7th BCWS directed the Licensee to cease operations. Continuing would have contributed to phase congestion and complicated suppression activities.
- BCWS used the Licensee's equipment into the second week of September
- BCWS communicated to the Licensee that they could resume operations aroubd September 10th, 2018.
- On August 3, 2018 the Licensee applied for a one (1) year extension to the TSL.
- At the time of application the TSM estimated that 50% of the TSL was harvested for the purpose of calculating the extension fee.
- On August 15, 2018 the extension fee was paid.
- On August 15, 2018 the Timber Sale Manager granted a one (1) year with a new expiry date of August 19, 2019.

Licensee's Evidence:

Reference the Licensee's request letter dated August 31, 2018, appended to this briefing note.

Extension Fee Waiver Amount: $25,970.89. The payment number is ID#1824

_____ _____

ACKNOWLEDGED **DATE SIGNED**

Chris Stagg
Assistant Deputy Minister
Timber Operations, Pricing and First Nations Division

Prepared by:
Name: Mike Watson, Woodlands Manager
Business Area: Babine
Phone: 250-692-0614

Appendices

1. Licensee's letter dated September 26, 2018 requesting extension fee relief.

BRITISH COLUMBIA
The Best Place on Earth

File: 19620-25/A94287
19130-20/Golden Bridge Resources Inc.

April 16, 2019

EMAIL: s.22

Xpress Post

Golden Bridge Resources Inc.
Unit 3718 – 8700 McKim Way
Richmond, BC V6X 4A5

Dear Registrant:

This letter is in regards to Timber Sale License (TSL) A94287 and the status of Golden Bridge Resources Inc. as a BC Timber Sales Enterprise.

I have become aware that Golden Bridge Resources Inc. has refused to enter into an agreement for TSL A94287. The facts in this case are:

- TSL A94287 was sold by auction on March 14, 2019
- Golden Bridge Resources Inc. was the successful bidder on TSL A94287.
- The successful bonus offer was $3,689,679.00.
- In a letter dated March 25th, 2019 Golden Bridge Resources Inc. declined to enter into the TSL agreement.

Pursuant to Section 78 (4) (a) of the *Forest Act*, I must disqualify a person from being registered as a BC Timber Sales Enterprise if the person is the successful applicant for a BC Timber Sales agreement and does not enter into the agreement.

Pursuant to Section 12 (2) of the BC Timber Sales Regulation (BCTSR) the period of disqualification is a minimum of six months.

Opportunity To Be Heard
An Opportunity to Be Heard (OTBH) was offered to Golden Bridge Resources Inc. on April 8, 2019 for the purposes of gathering information in respect to this determination. Golden Bridge Resources Inc. did not respond to this offer and provided no further information.

Ministry of Forests, Lands and Natural Resource Operations
BC Timber Sales
Strait of Georgia Business Area
Location:
370 South Dogwood Street
Campbell River, BC, V9W 6Y7
Mailing Address:
370 South Dogwood Street
Campbell River, BC V9W 6Y7
Tel: (250) 286-9300
Fax: (250) 286-9420

Disqualification
After considering the significance of the impact to BC Timber Sales of your refusal to enter into the agreement, effective the date of this letter, I am disqualifying your BC Timber Sales Enterprise registration until October 15, 2019.

Primary Performance
As a result of this disqualification, Golden Bridge Resources Inc. will be deemed to not meet Primary Performance status when assessing performance security deposit level for any new or transferred Timber Sales for the next 48 months, as per Section 16.3 of the BCTSR.

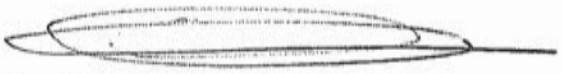
Requesting a Review of Disqualification
This determination is reviewable under section 143 of the *Forest Act* upon request.
A review must be requested no later than 21 days after the date of this notice of determination, and the request must be addressed to:

Ray Luchkow
A/Executive Director
BC Timber Sales
P.O Box 9510 Stn Prov Govt.
Victoria, BC V8W 9C2

The request for review must be signed by, or on behalf of, the requesting person and must contain all of the following information:

- The name and address of the requesting person,
- The grounds for review; and
- A statement of the relief requested.

Yours truly,



Don Hudson
Timber Sales Manager
Campbell River Timber Sales Office

Attachments: BC Timber Sales Regulation
Forest Act, Sections 78 and 143
March 25th, 2019 Letter from Golden Bridge Resources Ltd.

BRITISH COLUMBIA
The Best Place on Earth

File: 19620-25/A94287
19130-20/ Twenty Ten Timber Products Ltd.

May 21, 2019

EMAIL: s.22

Xpress Post

Twenty Ten Timber Products Ltd.
7045 Aulds Road
Lantzville, BC V0R 2H0

Dear Registrant:

This letter is in regards to Timber Sale License (TSL) A94287 and the status of Twenty Ten Timber Products Ltd. as a BC Timber Sales Enterprise.

I have become aware that Twenty Ten Timber Products Ltd. has refused to enter into an agreement for TSL A94287. The facts in this case are:

- TSL A94287 was sold by auction on March 14, 2019
- Golden Bridge Resources Inc. was the successful bidder on TSL A94287 but refused to enter into the TSL agreement.
- Twenty Ten Timber Products Ltd. was the next highest bidder with a bonus bid of $2,997,951.00.
- In a letter dated April 16, 2019 Twenty Ten Timber Products Ltd. declined to enter into the TSL agreement.

Pursuant to Section 78 (4) (a) of the *Forest Act*, I must disqualify a person from being registered as a BC Timber Sales Enterprise if the person is the successful applicant for a BC Timber Sales agreement and does not enter into the agreement.

Pursuant to Section 12 (2) of the BC Timber Sales Regulation (BCTSR) the period of disqualification is a minimum of six months.

Opportunity To Be Heard
An Opportunity to Be Heard (OTBH) was offered to Twenty Ten Timber Products Ltd. on April 17, 2019 for the purposes of gathering information in respect to this determination. Twenty Ten Timber Products Ltd. did not respond to this offer and provided no further information.

Ministry of Forests, Lands and Natural Resource Operations
BC Timber Sales
Strait of Georgia Business Area
Location:
370 South Dogwood Street
Campbell River, BC, V9W 6Y7
Mailing Address:
370 South Dogwood Street
Campbell River, BC V9W 6Y7
Tel: (250) 286-9300
Fax: (250) 286-9420

Disqualification
After considering the significance of the impact to BC Timber Sales of your refusal to enter into the agreement, effective the date of this letter, I am disqualifying your BC Timber Sales Enterprise registration until November 20, 2019.

Primary Performance
As a result of this disqualification, Twenty Ten Timber Products Ltd. will be deemed to not meet Primary Performance status when assessing performance security deposit level for any new or transferred Timber Sales for the next 48 months, as per Section 16.3 of the BCTSR.

Requesting a Review of Disqualification
This determination is reviewable under section 143 of the *Forest Act* upon request.
A review must be requested no later than 21 days after the date of this notice of determination, and the request must be addressed to:

Ray Luchkow
A/Executive Director
BC Timber Sales
P.O Box 9510 Stn Prov Govt.
Victoria, BC V8W 9C2

The request for review must be signed by, or on behalf of, the requesting person and must contain all of the following information:

- The name and address of the requesting person,
- The grounds for review; and
- A statement of the relief requested.

Yours truly,

Don Hudson
Timber Sales Manager
Campbell River Timber Sales Office

Attachments: BC Timber Sales Regulation
Forest Act, Sections 78 and 143
April 16, 2019 Letter from Twenty Ten Timber Products Ltd.

BRITISH COLUMBIA
The Best Place on Earth

File: 19620-25/A95423
19130-20/Stella Jones Inc.

April 8, 2019

EMAIL: s.22

Express Post

Stella Jones Inc.
23562 River Road
Maple Ridge, BC
V2W 1B7

Dear Registrant:

This letter is in regards to Timber Sale License (TSL) A95423 and the status of Stella Jones Inc. as a BC Timber Sales Enterprise.

I have become aware that Stella Jones Inc. has refused to enter into an agreement for TSL A95423. The facts in this case are:

- TSL A95423 was sold by auction on January 16, 2019
- Stella Jones Inc. was the successful bidder on TSL A95423.
- The successful bonus bid was $109.42/m3.
- In an email dated January 17, 2019 Stella Jones Inc. declined to enter into the TSL agreement.

Pursuant to Section 78 (4) (a) of the *Forest Act*, I must disqualify a person from being registered as a BC Timber Sales Enterprise if the person is the successful applicant for a BC Timber Sales agreement and does not enter into the agreement.

Pursuant to Section 12 (2) of the BC Timber Sales Regulation (BCTSR) the period of disqualification is a minimum of six months.

Opportunity To Be Heard
An Opportunity to Be Heard (OTBH) was offered to Stella Jones Inc. on January 21, 2019 for the purposes of gathering information in respect to this determination. Stella Jones Inc. responded via email and inquired about an administrative detail (see attached emails) but this detail did not have an impact on this determination.

Ministry of Forests, Lands and Natural Resource Operations
BC Timber Sales
Strait of Georgia Business Area
Location:
370 South Dogwood Street
Campbell River, BC, V9W 6Y7
Mailing Address:
370 South Dogwood Street
Campbell River, BC V9W 6Y7
Tel: (250) 286-9300
Fax: (250) 286-9420

Disqualification
After considering the significance of the impact to BC Timber Sales of your refusal to enter into the agreement, effective January 22, 2019, I am disqualifying your BC Timber Sales Enterprise registration until July 21, 2019.

Primary Performance
As a result of this disqualification, Stella Jones Inc. will be deemed to not meet Primary Performance status when assessing performance security deposit levels for any new or transferred Timber Sales for 48 months from the January 22, 2019 date of determination, as per Section 16.3 of the BCTSR.

Requesting a Review of Disqualification
This determination is reviewable under section 143 of the *Forest Act* upon request.

A review must be requested no later than 21 days after the date of this notice of determination, and the request must be addressed to:

Ray Luchkow
A/Executive Director
BC Timber Sales
P.O Box 9510 Stn Prov Govt.
Victoria, BC
V8W 9C2

The request for review must be signed by, or on behalf of, the requesting person and must contain all of the following information:

- The name and address of the requesting person,
- The grounds for review; and
- A statement of the relief requested.

Yours truly,

Don Hudson
Timber Sales Manager
Campbell River Timber Sales Office

Attachments: BC Timber Sales Regulation
Forest Act, Sections 78 and 143
email titled: Timber Sale A95423

From:	Janning-Stewart, Debbie FLNR:EX
To:	Bowerbank, Barb FLNR:EX
Subject:	FW: A91559 - 593299 BC Ltd - extension fee determination
Date:	April 17, 2019 8:41:59 AM
Attachments:	A91559Draft Letter - 58 1 (6) FA Extension Fee Waiver.pdf Waiver request A91559[1].pdf

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Debbie Janning-Stewart
Timber Sales Manager
BC Timber Sales
Babine Business Area

From: Kennedy, Paul FLNR:EX
Sent: Friday, February 8, 2019 8:24 AM
To: Janning-Stewart, Debbie FLNR:EX; Watson, Mike T FLNR:EX
Subject: A91559 - 593299 BC Ltd - extension fee determination

Attached is the extension fee determination for TSL A91559

Paul Kennedy
BC Timber Sales
Initiatives Officer
Phone: 778-974-5676
Cell phone: 250-267-2674
mailto: paul.kennedy@gov.bc.ca

File: 19620-25/A91559
280-40/A91559
Cliff: 244744

January 31, 2019

593299 B.C. Ltd.
PO Box 49
South Bank, British Columbia
V0J 2P0

Dear Sir/Madam:

I am in receipt of your letter dated September 26, 2018, requesting a waiver from the requirement to pay an extension fee in respect of Timber Sale Licence (TSL) A91559. As the person authorized by the Minister of Forests, Lands, Natural Resource Operations and Rural Development (FLNRORD) to deal with such requests, I would like to advise you of my determination.

Section 58.1 (6) of the *Forest Act* states that:

> *"…at the request of the holder of a timber sale licence…who has submitted an application for an extension… a person authorized by the minister may waive the* [extension] *fee…if the authorized person is satisfied that the reasons for the extension are circumstances* [that are]*:*
>
> *(a) beyond the holder's control, and* [are]
>
> *(b) unrelated to the holder's financial situation."*

Regardless of the many other considerations that could be argued as contributing to the situation you face, I am obliged to assess whether your request meets the circumstances described in section 58.1 (6) above. In doing so, it is my practice to consider any relevant information that is related to those circumstances. This may include policy guidance, advisory bulletins, and information provided by FLNRORD staff and your letter dated September 26, 2018, requesting a waiver.

In that context, I have completed my review of this matter. Having evaluated and considered all of the information available to me, I have concluded that your application does not meet the conditions described in section 58.1 (6) of the *Forest Act.* This is due to the following key factors summarized below:

Ministry of Forests, Lands, Natural Resource Operations and Rural Development
Timber Operations, Pricing and First Nations Division
Mailing Address: PO BOX 9352 Stn Prov Govt Victoria, BC V8W 9M1
Tel: 250 387-0902
Fax: 250 387-3291
Website: https://www.for.gov.bc.ca/bcts/

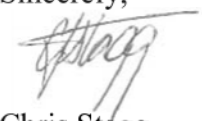
Key Factors:

- TSL A91559 was issued by the Babine Business Area authorizing the harvest of ~9,136 cubic metres of Crown timber over a 23 month term.
- An integral part of the application and tender for TSL A91559 included a requirement that the successful applicant sign and submit a declaration attesting that they have read and understood the invitation, application, tender and the associated tender package contents.
- As independent operators, TSL holders are responsible for managing their harvesting operations and exercising their Crown timber harvesting rights in accordance with the agreement and any applicable forestry legislation. This responsibility, in my view, also includes anticipating and responding to routine contingencies that typically arise during the term of a TSL (e.g., seasonal weather delays and temporary wildfire-related shut-down requirements, equipment availability/break-downs, etc.).
- In reviewing the evidence provided to me by Ministry staff (ref. attachment), I noted that industrial operations in the area that encompassed TSL A91559 had to cease due to the fire danger rating for the months of July and August 2018. However, I also noted that no harvesting had taken place in respect of TSL A91559 up until that point nor has it been initiated since that time.
- In light of the absence of any harvest activity to-date in respect of TSL A91559, the ample term of the agreement, and the relatively short duration of the wildfire-related shutdown that occurred in 2018, I am satisfied that the extension to the term of TSL A91559 was due to events within your control.

As a consequence of these findings, and pursuant to section 58.1 (6) of the *Forest Act*, I am declining to approve your September 26, 2018, request for an extension fee waiver in respect of TSL A91559. In light of my decision, the amount $19,304.30 will not be returned to you.

Should you have any questions regarding this matter please contact Debbie Janning-Stewart, Timber Sales Manager, Babine Business Area at (250) 692-2200.

Sincerely,



Chris Stagg
Assistant Deputy Minister

Attachment: BC Timber Sales Evidence as Provided by Business Area Staff

pc: Mike Falkiner, Executive Director, BC Timber Sales
Debbie Janning-Stewart, Timber Sales Manager, Babine Business Area
Paul Kennedy, Initiatives Officer, BC Timber Sales

BC Timber Sales Evidence as Provided by Business Area Staff:

- Timber Sale Licence (TSL) A91559 is a cruise-based licence that authorizes the harvest of approximately 9,136 m^3 of timber. This TSL is located approximately 47 km west of Burns Lake, within the Lakes Timber Supply Area, Nadina Natural Resource District and the Babine Business Area.
- The TSL is comprised of one cut block that contains approximately 6,411 m^3 of Lodgepole pine (70 percent) and 2,725m^3 of Spruce (30 percent).
- The licence area has been attacked by Mountain Pine Beetle where the net merchantable volume that is red and/or grey attacked is approximately 55 percent.
- The term of this TSL is 23 months.
- This TSL does not prohibit extensions.
- The upset value for this licence is $182,537.28.
- On September 15, 2016, applications and tenders closed for TSL A91559. There were three (3) applications and tenders received. The application and tender submitted by 593299 B.C. Ltd. (the Licencee) contained the eligible highest bonus offer in the amount of $203,548.73. The next highest eligible tendered bonus offer was $130,828.68.
- The total TSL value is $386,086.01.
- On September 29, 2016, the Babine Timber Sales Manager issued TSL A91559 to 593299 B.C. Ltd. This TSL has an effective date of September 29, 2016, and an initial expiry date of August 29, 2018, a 23-month term.
- On July 7, 2017, the Province of British Columbia declared a state of emergency in response to the level of wildfire activity within British Columbia. The state of emergency ensured a co-ordinated response to the current wildfire situation and ensured public safety. The state of emergency gave agencies such as Emergency Management BC, the Fire Commissioner, Ministry of Forests, Lands, Natural Resource Operations and Rural Development, and the RCMP authority under the *Emergency Program Act* to take every action necessary to fight these wildfires and protect residents and their communities.
- On September 16, 2017, the state of emergency for wildfires ended.
- During the 2017 wildfire season, this TSL was not impacted by wildfires.
- On July 27, 2018, the Licencee applied for a one (1) year extension to the TSL.
- On July 27, 2018, a wildfire was discovered approximately 6 km north of the community of Fraser Lake within the Nadina Natural Resource District. This wildfire is known as the Shovel Lake fire, R11498, which grew to 92,250 ha in size. The cause of this fire is under investigation.
- TSL A91559 is located approximately 65 km northwest of the western boundary of the Shovel Lake fire.

- Between the period of September 29, 2016, and July 27, 2018, there was no known activity on this licence. BC Timber Sales staff confirmed that no harvesting had taken place on this licence.
- On August 15, 2018, the Province of British Columbia once again declared a state of emergency in response to the level of wildfire activity within British Columbia.
- During the months of July and August 2018, within the Nadina Natural Resource District, the fire danger rating was extreme so industrial operations had to cease.
- There were numerous evacuation alerts and orders that were issued around the Northwest Fire Centre Region during the 2018 fire season but no evacuation alerts or orders directly impacted this licence.
- On August 22, 2018, the Licencee paid the extension fee in the amount of $19,304.30.
- On September 7, 2018, the state of emergency for the wildfires ended.
- On September 26, 2018, the Licencee requested a waiver from the payment of the extension fee.

593 299 BC Ltd
Box 49 Southbank BC V0J 2P0

Mr. Chris Stagg
Assistant Deputy Minister, BC Timber Sales

c/o BC Timber Sales
Babine Business Area
Box 999
Burns Lake BC
V0J 1E0

Dear Mr. Stagg,

September 26, 2018

Re: Extension fee waiver, TSL A91559

We are requesting a waiver of extension fees for TSL A91559 in light of the unprecedented wildfire season we have experienced in the Burns Lake area.

With the high fire danger and then the wildfires we experienced an abnormal amount of downtime and lost production leading up to the TSL expiry. All operations were fully shut down soon after the Shovel Lake fire started on July 27 and did not resume until well into September. Most local workers were occupied fighting fires, evacuating their homes or preparing to do so under emergency order.

If not for these circumstances beyond our control we could have avoided the need to extend.

Thank you for considering this request,

Alistair Schroff, Director 593 299 BC Ltd

From: Janning-Stewart, Debbie FLNR:EX
To: Bowerbank, Barb FLNR:EX
Subject: FW: A91588 extension fee waiver determination - West Point Rail and Timber
Date: April 17, 2019 8:41:31 AM
Attachments: A91588Draft Letter - 58 1 (6) FA Extension Fee Waiver ADM approved.pdf
A91588Extension fee waiver Briefing Note ADM approved.pdf

Debbie Janning-Stewart
Timber Sales Manager
BC Timber Sales
Babine Business Area

From: Kennedy, Paul FLNR:EX
Sent: Thursday, February 21, 2019 3:53 PM
To: Janning-Stewart, Debbie FLNR:EX; Watson, Mike T FLNR:EX
Subject: A91588 extension fee waiver determination - West Point Rail and Timber

Attached is the extension fee waiver determination for TSL A91588 – West Point Rail and Timber

Paul Kennedy
BC Timber Sales
Initiatives Officer
Phone: 778-974-5676
Cell phone: 250-267-2674
mailto: paul.kennedy@gov.bc.ca

BRITISH COLUMBIA

File: 19620-25/A91588
280-40/A91588
Cliff: 244743

February 15, 2019

West Point Rail & Timber Co. Ltd.
PO Box 320
Houston, British Columbia
V0J 1Z0

Dear Sir/Madam:

I am in receipt of your letter dated August 30, 2018, requesting a waiver from the requirement to pay an extension fee in respect of Timber Sale Licence (TSL) A91588. As the person authorized by the Minister of Forests, Lands, Natural Resource Operations, and Rural Development (FLNRORD) to deal with such requests, I would like to advise you of my determination.

Section 58.1 (6) of the *Forest Act* states that:

> *"…at the request of the holder of a timber sale licence…who has submitted an application for an extension… a person authorized by the minister may waive the* [extension] *fee…if the authorized person is satisfied that the reasons for the extension are circumstances* [that are]*:*
>
> > *(a) beyond the holder's control, and* [are]
> >
> > *(b) unrelated to the holder's financial situation."*

Regardless of the many other considerations that could be argued as contributing to the situation you face, I am obliged to assess whether your request meets the circumstances described in section 58.1 (6) above. In doing so, it is my practice to consider any relevant information that is related to those circumstances. This may include policy guidance, advisory bulletins, and information provided by FLNRORD staff and your letter dated August 30, 2018, requesting a waiver.

In that context, I have completed my review of this matter. Having evaluated and considered all of the information available to me, I have concluded that your application does not meet the conditions described in section 58.1 (6) of the *Forest Act.* This is due to the following key factors summarized below:

Ministry of Forests, Lands, Natural Resource Operations and Rural Development
Timber Operations, Pricing and First Nations Division
Mailing Address: PO BOX 9352 Stn Prov Govt Victoria, BC V8W 9M1
Tel: 250 387-0902
Fax: 250 387-3291
Website: https://www.for.gov.bc.ca/bcts/

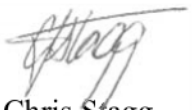
Key Factors:

- TSL A91588 was issued by the Babine Business Area authorizing the harvest of 67,218 cubic metres of Crown timber over a 21-month term.
- An integral part of the application and tender for TSL A91588 included a requirement that the successful applicant sign and submit a declaration attesting that they have read and understood the invitation, application, tender and the associated tender package contents.
- As independent operators, TSL holders are responsible for managing their harvesting operations and exercising their Crown timber harvesting rights in accordance with the agreement and any applicable forestry legislation. This responsibility, in my view, also includes anticipating and responding to routine contingencies that typically arise during the term of a TSL (e.g., seasonal weather delays and temporary wildfire-related shut-down requirements, equipment availability/breakdowns, business-to-business relationships and agreement, etc.).
- In reviewing the evidence provided to me by Ministry staff (ref. attachment), I noted that industrial operations in respect of TSL A91588 ceased for a five (5) month period during the prime 2017/2018 winter harvesting season in order for you to conduct harvesting operations on another licence. I am satisfied that ceasing operations on TSL A91588 to conduct operations on another licence is within your control.
- In light of the absence of any harvest activity during prime operating windows in respect of TSL A91588, the ample term of the agreement, and the relatively short duration of the fire danger-related shutdown that occurred in 2018, I am satisfied that the extension to the term of TSL A91588 was due to events within your control.

As a consequence of these findings, and pursuant to section 58.1 (6) of the *Forest Act*, I am not approving your August 30, 2018, request for an extension fee waiver in respect of TSL A91588. In light of my decision, the amount $11,497.64 will not be returned to you.

Should you have any questions regarding this matter please contact Debbie Janning-Stewart, Timber Sales Manager, Babine Business Area at (250) 692-2200.

Sincerely,



Chris Stagg
Assistant Deputy Minister

Attachment: BC Timber Sales Evidence as Provided by Business Area Staff

pc: Mike Falkiner, Executive Director, BC Timber Sales
Debbie Janning-Stewart, Timber Sales Manager, Babine Business Area
Paul Kennedy, Initiatives Officer, BC Timber Sales

BC Timber Sales Evidence as Provided by Business Area Staff:

- Timber Sale License (TSL) A91588 is a cruise-based licence authorizes the harvest of approximately 67,218 m^3 of timber. This licence is located approximately 45 km west of Smithers, within the Nadina Natural Resource District, Lakes Timber Supply Area and within the Babine Business Area.
- This TSL is comprised of two cut blocks with approximately 36,763 m^3 of Balsam fir (55 percent), 19,714 m^3 of Lodgepole pine (29 percent), and 9,308 m^3 of Spruce (14 percent).
- The TSL Safety and Highlights Report, which forms part of the tender package, contains the following information on operational recommendations:
    - "*Work Window/timing Restrictions: Block 3 has a recommendation for winter only logging.*"
- The TSL agreement does not contain any restrictions on the season of harvest.
- The term of this TSL is for 21 months and does not prohibit extensions.
- The upset stumpage rate for this TSL is \$23.66/m^3.
- On October 27, 2016, applications and tenders closed for TSL A91588. There were four (4) applications and tenders received. The application and tender submitted by the Licensee contained the highest eligible bonus bid for the amount of \$10.55/m^3. The next highest eligible tendered bonus bid was \$5.39/m^3.
- The total stumpage rate for this TSL is \$34.21/m^3.
- TSL A91588 was issued to the Licence with an effective date of November 18, 2016, and an initial expiry date of August 17, 2018.
- On November 28, 2016, the Licensee and BC Timber Sales (BCTS) staff conducted a pre-work for this licence.
- During the winter season 2016/2017, the Licensee commenced and completed harvest operations on cut block 3, approximately 18 hectares in size.
- On July 7, 2017, the Province of British Columbia declared a state of emergency in response to the level of wildfire activity within British Columbia.
- On July 28, 2017, the Licensee and BCTS staff conducted a second pre-work for this licence.
- On July 28, 2017, the Licensee commenced road construction within cut block 1, approximately 154 hectares in size. Harvesting operations were limited to the road right of way.
- During the 2017 wildfire season, industrial operations did not have to cease due to the extreme fire danger class.
- On September 16, 2017, the state of emergency for wildfires ended.
- The Licensee did not conduct harvesting operations on this licence during the 2017/2018 winter harvest season. The Licensee relocated their harvesting operations for approximately five (5) months in order to complete harvesting on another licence.
- On March 9, 2018, a third pre-work was conducted with the Licensee and BCTS staff.

- The Licensee commenced harvesting operations on cut block 1, approximately 154 hectares in size, during the spring and summer of 2018. During this period, harvesting production was high.
- On July 31, 2018, a lightning storm started a fire that is known as the Nadine Lake Fire (R21721). This fire was located approximately 40 km southwest of Burns Lake. The size of this fire was approximately 86,766 hectares in size.
- The Nadine Lake Fire was approximately 70 km southeast from this licence. The Nadine Lake Fire does not impact this TSL.
- On August 4, 2018, a lightning storm started a fire that is known as the Torkelsen Lake Fire (R32182). This fire was located approximately 20 km south of Fort Babine. The size of this fire was approximately 2,524 hectares in size.
- The Torkelsen Lake Fire was approximately 125 km southeast from this licence. The Torkelsen Lake Fire does not impact this TSL.
- On August 7, 2018, a lightning storm started a fire that is known as the Gilmore Lake Fire. This fire was located approximately 2.5 km south of Gilmore Lake and 8 km southwest of Topley. The size of this fire was approximately 216 hectares in size.
- The Gilmore Lake Fire was approximately 90 km southeast from this licence. The Gilmore Lake Fire does not impact this TSL.
- The Regional District of Bulkley-Nechako issued numerous evacuation alerts and orders for the various fires in the region, however, these alerts and orders did not cover this licence.
- On August 8, 9, and 10, 2018, the Licensee voluntarily curtailed industrial operations due to fire weather conditions.
- The Pine Creek fire weather station is the most appropriate fire weather station for this licence. During the month of August 2018, the fire danger class for this weather station remained at a high danger class. This fire rating allowed for industrial activity to continue.
- Most of the other fire weather stations within the district showed an extreme fire danger class.
- On August 14, 2018 the Licensee applied for a one (1) year extension to the TSL.
- On August 15, 2018 the Licensee paid for the one (1) year extension.
- On August 15, 2018 the TSM granted a one (1) year extension with a new expiry date of August 17, 2019.
- On August 15, 2018, the Province of British Columbia once again declared a state of emergency in response to the level of wildfire activity within British Columbia.
- On August 30, 2018, the Licensee requested a waiver from the payment of the extension fee for TSL A91588.
- On September 7, 2018, the state of emergency for the wildfires ended.
- As of January 2, 2019, the Licensee has harvested and been billed for approximately 60,452 m^3 of timber from this licence. The species that have been billed consist of approximately 34,617 m^3 of Balsam fir (57 percent), 12,018 m^3 of Lodgepole pine (20 percent), and 13,741 m^3 of Spruce (23 percent).

MINISTRY OF FORESTS, LANDS, NATURAL RESOURCE OPERATIONS AND RURAL DEVELOPMENT
INFORMATION NOTE

Date: February 15, 2019
File: 19620-25/ A91588
280-40/ A91588
CLIFF: 244743

PREPARED FOR: Chris Stagg, Assistant Deputy Minister, Timber Operations, Pricing and First Nations Division

ISSUE: TSL A91588 - Request for Extension Fee Waiver

Applicant:

West Point Rail & Timber Co. Ltd.
PO Box 320
Houston, British Columbia
V0J 1Z0

BACKGROUND:

The Babine Timber Sales Manager (TSM) issued Timber Sale License (TSL) A91588 to West Point Rail & Timber Co. Ltd. (the Licensee) on November 18, 2016, for a term of 21 months expiring on August 17, 2018. This cruise-based licence authorizes the harvest of approximately 67,218 m^3 of timber that is located approximately 45 km west of Smithers, within the Nadina Natural Resource District, Lakes Timber Supply Area and within the Babine Business Area.

Nature of Request:

As stated in the letter dated August 30, 2018, sent on behalf of the Licensee by Groot Bros. Contracting Ltd., contends that extension fee waiver is warranted due to:

- Harvesting was restricted to winter only.
- There was no delay in starting operations on this licence as a pre-work was conducted on November 28, 2016. The land use letter was sent out on November 14, 2016, with a proposed start date for harvesting operations of November 30, 2016.
- There was an increase in Balsam-fir utilization and the volume harvested exceeded expectation.
- With the assistance of two (2) harvesting contractors, harvesting commenced with the first delivery of timber being made between December 3, 2016, and January 13, 2017.
- Harvesting operations resumed in the fall of 2017, with skidding completed by May 18, 2018, and processing of the timber completed by July 18, 2018.
- The road ban was two (2) weeks longer than expected which delayed the recommencement of hauling until June 18, 2018.
- At the time of the extension request, approximately 28 loads remained on the licence area which is about 1.5 days of hauling.

- The Licensee was called to action the various wildfires in the region, including the Torkelson Fire which started on August 5, 2018, the Gilmore Lake Fire which started on August 7, 2018, and the Nadina Fire that grew in size significantly.
- The Licensee ceased operations for three (3) days, August 8, 9, and 10, 2018, due to high temperatures and winds. They feel that continuing operations under these conditions involved too high a risk of starting a fire. Hauling would have been completed if it was not for the three (3) days of shutdown.

BC Timber Sales Evidence as Provided by Business Area Staff:

- This TSL is comprised of two cut blocks with approximately 36,763 m^3 of Balsam fir (55 percent), 19,714 m^3 of Lodgepole pine (29 percent), and 9,308 m^3 of Spruce (14 percent).
- The TSL Safety and Highlights Report, which forms part of the tender package, contains the following information on operational recommendations:
    - "*Work Window/timing Restrictions: Block 3 has a recommendation for winter only logging.*"
- The TSL agreement does not contain any restrictions on the season of harvest.
- The term of this TSL is for 21 months and does not prohibit extensions.
- The upset stumpage rate for this TSL is \$23.66/m^3.
- On October 27, 2016, applications and tenders closed for TSL A91588. There were four (4) applications and tenders received. The application and tender submitted by the Licensee contained the highest eligible bonus bid for the amount of \$10.55/m^3. The next highest eligible tendered bonus bid was \$5.39/m^3.
- The total stumpage rate for this TSL is \$34.21/m^3.
- TSL A91588 was issued to the Licence with an effective date of November 18, 2016, and an initial expiry date of August 17, 2018.
- On November 28, 2016, the Licensee and BC Timber Sales (BCTS) staff conducted a pre-work for this licence.
- During the winter season 2016/2017, the Licensee commenced and completed harvest operations on cut block 3, approximately 18 hectares in size.
- On July 7, 2017, the Province of British Columbia declared a state of emergency in response to the level of wildfire activity within British Columbia.
- On July 28, 2017, the Licensee and BCTS staff conducted a second pre-work for this licence.
- On July 28, 2017, the Licensee commenced road construction within cut block 1, approximately 154 hectares in size. Harvesting operations were limited to the road right of way.
- During the 2017 wildfire season, industrial operations did not have to cease due to the extreme fire danger class.
- On September 16, 2017, the state of emergency for wildfires ended.

- The Licensee did not conduct harvesting operations on this licence during the 2017/2018 winter harvest season. The Licensee relocated their harvesting operations for approximately five (5) months in order to complete harvesting on another licence.
- On March 9, 2018, a third pre-work was conducted with the Licensee and BCTS staff.
- The Licensee commenced harvesting operations on cut block 1, approximately 154 hectares in size, during the spring and summer of 2018. During this period, harvesting production was high.
- On July 31, 2018, a lightning storm started a fire that is known as the Nadine Lake Fire (R21721). This fire was located approximately 40 km southwest of Burns Lake. The size of this fire was approximately 86,766 hectares in size.
- The Nadine Lake Fire was approximately 70 km southeast from this licence. The Nadine Lake Fire does not impact this TSL.
- On August 4, 2018, a lightning storm started a fire that is known as the Torkelsen Lake Fire (R32182). This fire was located approximately 20 km south of Fort Babine. The size of this fire was approximately 2,524 hectares in size.
- The Torkelsen Lake Fire was approximately 125 km southeast from this licence. The Torkelsen Lake Fire does not impact this TSL.
- On August 7, 2018, a lightning storm started a fire that is known as the Gilmore Lake Fire. This fire was located approximately 2.5 km south of Gilmore Lake and 8 km southwest of Topley. The size of this fire was approximately 216 hectares in size.
- The Gilmore Lake Fire was approximately 90 km southeast from this licence. The Gilmore Lake Fire does not impact this TSL.
- The Regional District of Bulkley-Nechako issued numerous evacuation alerts and orders for the various fires in the region, however, these alerts and orders did not cover this licence.
- On August 8, 9, and 10, 2018, the Licensee voluntarily curtailed industrial operations due to fire weather conditions.
- The Pine Creek fire weather station is the most appropriate fire weather station for this licence. During the month of August 2018, the fire danger class for this weather station remained at a high danger class. This fire rating allowed for industrial activity to continue.
- Most of the other fire weather stations within the district showed an extreme fire danger class.
- On August 14, 2018 the Licensee applied for a one (1) year extension to the TSL.
- On August 15, 2018 the Licensee paid for the one (1) year extension.
- On August 15, 2018 the TSM granted a one (1) year extension with a new expiry date of August 17, 2019.

- On August 15, 2018, the Province of British Columbia once again declared a state of emergency in response to the level of wildfire activity within British Columbia.
- On August 30, 2018, the Licensee requested a waiver from the payment of the extension fee for TSL A91588.
- On September 7, 2018, the state of emergency for the wildfires ended.
- As of January 2, 2019, the Licensee has harvested and been billed for approximately 60,452 m^3 of timber from this licence. The species that have been billed consist of approximately 34,617 m^3 of Balsam fir (57 percent), 12,018 m^3 of Lodgepole pine (20 percent), and 13,741 m^3 of Spruce (23 percent).

Licensee's Evidence:

Reference the Licensee's request letter dated August 30, 2018, appended to this briefing note.

Extension Fee Waiver Amount: $11,497.64. The payment number is **1820**.

February 15, 2019

ACKNOWLEDGED **DATE SIGNED**

Chris Stagg
Assistant Deputy Minister
Timber Operations, Pricing and First Nations Division

Prepared by:
Name: Mike Watson, Woodlands Manager
Business Area: Babine
Phone: 250-692-0614

Reviewed by	Initials	Date
PRGM Dir./Mgr.		
Sr. Mgr.		
Initiative Off.		

Appendices

1. Licensee's letter dated August 30, 2018, requesting extension fee relief.

From:	Janning-Stewart, Debbie FLNR:EX
To:	Bowerbank, Barb FLNR:EX
Subject:	FW: A92837 - Williams Miller - extension fee determination
Date:	April 17, 2019 8:41:44 AM
Attachments:	A92837Draft Letter - 58 1 (6) FA Extension Fee Waiver.pdf A92837Extension fee waiver Briefing Note.pdf

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Debbie Janning-Stewart
Timber Sales Manager
BC Timber Sales
Babine Business Area

From: Kennedy, Paul FLNR:EX
Sent: Friday, February 8, 2019 8:26 AM
To: Janning-Stewart, Debbie FLNR:EX; Watson, Mike T FLNR:EX
Subject: A92837 - Williams Miller - extension fee determination

Attached is the extension fee determination for TSL A92837

Paul Kennedy
BC Timber Sales
Initiatives Officer
Phone: 778-974-5676
Cell phone: 250-267-2674
mailto: paul.kennedy@gov.bc.ca

BRITISH COLUMBIA

File: 19620-25/A92837
280-40/A92837
Cliff: 244742

January 31, 2019

William Miller
s.22

Dear William Miller:

I am in receipt of your letter dated September 26, 2018, requesting a waiver from the requirement to pay an extension fee in respect of Timber Sale Licence (TSL) A92837. As the person authorized by the Minister of Forests, Lands, Natural Resource Operations and Rural Development (FLNRORD) to deal with such requests, I would like to advise you of my determination.

Section 58.1 (6) of the *Forest Act* states that:

> *"…at the request of the holder of a timber sale licence…who has submitted an application for an extension… a person authorized by the minister may waive the* [extension] *fee…if the authorized person is satisfied that the reasons for the extension are circumstances* [that are]*:*
>
> *(a) beyond the holder's control, and* [are]
>
> *(b) unrelated to the holder's financial situation."*

Regardless of the many other considerations that could be argued as contributing to the situation you face, I am obliged to assess whether your request meets the circumstances described in section 58.1 (6) above. In doing so, it is my practice to consider any relevant information that is related to those circumstances. This may include policy guidance, advisory bulletins, and information provided by FLNRORD staff and your letter dated September 26, 2018, requesting a waiver.

In that context, I have completed my review of this matter. Having evaluated and considered all of the information available to me, I have concluded that your application does not meet the conditions described in section 58.1 (6) of the *Forest Act.* This is due to the following key factors summarized below:

Ministry of Forests, Lands, Natural Resource Operations and Rural Development
Timber Operations, Pricing and First Nations Division
Mailing Address: PO BOX 9352 Stn Prov Govt Victoria, BC V8W 9M1
Tel: 250 387-0902
Fax: 250 387-3291
Website: https://www.for.gov.bc.ca/bcts/

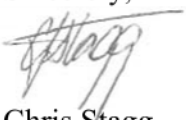
Key Factors:

- TSL A92837 was issued by the Babine Business Area authorizing the harvest of 5,532 cubic metres of Crown timber over a 28-month term.
- An integral part of the application and tender for TSL A92837 included a requirement that the successful applicant sign and submit a declaration attesting that they have read and understood the invitation, application, tender and the associated tender package contents.
- As independent operators, TSL holders are responsible for managing their harvesting operations and exercising their Crown timber harvesting rights in accordance with the agreement and any applicable forestry legislation. This responsibility, in my view, also includes anticipating and responding to routine contingencies that typically arise during the term of a TSL (e.g., seasonal weather delays and temporary wildfire-related shut-down requirements, equipment availability/break-downs, etc.).
- In reviewing the evidence provided to me by Ministry staff (ref. attachment), I noted that industrial operations in respect of TSL A92837 had to cease due to the fire danger rating for the months of July and August 2018 (i.e., 2 months out of TSL with a 28-month term and not atypical in my view). I also noted that harvesting operations didn't commence on the TSL until May 16, 2018 (i.e., 24 months into a 28-month term TSL).
- In light of the relatively small volume of Crown timber to be harvested under TSL A92837, the ample term of the agreement, and the relatively short duration of the wildfire-related shutdown that impacted your operations, I am satisfied that the extension to the term of TSL A92837 was due to events within your control.

As a consequence of these findings, and pursuant to section 58.1 (6) of the *Forest Act*, I am declining to approve your September 26, 2018, request for an extension fee waiver in respect of TSL A92837. In light of my decision, the amount $10,504.47 will not be returned to you.

Should you have any questions regarding this matter please contact Debbie Janning-Stewart, Timber Sales Manager, Babine Business Area at (250) 692-2200.

Sincerely,



Chris Stagg
Assistant Deputy Minister

Attachment: BC Timber Sales Evidence as Provided by Business Area Staff

pc: Mike Falkiner, Executive Director, BC Timber Sales
Debbie Janning-Stewart, Timber Sales Manager, Babine Business Area
Paul Kennedy, Initiatives Officer, BC Timber Sales

BC Timber Sales Evidence as Provided by Business Area Staff:

- Timber Sale Licence (TSL) A92837 is a cruise-based licence that authorizes the harvest of approximately 5,532 m^3 of timber. This licence is located approximately 45 km west of Burns Lake, within the Lakes Timber Supply Area, Nadina Natural Resource District and within the Babine Business Area.
- The TSL is comprised of three (3) cut blocks with approximately 3,472 m^3 of Lodgepole pine (63 percent), and 2,060 m^3 of Spruce (37 percent).
- This TSL does not prohibit extensions.
- The upset stumpage value for this TSL is $76,839.48.
- On March 29, 2016, applications and tenders closed for TSL A92837. There were four (4) applications and tenders received. The application and tender submitted by William Miller (the Licencee) contained the highest eligible bonus offer in the amount of $133,250. The next highest eligible tendered bonus offer was $128,805.79.
- The total stumpage value of this licence is $210,089.48.
- On April 7, 2016, the Timber Sales Manager awarded TSL A92837 to William Miller.
- TSL A92837 has an effective date of April 7, 2016, with an initial expiry date of August 8, 2018, a term of 28 months.
- On July 7, 2017, the Province of British Columbia declared a state of emergency in response to the level of wildfire activity within British Columbia. The state of emergency ensured a co-ordinated response to the current wildfire situation and ensured public safety. The state of emergency gave agencies such as Emergency Management BC, the Fire Commissioner, Ministry of Forests, Lands, Natural Resource Operations and Rural Development and the RCMP authority under the *Emergency Program Act* to take every action necessary to fight these wildfires and protect residents and their communities.
- On September 16, 2017, the state of emergency for wildfires ended.
- During the 2017 wildfire season, this TSL was not impacted by wildfires.
- Between April 7, 2016, and May 2, 2018, there was no known activity on this licence.
- On May 2, 2018, the Licencee and BC Timber Sales staff conducted a pre-work for the licence.
- On May 16, 2018, the Licencee commenced harvesting operations.
- On July 21, 2018, the Licencee applied for a one (1) year extension to the TSL.
- On July 27, 2018, a wildfire was discovered approximately 6 km north of the community of Fraser Lake within the Nadina Natural Resource District. This wildfire is known as the Shovel Lake fire, R11498, which grew to 92,250 ha in size. The cause of this fire is under investigation.
- TSL A92837 is located approximately 65 km northwest of the western boundary of the Shovel Lake fire.

- During the months of July and August 2018, within the Nadina Natural Resource District, the fire danger rating was extreme so industrial operations had to cease.
- There were numerous evacuation alerts and orders that were issued around the Northwest Fire Centre Region during the 2018 fire season but no evacuation alerts or orders directly impacted this licence.
- On August 2, 2018, the Licencee paid for the one (1) year extension to this licence in the amount of $10,504.47.
- On August 15, 2018, the Province of British Columbia once again declared a state of emergency in response to the level of wildfire activity within British Columbia.
- On September 7, 2018, the state of emergency for the wildfires ended.

MINISTRY OF FORESTS, LANDS, NATURAL RESOURCE OPERATIONS AND RURAL DEVELOPMENT
INFORMATION NOTE

Date: January 31, 2019
File: 19620-25/ A92837
280-40/ A92837
CLIFF: 244742

PREPARED FOR: Chris Stagg, Assistant Deputy Minister, Timber Operations, Pricing and First Nations Division

ISSUE: TSL A92837 - Request for Extension Fee Waiver

Applicant:

William Miller
s.22

BACKGROUND:
The Babine Timber Sales Manager (TSM) issued Timber Sale Licence (TSL) A92837 to William Miller (the Licencee) on April 7, 2016, for a term of 28 months expiring on August 6, 2018. This cruise-based TSL authorizes the harvest of approximately 5,532 m^3 of timber that is located approximately 45 km west of Burns Lake, within the Nadina Natural Resource District, Lakes Timber Supply Area and within the Babine Business Area.

Nature of Request:

As stated in the letter dated September 26, 2018, the Licencee contends that extension fee waiver is warranted due to:

- Unprecedented wildfire season that was experienced in the Burns Lake area in 2018.
- High fire danger followed by the wildfires that resulted in an abnormal amount of downtime and lost production leading up to the the TSL expiry.
- All operations were fully shutdown soon after the Shovel Lake Fire started on July 27, 2018 and did not resume until September 2018.
- Most local workers were occupied fighting fires, evacuating their homes or preparing to do so under emergency order.

BC Timber Sales Evidence as Provided by Business Area Staff:

- The TSL is comprised of three (3) cut blocks with approximately 3,472 m^3 of Lodgepole pine (63 percent), and 2,060 m^3 of Spruce (37 percent).
- This TSL does not prohibit extensions.
- The upset stumpage value for this TSL is $76,839.48.
- On March 29, 2016, applications and tenders closed for TSL A92837. There were four (4) applications and tenders received. The application and tender submitted

by the Licencee contained the highest eligible bonus offer in the amount of $133,250. The next highest eligible tendered bonus offer was $128,805.79.

- The total stumpage value of this licence is $210,089.48.
- On April 7, 2016, the Timber Sales Manager TSM awarded TSL A92837 to William Miller.
- TSL A92837 has an effective date of April 7, 2016, with an initial expiry date of August 8, 2018, a term of 28 months.
- On July 7, 2017, the Province of British Columbia declared a state of emergency in response to the level of wildfire activity within British Columbia. The state of emergency ensured a co-ordinated response to the current wildfire situation and ensured public safety. The state of emergency gave agencies such as Emergency Management BC, the Fire Commissioner, Ministry of Forests, Lands, Natural Resource Operations and Rural Development and the RCMP authority under the *Emergency Program Act* to take every action necessary to fight these wildfires and protect residents and their communities.
- On September 16, 2017, the state of emergency for wildfires ended.
- During the 2017 wildfire season, this TSL was not impacted by wildfires.
- Between April 7, 2016, and May 2, 2018, there was no known activity on this licence.
- On May 2, 2018, the Licencee and BC Timber Sales staff conducted a pre-work for the licence.
- On May 16, 2018, the Licencee commenced harvesting operations.
- On July 21, 2018, the Licencee applied for a one (1) year extension to the TSL.
- On July 27, 2018, a wildfire was discovered approximately 6 km north of the community of Fraser Lake within the Nadina Natural Resource District. This wildfire is known as the Shovel Lake fire, R11498, that grew to 92,250 ha in size. The cause of this fire is under investigation.
- TSL A92837 is located approximately 65 km northwest of the western boundary of the Shovel Lake fire.
- During the months of July and August 2018, within the Nadina Natural Resource District, the fire danger rating was extreme so industrial operations had to cease.
- There were numerous evacuation alerts and orders that were issued around the Northwest Fire Centre Region during the 2018 fire season but no evacuation alerts or orders directly impacted this licence.
- On August 2, 2018, the Licencee paid for the one (1) year extension to this licence in the amount of $10,504.47.
- On August 15, 2018, the Province of British Columbia once again declared a state of emergency in response to the level of wildfire activity within British Columbia.
- On September 7, 2018, the state of emergency for the wildfires ended.

Licencee's Evidence:

Reference the Licencee's request letter dated September 26, 2018, appended to this briefing note.

Extension Fee Waiver Amount: $10,504.47. The payment number is **1794**.

January 31, 2019

ACKNOWLEDGED **DATE SIGNED**

Chris Stagg
Assistant Deputy Minister
Timber Operations, Pricing and First Nations Division

Prepared by:
Name: Mike Watson, Woodlands Manager
Business Area: Babine
Phone: 250-692-0614

Reviewed by	Initials	Date
PRGM Dir./Mgr.	SH	Jan 7/19
Sr. Mgr.	AP	Jan 2/19
Initiative Off.	PK	Dec 28/18

Appendices

1. Licencee's letter dated September 26, 2018, requesting extension fee relief.

From:	Janning-Stewart, Debbie FLNR:EX
To:	Bowerbank, Barb FLNR:EX
Subject:	FW: A92849 - Coppermoon Contracting - extension fee determination
Date:	April 17, 2019 8:42:14 AM
Attachments:	A92849Draft Letter - 58 1 (6) FA Extension Fee Waiver.pdf A92849Extension fee waiver Briefing Note.pdf

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Debbie Janning-Stewart
Timber Sales Manager
BC Timber Sales
Babine Business Area

From: Kennedy, Paul FLNR:EX
Sent: Friday, February 8, 2019 8:21 AM
To: Janning-Stewart, Debbie FLNR:EX; Watson, Mike T FLNR:EX
Subject: A92849 - Coppermoon Contracting - extension fee determination

Attached is the extension fee determination for TSL A92849

Paul Kennedy
BC Timber Sales
Initiatives Officer
Phone: 778-974-5676
Cell phone: 250-267-2674
mailto: paul.kennedy@gov.bc.ca

File: 19620-25/A92849
280-40/A92849
Cliff: 244738

January 31, 2019

Coppermoon Contracting Ltd.
16341 Yellowhead Highway
Telkwa, British Columbia
V0J 2X0

Dear Sir/Madam:

I am in receipt of your letter dated August 31, 2018, requesting a waiver from the requirement to pay an extension fee in respect of Timber Sale Licence (TSL) A92849. As the person authorized by the Minister of Forests, Lands, Natural Resource Operations and Rural Development (FLNRORD) to deal with such requests, I would like to advise you of my determination.

Section 58.1 (6) of the *Forest Act* states that:

> *"…at the request of the holder of a timber sale licence…who has submitted an application for an extension… a person authorized by the minister may waive the* [extension] *fee…if the authorized person is satisfied that the reasons for the extension are circumstances* [that are]*:*
>
> *(a) beyond the holder's control, and* [are]
>
> *(b) unrelated to the holder's financial situation."*

Regardless of the many other considerations that could be argued as contributing to the situation you face, I am obliged to assess whether your request meets the circumstances described in section 58.1 (6) above. In doing so, it is my practice to consider any relevant information that is related to those circumstances. This may include policy guidance, advisory bulletins, and information provided by FLNRORD staff and your letter dated August 31, 2018, requesting a waiver.

In that context, I have completed my review of this matter. Having evaluated and considered all of the information available to me, I have concluded that your application does not meet the conditions described in section 58.1 (6) of the *Forest Act.* This is due to the following key factors summarized below:

Ministry of Forests, Lands, Natural Resource Operations, and Rural Development
Timber Operations, Pricing and First Nations Division
Mailing Address: PO BOX 9352 Stn Prov Govt Victoria, BC V8W 9M1
Tel: 250 387-0902
Fax: 250 387-3291
Website: https://www.for.gov.bc.ca/bcts/

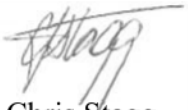
Key Factors:

- The application for the TSL includes a declaration signed by you, as the Licensee, attesting that you read and understood the invitation, application, tender and the associated tender package contents.
- As the Licensee, you bid on TSL A92849 based on your own information and assessment of the limiting factors identified within the TSL documents, ground conditions, markets and risks.
- Licensees are responsible for planning and scheduling their operations and to develop contingencies to deal with routine issues that arise during the course of operations, including weather-related events, seasonal restrictions, resultant delays, production rates, operational issues, production delays, and business-to-business relationships.
- I note that access to this licence was restricted for a period of approximately 12 days before the expiry of the licence for fire suppression activities. At the time you applied for an extension, five (5) days before access restriction for fire suppression activities, there was approximately 18,000 m^3 of timber remaining on the licence area. The access restriction for fire suppression activities did not occur until after you had applied for an extension to this licence. The reasons you cite for an extension fee waiver all relate to the access restrictions and fire suppression activities.
- Harvesting commenced on March 6, 2018, approximately 19 months into the 24-month term. I am satisfied that not conducting harvesting operations within this period was within the control of the Licensee.
- I am satisfied that there was sufficient time provided to the License to exercise harvesting rights.

As a consequence of these findings, and pursuant to section 58.1 (6) of the *Forest Act*, I am declining to approve your August 31, 2018 request for an extension fee waiver in respect of TSL A92849. In light of my decision, the amount $25,970.89 will not be returned to you.

Should you have any questions regarding this matter please contact Debbie Janning-Stewart, Timber Sales Manager, Babine Business Area at (250) 692-2200.

Sincerely,



Chris Stagg
Assistant Deputy Minister

Attachment: BC Timber Sales Evidence as Provided by Business Area Staff

pc: Mike Falkiner, Executive Director, BC Timber Sales
Debbie Janning-Stewart, Timber Sales Manager, Babine Business Area
Paul Kennedy, Initiatives Officer, BC Timber Sales

BC Timber Sales Evidence as Provided by Business Area Staff:

- The TSL is comprised of one cut block with approximately 24,970 m^3 of Balsam Fir (68 percent), 10,908 m^3 of Spruce (30 percent) and 921 m^3 of Lodgepole Pine (2 percent).
- The term of this TSL is 23 months and does not prohibit extensions.
- The upset stumpage rate for this TSL is \$20.21/m^3.
- On August 23, 2016, applications and tenders closed for TSL A92849. There were three (3) applications and tenders received. The application and tender submitted by the Licensee contained the highest eligible bonus bid in the amount of \$8.02/m^3. The next highest eligible tendered bonus bid was \$6.57/m^3. The bonus bid of \$11.50/m^3 was deemed ineligible.
- The total stumpage rate for this licence is \$28.23/m^3.
- On September 20, 2016, the TSM awarded TSL A92849 to the Coppermoon Contracting Ltd.
- TSL A92849 has an effective date of September 20, 2016, and with an initial expiry date of August 19, 2018.
- On July 7, 2017, the Province of British Columbia declared a state of emergency in response to the level of wildfire activity within British Columbia. The state of emergency ensured a co-ordinated response to the current wildfire situation and ensured public safety. The state of emergency gave agencies such as Emergency Management BC, the Fire Commissioner, Ministry of Forests, Lands, Natural Resource Operations and Rural Development and the RCMP authority under the *Emergency Program Act* to take every action necessary to fight these wildfires and protect residents and their communities.
- On January 26, 2018, the Licensee and BC Timber Sales (BCTS) staff conducted a pre-work for this licence.
- There was no known activity on this licence between September 20, 2016, and March 6, 2018.
- On March 6, 2018, the Licensee commenced harvesting operations.
- On August 3, 2018, the Licensee applied for a one (1) year extension to this licence. The TSM estimated that approximately 50 percent of the TSL was harvested for the purpose of calculating the extension fee amount.
- On August 4, 2018, a lightning storm started a wildfire approximately 20 kilometers south of Fort Babine. This wildfire is known as the Torkelsen Lake fire that grew to approximately 2,524 hectares in size.
- On August 5, 2018, BC Wildfire Service started to action the Torkelsen Lake fire.
- This licence is within two (2) kilometers of the Torkelsen Lake fire.
- On August 6, 2018, the Regional District of Bulkley-Nechako issued an evacuation alert for the Torkelsen Lake fire. This alert does not cover this licence.

- On August 7, 2018, BC Wildfire Services directed the Licensee to cease all operations on this licence. BC Wildfire Services said that continuing harvesting operations would contribute to congestion and complicated suppression activities.
- BC Wildfire Services planned to use the Licensee's equipment in fire suppression activities during the second week of September 2018.
- On August 15, 2018, the Province of British Columbia once again declared a state of emergency in response to the level of wildfire activity within British Columbia.
- On August 15, 2018, the Licensee paid the extension fee for this licence in the amount of $25,970.89.
- On August 15, 2018, the TSM granted a one (1) year extension to this licence with a new expiry date of August 19, 2019.
- On August 20, 2018, the Regional District of Bulkley-Nechako expanded the evacuation alert and order for the Torkelsen Lake fire that covers part of this licence.
- On August 31, 2018, the Licensee requested an extension fee waiver.
- On September 3, 2018, the Regional District of Bulkley-Nechako rescinded the evacuation alert due to the Torkelsen Lake fire which covers part of this licence.
- On September 7, 2018, the state of emergency for the wildfires ended.
- On September 10, 2018, the BC Wildfire Services informed the Licensee that they could resume harvesting operations on this licence.

MINISTRY OF FORESTS, LANDS, NATURAL RESOURCE OPERATIONS AND RURAL DEVELOPMENT
INFORMATION NOTE

Date: January 31, 2019
File: 19620-25/ A92849
280-40/ A92849
CLIFF: 244738

PREPARED FOR: Chris Stagg, Assistant Deputy Minister, Timber Operations, Pricing and First Nations Division

ISSUE: TSL A92849 - Request for Extension Fee Waiver

Applicant:

Coppermoon Contracting Ltd.
16341 Yellowhead Highway
Telkwa, British Columbia
V0J 2X0

BACKGROUND:

The Babine Timber Sales Manager (TSM) issued Timber Sale License (TSL) A92849 to Coppermoon Contracting Ltd. (the Licensee) on September 20, 2016, with a term of 23 months expiring on August 19, 2018. This scale-based TSL authorizes the harvest of approximately 36,799 m^3 of timber that is located approximately 68 km north of Smithers, within the Skeena-Stikine Natural Resource District, Bulkley Timber Supply Area and within the Babine Business Area.

Nature of Request:

As stated in the letter dated August 31, 2018, the Licensee contends that extension fee waiver is warranted due to:

- BC Wildfire Services demanded the Licensee to cease all logging operations on August 5, 2018, because the cut block was located in the fire zone.
- BC Wildfire Services required access to roads and landings within the logging block for firefighting efforts two (2) weeks prior to expiry of this licence.
- All of the logging equipment was required to aid in the firefighting efforts.

BC Timber Sales Evidence as Provided by Business Area Staff:

- The TSL is comprised of one cut block with approximately 24,970 m^3 of Balsam Fir (68 percent), 10,908 m^3 of Spruce (30 percent) and 921 m^3 of Lodgepole Pine (2 percent).
- The term of this TSL is 23 months and does not prohibit extensions.
- The upset stumpage rate for this TSL is $20.21/$m^3$.

- On August 23, 2016, applications and tenders closed for TSL A92849. There were three (3) applications and tenders received. The application and tender submitted by the Licensee contained the highest eligible bonus bid in the amount of $8.02/m^3. The next highest eligible tendered bonus bid was $6.57/m^3. The bonus bid of $11.50/m^3 was deemed ineligible.
- The total stumpage rate for this licence is $28.23/m^3.
- On September 20, 2016, the TSM awarded TSL A92849 to the Coppermoon Contracting Ltd.
- TSL A92849 has an effective date of September 20, 2016, and with an initial expiry date of August 19, 2018.
- On July 7, 2017, the Province of British Columbia declared a state of emergency in response to the level of wildfire activity within British Columbia. The state of emergency ensured a co-ordinated response to the current wildfire situation and ensured public safety. The state of emergency gave agencies such as Emergency Management BC, the Fire Commissioner, Ministry of Forests, Lands, Natural Resource Operations and Rural Development and the RCMP authority under the *Emergency Program Act* to take every action necessary to fight these wildfires and protect residents and their communities.
- On January 26, 2018, the Licensee and BC Timber Sales (BCTS) staff conducted a pre-work for this licence.
- There was no known activity on this licence between September 20, 2016, and March 6, 2018.
- On March 6, 2018, the Licensee commenced harvesting operations.
- On August 3, 2018, the Licensee applied for a one (1) year extension to this licence. The TSM estimated that approximately 50 percent of the TSL was harvested for the purpose of calculating the extension fee amount.
- On August 4, 2018, a lightning storm started a wildfire approximately 20 kilometers south of Fort Babine. This wildfire is known as the Torkelsen Lake fire that grew to approximately 2,524 hectares in size.
- On August 5, 2018, BC Wildfire Service started to action the Torkelsen Lake fire.
- This licence is within two (2) kilometers of the Torkelsen Lake fire.
- On August 6, 2018, the Regional District of Bulkley-Nechako issued an evacuation alert for the Torkelsen Lake fire. This alert does not cover this licence.
- On August 7, 2018, BC Wildfire Services directed the Licensee to cease all operations on this licence. BC Wildfire Services said that continuing harvesting operations would contribute to congestion and complicated suppression activities.
- BC Wildfire Services planned to use the Licensee's equipment in fire suppression activities under the second week of September 2018.
- On August 15, 2018, the Province of British Columbia once again declared a state of emergency in response to the level of wildfire activity within British Columbia.

- On August 15, 2018, the Licensee paid the extension fee for this licence in the amount of $25,970.89.
- On August 15, 2018, the TSM granted a one (1) year extension to this licence with a new expiry date of August 19, 2019.
- On August 20, 2018, the Regional District of Bulkley-Nechako expanded the evacuation alert and order for the Torkelsen Lake fire that covers part of this licence.
- On August 31, 2018, the Licensee requested an extension fee waiver.
- On September 3, 2018, the Regional District of Bulkley-Nechako rescinded the evacuation alert due to the Torkelsen Lake fire which covers part of this licence.
- On September 7, 2018, the state of emergency for the wildfires ended.
- On September 10, 2018, the BC Wildfire Services informed the Licensee that they could resume harvesting operations on this licence.

Licensee's Evidence:

Reference the Licensee's request letter dated August 31, 2018, appended to this briefing note.

Extension Fee Waiver Amount: $25,970.89. The payment number is **1824**.

January 31, 2019
DATE SIGNED

ACKNOWLEDGED
Chris Stagg
Assistant Deputy Minister
Timber Operations, Pricing and First Nations Division

Prepared by:
Name: Mike Watson, Woodlands Manager
Business Area: Babine
Phone: 250-692-0614

Reviewed by	Initials	Date
PRGM Dir./Mgr.		
Sr. Mgr.		
Initiative Off.		

GROOT BROS.
CONTRACTING LTD.
HOUSTON B.C.

Box 320 Houston BC V0J 1Z0 Ph: 250-845-0093 **ext 502** Fax: 250-845-0094

Mark Groot Email: mgroot@gbcltd.ca Patricia Mckenzie Email: pmckenzie@gbcltd.ca

August 30, 2018

BC Timber Sales
Box 999
Burns Lake, BC, V0J 1E0

Attention: Mike Watson: RE: A91588 waive extension fee

As prime contractor of TSL A91588, I am respectfully asking for the waiver of the extension fee of $11,497.64 for this block.

The facts to be considered in your decision are as follows:

- West Point Rail & Timber Co. Ltd. was the successful bidder of this TSL on Oct. 27, 2016. With a volume of 67,213 m3 and 22 months to harvest. This was a winter only block.
- There was no delay in starting. The prework was done November 28, 2016.
- Land use letters were sent out November 14, 2016 with a start date of November 30, 2016
- With the assistance of Triantha Enterprises Ltd. and Groot Bros Contracting Ltd., harvesting was started and first deliveries were made for the period Dec. 31 to Jan. 13, 2017.
- Operation continued again in the fall of 2017, all the skidding was completed May 18, 2018 and all processing was completed July 18, 2018 as part of spring decking.
- There was a two week delay due to road bans and hauling could not start until June 18, 2018, with deliveries for the period June 16, 2018 to June 30, 2018 and continued hauling with deliveries for the period July 14 to Aug 17, 2018.
- With this block, we utilized more balsam than expected, and harvest volume was in excess of expectation. This additional volume harvested gave us more than expected volumes to be delivered.
- At the time the extension was requested all that was left to complete this block was the delivery of approximately 28 loads or 1 ½ days of hauling. All other harvesting activities were completed.
- We were unable to meet the deadline due to extremely dry conditions and high temperatures with 30 km/hr winds. We felt at the time, that continuing to haul would not show due diligence on our part.
- We were called into action with the start of the Torkleson Fire on Aug. 5, 2018, then August 7, 2018 the Gilmore Lake Fire started, and the Nadina Fire grew significantly.
- We felt the risk was just too high with the temperature and the winds and the outbreak of wild fires. So the operations were ceased for 3 days August 8th, 9th and 10th and through the weekend.
- If we had hauled for these 3 days, our obligation would have been completed, and there would have been no need for an extension.

Please take these facts in to consideration when making your decision.
Please respond to myself and Patricia McKenzie.

Thank you,

Mark Groot

Mr. Chris Stagg
Assistant Deputy Minister, BC Timber Sales

c/o BC Timber Sales
Babine Business Area
Box 999
Burns Lake BC
V0J 1E0

Dear Mr. Stagg,

September 26, 2018

Re: Extension fee waiver, TSL A92837

I am requesting a waiver of extension fees for TSL A92837 in light of the unprecedented wildfire season we have experienced in the Burns Lake area.

With the high fire danger and then the wildfires we experienced an abnormal amount of downtime and lost production leading up to the TSL expiry. All operations were fully shut down soon after the Shovel Lake fire started on July 27 and did not resume until September. Most local workers were occupied fighting fires, evacuating their homes or preparing to do so under emergency order.

If not for these circumstances beyond my control I could have avoided the need to extend.

Thank you for considering this request,

Bill Miller

BRITISH COLUMBIA

File: 19620-25/A93832
19130-20/s.22

January 31, 2018

s.22

Dear s.22 :

This letter is in regards to the status of Timber Sale Licence (TSL) A93832 and your status as a BC Timber Sales enterprise.

You have made known your decision to refuse to enter into an agreement for TSL A93832. The undisputed facts in this case are:

- TSL A93832 was sold by auction on January 22, 2018.
- s.22 was the successful bidder on TSL A93832.
- The successful bonus bid was $34.17 per cubic metre and there was no bid deposit required.
- In an email dated January 23, 2018 s.22 declined to enter into the TSL agreement.

BC TIMBER SALES EVIDENCE

- Minutes from a phone call between s.22 Mike Watson, Woodlands Manager and Debbie Janning-Stewart, Timber Sales Manager for the Babine Business Area confirm s.22 s.22 decision not to enter into the TSL agreement.
- BCTS records of three previous timber sales auctions in which s.22 was the successful bidder confirm that s.22 entered into all three timber sales licences.
- s.22 has no history of previous disqualification.
- The TSL A93832 was offered to the next qualified bidder.

OPPORTUNITY TO BE HEARD

An opportunity to be heard (OTBH) was held at the Babine Timber Sales office on January 29, 2018 for the purpose of gathering information in respect to this determination. s.22 was provided the opportunity to provide his evidence in writing and chose to provide his evidence verbally via a phone call.

Ministry of Forests, Lands, Natural Resource Operations and Rural Development
BC Timber Sales - Babine Business Area
Location: 183 Highway 16 West Burns Lake, BC
Mailing Address: PO Box 999 Burns Lake, BC V0J 1E0
Tel: (250) 692-2200
Fax: (250) 692-7461

s.22

EVIDENCE

- s.22 indicated that the error was a transcription mistake from a spreadsheet that he maintains to prepare bids for timber sales. The bid submitted was meant for another TSL but was copied from the wrong line in his spreadsheet.
- s.22
-

DETERMINATION

Based on the detailed review of all evidence made available to me I have determined that s.22 s.22 has refused to enter into the agreement for TSL A93832.

DISQUALIFICATION

Pursuant to Section 78 (4) (a) of the *Forest Act*, I must disqualify s.22 from being registered as a BC timber sales enterprise. s.22 is disqualified for a period of 6 months beginning on the date of this notice.

In accordance with Section 12 (3) of the *BCTS Regulation* I have considered the following criteria for the purpose of determining an appropriate period of disqualification:

1. s.22 has not previously refused to enter into a TSL agreement for which he was the successful applicant.
2. The direct and indirect costs to government that resulted from s.22 refusal to enter into the agreement are negligible.

PRIMARY PERFORMANCE

As a result of this disqualification; s.22 , will be deemed to not meet Primary Performance status when assessing performance security deposit level for any new or transferred timber sales for the next 48 months, as per Section 16.3 of the BC Timber Sales Regulation.

REQUESTING A REVIEW OF DISQUALIFICATION

This determination is reviewable under Section 143 of the *Forest Act* upon request.

A request for a review must be submitted to:

Mike Falkiner,
Executive Director,
FLNROD - BC Timber Sales Headquarters,
PO Box 9507, Stn Prov Govt,
Victoria, BC V8W 9C2

No later than 3 weeks (21 days) after the date of this notice of determination is given or delivered to you.

The request for a review must be signed by, or on behalf of, the requesting person and must contain all of the following information:

1. The name and address of the requesting person;
2. The grounds for review; and
3. A statement of the relief requested.

Should you have any questions regarding the determination made in this matter please contact me at 250-692-2200.

Yours truly,

Debbie Janning-Stewart, R.P.F,
Timber Sales Manager
BC Timber Sales
Babine Business Area

pc: Mike Falkiner, Executive Director, BC Timber Sales.
Ray Luchkow, Director of Operations, BC Timber Sales.
Sean Donahue, Timber Sales Manager – Cariboo Chilcotin Business Area, BC Timber Sales.

Ministry of Forests, Lands, Natural Resource Operations and Rural Development
BC Timber Sales - Babine Business Area
Location:
183 Highway 16 West
Burns Lake, BC
Mailing Address:
PO Box 999
Burns Lake, BC V0J 1E0
Tel: (250) 692-2200
Fax: (250) 692-7461

BRITISH COLUMBIA

File: 19620-25/A92595
19130-20/VIHU

May 28, 2018

XPRESSPOST

Email: nwtoutfitters@shaw.ca

Vancouver Island Hunts Ltd.
3018 Kensington Crescent
Courtenay, BC V9N 8Z8

Dear Eric Mikkelson:

I am writing regarding your Application and Tender for Timber Sale Licence (TSL) A92595 of May 17, 2018 and your subsequent fax dated May 24, 2018 declaring that you are withdrawing your bid.

As discussed on the telephone, withdrawing your bid is deemed to be equivalent to refusing to enter into the agreement. Failing to enter into the Licence is a contravention of Section 11 of the Invitation for Applications which states:

> *FAILURE TO ENTER INTO THE LICENCE*
> *Where an applicant whose application is approved by the Timber Sales Manager does not enter into the licence within the ten (10) business days of being required to do so by the Timber Sales Manager,*
> *a) the successful applicant's bid deposit, or standing bid deposit, as the case may be, is forfeited to the Crown in accordance with the BC Timber Sales Regulation,*
> *b) the Timber Sales Manager may do any or all of the things authorized under Section 78 of the Forest Act, and*
> *c) the Timber Sales Manager may submit the application to the necessary authorities for further investigation.*

As a consequence of refusing to enter into TSL A92595, you are disqualified from being registered as a BC Timber Sales Enterprise as per Section 78 of the *Forest Act*.

The length of time for this disqualification is six months, as per Section 12(2)(a) of the *BC Timber Sales Regulation*, ending on November 23, 2018.

You have the ability to request review of the disqualification, as per Section 143 of the *Forest Act*. If you wish to request a review, you must notify the undersigned not later than 3 weeks after the date of this letter.

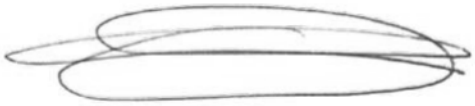
Ministry of Forests, Lands and Natural Resource Operations
BC Timber Sales
Strait of Georgia Business Area
Location:
370 South Dogwood Street
Campbell River, BC, V9W 6Y7
Mailing Address:
370 South Dogwood Street
Campbell River, BC V9W 6Y7
Tel: (250) 286-9300
Fax: (250) 286-9420

Be advised that my determination to disqualify you is reviewable as per Section 143 (1) of the Forest Act. A request for review must be addressed to Mike Falkiner, Executive Director, BC Timber Sales, P.O. Box 9510 Stn Prov Govt. Victoria, British Columbia, V8W 9C2 no later than 21 days after the date of this notice of determination. The request for review must be signed by, or on behalf of the requesting person and must contain all of the following information:

a) The name and address of the requesting person,
b) The address for service of the requesting person,
c) The grounds for review; and
d) A statement of the relief requested.

Should you have questions regarding this matter please contact me at 250-286-9337.

Yours truly,



Don Hudson
Timber Sales Manager
Campbell River Timber Sales Office

Attachments: BC Timber Sales Regulation
Forest Act, Sections 78, 143 and 144

593 299 BC Ltd
Box 49 Southbank BC V0J 2P0

Mr. Chris Stagg
Assistant Deputy Minister, BC Timber Sales

c/o BC Timber Sales
Babine Business Area
Box 999
Burns Lake BC
V0J 1E0

Dear Mr. Stagg,

September 26, 2018

Re: Extension fee waiver, TSL A91559

We are requesting a waiver of extension fees for TSL A91559 in light of the unprecedented wildfire season we have experienced in the Burns Lake area.

With the high fire danger and then the wildfires we experienced an abnormal amount of downtime and lost production leading up to the TSL expiry. All operations were fully shut down soon after the Shovel Lake fire started on July 27 and did not resume until well into September. Most local workers were occupied fighting fires, evacuating their homes or preparing to do so under emergency order.

If not for these circumstances beyond our control we could have avoided the need to extend.

Thank you for considering this request,

Alistair Schroff, Director 593 299 BC Ltd

Coppermoon Contracting Ltd
16341 Yellowhead Highway
Telkwa, BC V0J 2X1

PROVINCE OF B.C.
RECEIVED
SEP 0 6 2018
BURNS LAKE

August 31, 2018

Timber Sales Manager
Babine Business Area
PO Box 999
183 Highway 16 West
Burns Lake, BC V0J 1E0

Dear Timber Sale Manager,

Please accept this letter as a written request for waiver of the extension fee on TSL A92849 in the amount of $25,970.89.

As a result of the Torkelsen Lake Wildfire, the BC Wildfire Service demanded us to cease all logging operations on August 5, 2018 because the block was located in the fire zone and they required access to roads and landings within the logging block for firefighting efforts. Our equipment was also requested to aid in the firefighting. Consequently, we were unable to haul any wood for the remaining two weeks of the timber sale license.

Due to the fact that it was an order from government officials to stop logging operations two weeks prior to the expiry of TSL A92849, we are requesting a waiver of the extension fee. As soon as we obtain the approval to start back up logging operations, we will make it a priority to complete the timber sale. Thank you in advance for your consideration to this matter. Please contact me at 250-877-7226 if you would like to discuss further.

Sincerely,

Randy Brook
Coppermoon Contracting Ltd

BRITISH COLUMBIA

File: 19620-25/A93151

March 19, 2019

Lawrence Wheatley
Quinsam Reman Ltd.
7181 Gold River Highway
Campbell River, British Columbia
V9H 1P1

Dear Mr. Wheatley:

Subject: Determination for Timber Sale Licence (TSL) A93151 – Disposition of Deposit, Registration and Billing status.

This TSL expired December 15, 2018 with outstanding obligations, which include TSL Schedule 'A' clauses 4 and 12, Harvesting and Timber Processing respectively.

Please refer to clauses 4.01 and 12.01 of the TSL A93151 Schedule 'A' document wherein it states:

4.01 The Licensee must pile and dispose of all roadside and landing debris.

12.01 The Licensee, during the term of this Licence and in the timber processing facility identified in the Licensee's Application for Registration, must process a minimum volume of ***16,389 cubic metres of timber (50%)****, or an equivalent volume of wood fibre, either harvested from or received in trade for timber from the cutting authority area, or otherwise purchased.*

Authority for Timber Sales Manager's Determination

In the event of a failure by a Licensee to carry out licence or legislated obligations, a Timber Sales Manager (TSM) is authorized as follows:

- Under Section 21 of the *BC Timber Sales Regulation (BCTSR)* the TSM is obliged to consider all or a portion of the security deposit to remedy any failures and/or provide a punitive measure to deter similar contraventions in the future. In addition, it authorizes the TSM to retain any balance toward all outstanding accounts held in the name of the Licensee.
- Section 78(2)(b) of the *Forest Act*, authorizes a TSM to, among other things, disqualify a person from being registered as a BC Timber Sales Enterprise.

In making a determination under the above legislation, I must consider the current policy guidance regarding TSL deposits and the rules governing the application of administrative law.

In addition, in order to make an informed and fair decision you were provided a written Opportunity to be Heard to communicate any extraordinary circumstances you believe contributed to your failure to complete the licence.

Tenure Background Summary

- TSL A93151 awarded 2016-12-01.
- Security deposit of $17,445.88 provided for this sale (Level 1 applicant deposit).
- Timber Processing Report shows 7626.666m^3(46.5%) was processed by 2018-01-06.
- TSL was vacated around 2018-03-21
- Discussions with the Licensee 2018-12-13 found the CAT 2 facility was closed around 2018-06-01, with no additional processing beyond 2018-01-06.
- The CAT 2 facility was sold 2018-11-05, then the CAT 2 registration was cancelled and CAT 1 registration applied for 2018-11-15.
- The TSL expired 2018-12-15, with the outstanding obligations noted above.

Summary of the Licensee Opportunity to be Heard – Written Submission.

A registered letter was sent to the Licensee 2019-01-17, providing 30 days for a written submission outlining any extraordinary and relevant issues that the Licensee believed contributed to the inability to complete obligations. The Licensee responded 2019-01-18 that they agree to forfeit their deposit.

Uncontested Facts

The following conditions existed on the TSL at expiry:

- Fire Hazard Assessment (FHA) from 2017-12-22 concluded abatement required, yet abatement strategy was not implemented;
- CAT 2 Processing Requirements of 16,389m^3 was not achieved; and
- licensee forfeited their deposit and does not intend to uphold TSL or legislative obligations

BCTS Evidence

The following is information acquired by BCTS during the course of this TSL's activity:

- despite the FHA, fuel abatement strategy was not executed and remains a hazard;
- licensee stated in correspondence that processing requirements were too large for their facilities, and that several years would be needed to process the remaining volume;
- while CAT 2 TSL was active, CAT 2 facility was closed, sold, and registration cancelled;
- CAT 2 Processing Requirements was not achieved prior to expiry of the TSL; and
- despite being provided an Opportunity to be Heard, the Licensee forfeited their deposit and does not intend to uphold TSL or legislative obligations.

TSM Determination

Part A

Due to the Licensee's failure to comply with the TSL and legislative obligations mentioned above, Section 21 (1)(a)(i), (a)(iv), and (b)(ii) of BCTSR authorizes the TSM to realize the Licensee's entire security-deposit of $17,445.88. This deposit will be disposed of by the TSM, as per Section 21(2)(a)(ii) and (b)(i) of *BCTSR*, in order to maintain compliance with the TSL and legislative obligations, and the cost is estimated as follows:

Remedial works	Penalties (<50% total deposit)	Balance to Licensee
Fuel abatement: $17,158.40	Non-compliances $287.48	$0.00

Part B

Forest Act Section 78(2)(b) provides the TSM the authority to disqualify, suspend, and cancel registration of a BCTS Enterprise. Upon consideration, as per Section 78(1)(b) and (c) of the Forest Act, Quinsam Reman Ltd. is suspended from bidding on applications for a BCTS agreement for 6 months, effective the date of this letter.

Future TSL Deposit Requirements

At the time A93151 was awarded, the Licensee had an applicant Level 1 status, yet according to Section 16.3(2)(b)(iii) and (iv) of *BCTSR*, the Licensee is hereby classed as a Level 2 applicant.

TSL Deposit Requirements

Effective the date of this letter, deposits payable for TSLs must be in an amount equal to two-times the base deposit amount, according to Section. 16(3)(b) of the *BCTSR*.

Request for Deposit Forfeiture Relief

Be advised that the determination made under Part A is not reviewable under Section 143 of the *Forest Act*. The Minister, or a person authorised by the Minister, may relieve a person that is the subject of a deposit forfeiture described above if satisfied that the failure of the person to comply with the terms and conditions under or in respect of the TSL was the result of an event that:

- was not related to financial circumstances of the licensee;
- was beyond the control of the licensee; and
- prevented the licence obligations from being carried out.

Requests for deposit forfeiture relief, if any, must be submitted to:

c/o Gilbert Richir, Senior Policy Officer
BC Timber Sales Headquarters
Ministry of Forests, Lands and Natural Resource Operations
PO Box 9507, Stn Prov Govt
Victoria, British Columbia V8W 9C2

no later than 30 days after the date this notice of determination is given or delivered to you. The request for deposit forfeiture relief must be signed by, or on behalf of, the requesting person and must contain all of the following information:

A. the name and address of the requesting person;
B. the address for service of the requesting person;
C. the grounds for review; and

D. a statement of the relief requested.

Request for Review

Be advised that the determination made under Part B is reviewable under Section 143 of the *Forest Act.* Requests for review must be submitted to:

c/o Allan Powelson, A/ Director of Sustainability
BC Timber Sales Headquarters
Ministry of Forests, Lands, Natural Resource Operations and Rural Development
PO Box 9507, Stn Prov Govt
Victoria, British Columbia V8W 9C2

Please submit your review request no later than three weeks after the date of this notice of determination is given or delivered to you. The request for review must be signed by, or on behalf of, the requesting person and must contain all of the following information:

A. the name and address of the requesting person;
B. the address for service of the requesting person;
C. the grounds for review; and
D. a statement of the relief requested.

Should you have any questions regarding this matter, please contact me at 604-702-5796.

Yours truly,

S. Gould

Stacey Gould, RPF
Timber Sales Manager
BC Timber Sales
Chinook Business Area

BRITISH COLUMBIA

File: ORCS 23060-40/DSC-34928
ERA DSC-34928

May 1, 2018

REGISTERED MAIL

Larry Fedorkie
Capacity Forest Management Ltd.
1761 Redwood Street
Campbell River, British Columbia
V9W 3K7

Dear Larry Fedorkie:

RE: Contravention Determination and Notice of Penalty Levied Under section 71(2) (a) of the *Forest and Range Practices Act*

This is further to my letter dated March 19, 2018 respecting the alleged contraventions of sections 52(1) and 52(3) of the *Forest and Range Practices Act* (FRPA). After considering the evidence presented to me, I have now made my determination and conclude that Capacity Forest Management Ltd. (CFM) contravened sections 52(1) and 52(3) of FRPA and I am levying a penalty in the amount of $33,427.60.

Authority

The Minister of Forests, Lands, Natural Resource Operations and Rural Development (FLNRORD) has delegated to me, under section 120.1 of FRPA, the authority to make determinations with respect to administrative contraventions and penalties under section 71 of FRPA.

Legislation

The Compliance and Enforcement Branch (C&E) of FLNRORD alleges that CFM contravened sections 52 (1) and 52 (3) of FRPA:

Unauthorized timber harvesting

52 (1) A person must not cut, damage or destroy Crown timber unless authorized to do so

(a) under this Act, the *Forest Act* or an agreement under the *Forest Act*,

(b) by the minister, for silviculture, stand tending, forest health, abating a fire hazard related to wildfires or another purpose,

(b.1) under the *Wildfire Act*,

Ministry of Forests, Lands, Natural Resource Operations and Rural Development
Sunshine Coast Natural Resource District
Mailing Address: 7077 Duncan Street Powell River BC V8A 1W1
Tel: (604) 485-0700
Fax: (604) 485-0799
Website: www.gov.bc.ca/for

(c) under a grant of Crown land made under the *Land Act*,

(d) under the *Park Act*, or

(e) under the regulations, in the course of carrying out activities

(i) under an authorization referred in section 51 or 57, or

(ii) that are incidental to or required to carry out activities authorized or approved under this Act, the Forest Act, the Range Act or another prescribed enactment.

(3) A person must not remove Crown timber unless authorized to do so

(a) under the *Forest Act* or an agreement under the *Forest Act*,

(b) under a grant of Crown land made under the *Land Act*, or

(c) under the *Park Act*.

Sections 52(4) and 71(3) of FRPA are Relevant to my Determination:

Unauthorized timber harvesting

52 (4) If a person, at the direction of or on behalf of another person,

(a) cuts, damages or destroys Crown timber contrary to subsection (1), or

(b) removes Crown timber contrary to subsection (3),

that other person also contravenes subsection (1) or (3).

Administrative Penalties

71 (3) Subject to section 72, if a person's contractor, employee or agent contravenes a provision of the Acts in the course of carrying out the contract, employment or agency, the person also contravenes the provision.

Summary

C&E alleges that CFM caused Crown timber to be cut, damaged or destroyed without authority and removed Crown timber without authority in contravention of sections 52(1) and 52(3) of FRPA, respectively.

This determination is based on information and evidence that C&E provided to me in the case file binder. The binder includes a written, *Agreed Statement of Facts*, with respect to this set of circumstances that Warren Paul of Tsain-Ko Forestry Development Corporation (Tsain-Ko), yourself of CFM, and Natural Resource Officer (NRO) Hugo Sloos of FLNRORD signed on December 4 and 5, 2017 and January 10, 2018, respectively.

On October 6, 2016, C&E identified Tsain-Ko as allegedly contravening, however in a follow-up letter on February 22, 2018, it is stated that the evidence collected respecting the activities under investigation does not identify a contravention by Tsain-Ko. As such, there will be no determination on this matter relating to Tsain-Ko.

On January 29, 2018, C&E identified CFM as having responsibility for the alleged contraventions on Tsain-Ko's Non-Replaceable Forest Licence (NRFL) A80357. Therefore, CFM is the only subject of this determination.

On April 2, 2018, I was informed by you, in writing, that CFM declines a formal opportunity to be heard and you were comfortable with me making a determination based on the information provided in the case file binder.

In the paragraphs that follow is a brief summary of the case based on the evidence provided to me. I have considered all of the evidence provided to me, whether expressly referred to in my determination or not.

On March 26, 2014, Tsain-Ko was issued Cutting Permit (CP) 6 under NRFL A80357, with a term of four years. You were authorized under CFM as a signatory on behalf of Tsain-Ko and have management responsibility for NRFL A80357. CFM hired harvesting contractor Takama Holdings Ltd. (Takama) and on May 1, 2014, harvesting started on Block SC16, CP 6, NRFL A80357 and was reported to be complete on April 30, 2015.

On September 8, 2016, NRO Sloos inspected the harvested Block SC16 and was accompanied by you. During the inspection, NRO Sloos found evidence that harvesting and removal of Crown timber had occurred outside the approved block boundary, south of Block SC16.

In the, *Agreed Statement of Facts*, Tsain-Ko and CFM acknowledge that they harvested Crown timber without authority in contravention of sections 52(1) and 52(3) of FRPA. The details of the contraventions are described in sections below.

Issues

The following issues are relevant to this determination:

1. Did CFM contravene sections 52(1) and 52(3) of FRPA?

2. If CFM contravened section 52(1) or 52(3), do any of the defences of due diligence, mistake of fact or officially induced error apply?

3. If CFM contravened section 52(1) or 52(3) and none of the defences apply, what amount of penalty, if any, is appropriate?

In brief and before going into more detail about the facts surrounding the alleged contraventions, I conclude that:

1. CFM contravened sections 52(1) and 52(3) of FRPA;

2. None of the statutory defences apply; and

3. It is appropriate to levy a penalty in the amount of $33,427.60 pursuant to section 71(2) (a) (i) of FRPA, **which, subject to the stay referred to below, must be paid by July 3, 2018.**

Issue 1: *Did CFM contravene sections 52(1) and 52(3) of FRPA?*

Alleged contravention of section 52(1) of FRPA

You, on behalf of CFM, acknowledged in the signed, *Agreed Statement of Facts*, that under CFM's explicit direction, Takama cut Crown timber without authority. I have reviewed the statement and the information in the case file binder and have concluded that CFM was responsible for this Crown timber being cut without authority.

The evidence does not support or establish any of the defences of due diligence, mistake of fact, or officially induced error.

Alleged contravention of section 52(3) of FRPA

You, on behalf of CFM, also acknowledged in the signed, *Agreed Statement of Facts*, that under CFM's explicit direction, Takama removed Crown timber without authority. I have reviewed the statement and the information in the case file binder and have concluded that CFM was responsible for removing Crown timber without authority.

The evidence does not support or establish any of the defences of due diligence, mistake of fact, or officially induced error.

Summary of the evidence and findings of fact

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

- Tsain-Ko is the holder of NRFL A80357.
- At all material times, CFM had signing authority, and authority to direct works in accordance with its contract to Tsain-Ko, in regards to CP Applications for NRFL A80357.
- CP 6 was issued on March 26, 2014 which authorized harvesting on Block SC16.
- While harvesting Block SC16, Marcel Rivard, of CFM, directed Takama, the harvesting contractor, to extend the harvest area of Block SC16 to the old logging grade upslope, south of the approved boundary, between Falling Corners 100 and 103, in order to improve deflection.
- By providing those instructions, Mr. Rivard directed Takama to harvest outside of the approved area for Block SC16.
- The approximate area of unauthorized harvest, provided by CFM using a "survey grade GPS" unit, is 1.0 hectare.
- The Crown timber that was harvested and removed without authority was scaled on or about March 2015.
- FLNRORD first received notice of the alleged unauthorized harvest on or about June 24, 2016, with the submission of Amendment 1 to CP 6, NRFL A80357.
- The harvesting, removal, and replanting of Block SC16, plus the area of unauthorized harvest, had already occurred by June 24, 2016.

- On August 22, 2016, Amendment 1 was approved by me as Acting District Manager for the Sunshine Coast Natural Resource.
- Approximately 762.4 m3 of Crown timber was harvested without authority. You provided this estimate to me and it includes the volume of waste per hectare.
- Approximately 686.6 m3 of Crown timber was removed without authority.
- Stumpage has been paid on the Crown timber that was harvested without authority.
- Tsain-Ko and CFM were completely cooperative during the investigation of these contraventions.

Do the facts support a finding of contravention if no defences apply?

I conclude that the facts set out above support a conclusion that CFM contravened sections 52(1) and 52(3) of FRPA, unless one of the defences described in section 72 of FRPA applies. CFM agrees that it harvested and removed Crown timber without authorization.

Although CFM's employees did not physically harvest Crown timber without authorization, I am satisfied that they directed Takama to do so which makes CFM responsible for the contraventions pursuant to section 52(4) of FRPA.

Issue 2: *Do any defences apply?*

Although CFM did not raise any defences in this case, I think that the defence of due diligence warrants some consideration.

As evidenced by having obtained authorization to harvest CP 6 under NRFL A80357 and applying for Amendment 1 to change the harvest area, CFM was aware of the requirement to obtain authorization prior to harvesting Crown timber.

CFM employs registered forest professionals to provide direct supervision of its harvesting contractors. In this case, Mr. Rivard, a Registered Forest Technologist, was tasked with onsite supervision of Takama.

The key question to ask when considering the defence of due diligence is what would a person taking all reasonable care have done in the circumstances? In this case, a forest professional taking all reasonable care would know that Crown timber outside the block boundary was not authorized for harvest and that authorization from FLNRORD is required to harvest that Crown timber. Mr. Rivard ought to have known this and taken the appropriate steps. If a forest professional is uncertain about the block boundary or whether the necessary authorization was in place, a successful defence of due diligence would require the professional, at a minimum, asking another professional or government representative for clarification. To my knowledge no such question was asked and the defence of due diligence fails.

As such, I am satisfied that the facts do not support any of the defences set out in section 72 of FRPA.

Issue 3: *Is a penalty appropriate and if so how much?*

Under section 71(2) (a) (i) of FRPA and section 13(2) (c) of the Administrative Orders and Remedies Regulation, I am authorized to impose a penalty of up to $176,358.11 for a contravention of section 52(1) of FRPA, and up to $158,823.93 for a contravention of section 52(3) of FRPA. Alternatively, under section 71(2) (a) (ii) of FRPA, I may refrain from levying a penalty if I consider that the contravention is trifling and that it is not in the public interest to do so. If I do levy a penalty, I must consider the following factors described in section 71(5) of FRPA:

(a) CFM's previous contraventions, if any, of a similar nature;

There are no previous similar contraventions for me to consider.

(b) The gravity and magnitude of the contravention;

The magnitude of the contraventions is significant in that 762.4 m3 of Crown timber was cut and 686.6 m3 was removed without authority. The magnitude of the contraventions is somewhat mitigated because the impact of the contraventions was to a small area of land and CFM has replanted the affected area.

The gravity of the contraventions is also somewhat mitigated as the unauthorized harvest and removal took place within the licence area afforded to NRFL A80357 and immediately adjacent to the authorized block. Given current adjacency requirements, the unauthorized harvest does not impact another agreement holder's opportunity to exercise timber rights in the near term.

(c) Whether the contravention was repeated or continuous;

The contraventions were neither repeated nor continuous.

(d) Whether the contravention was deliberate;

The contraventions are deemed to be deliberate as CFM was aware of the requirement to contact and receive approval from the provincial government, prior to undertaking such variances in the approved cutting authority.

(e) Any economic benefit you derived from the contravention;

The economic benefit from cutting and removing Crown timber without authorization is typically calculated using the following formula:

Market Value – Stumpage Paid – Operating Costs = Economic Benefit

As per C&E's calculations (referenced in the case binder):

$64,637.43 - $15,407.30 - $15,805.53 = $33,427.60.

It is unclear what portion of this economic benefit was realized by CFM directly, as opposed to Tsain-Ko, the licensee. However, an economic benefit to the licensee gained by the deliberate contravention of the licensee's agent, likely provides indirect benefit to the agent, in this case CFM.

(f) Cooperativeness and efforts to correct the contravention;

CFM fully cooperated during this investigation.

CFM had no opportunity to correct the contravention but it is worth noting that CFM replanted the area where the unauthorized harvest and removal occurred and undertook to amend the CP, although after the contravention occurred.

(g) Any other considerations that the Lieutenant Governor in Council may have prescribed.

The Lieutenant Governor in Council has not prescribed any other considerations.

In my view, the contraventions are not trifling and I am levying a total penalty in the amount of $33,427.60.

This penalty is being applied as both compensation to the Crown with regard to lost ability to manage the forest resource, and as a deterrent to both CFM and the licensee, Tsain-Ko. I think that it is important to remove the whole economic benefit received, not just the benefit received by CFM, from the contraventions and while difficult to determine how much of the economic benefit CFM received from the unauthorized harvest and removal of Crown timber, it is reasonable to surmise that the benefit was shared.

In this case, I find that it is not necessary to consider applying additional deterrent penalties. CFM and Tsain-Ko have acknowledged responsibility for these contraventions and have made significant efforts to support an accurate and efficient investigation and determination process. I have every expectation that contraventions of this nature will not happen again.

Determination does not forestall other actions that may be taken

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

Opportunity for correcting this determination

For 15 days after making my contravention determination and penalty determination under section 71, I am authorized under section 79 of FRPA 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 by phone at 604-485-0700 within this 15 day period.

Opportunities for review and appeal

If you have evidence that was not available at the time that I made this determination, you may request a review of my determination on the basis of this new evidence. A request for review must be in writing, must be signed by you or someone on your behalf and must contain:

1. Your name and address; and the name of the person, if any, making the request on your behalf;
2. The address for serving a document to you or the person acting on your behalf;
3. The new evidence that was not available at the time this determination was made; and
4. A statement of the relief requested.

This request should be directed to me at 7077 Duncan Street, Powell River, BC V8A 1W1 and I must receive it no later than three weeks after the date on which you receive this contravention determination.

The provisions governing reviews are set out in section 80 of FRPA and in the Administrative Review and Appeal Procedure Regulation. Please note the 3 week time limit for requesting a review.

A person who is the subject of this determination may appeal the determination or a decision made after completion of a review of the determination to the Forest Appeals Commission.

An appeal request to the Forest Appeals Commission must be signed by you, or on your behalf, and must contain:

1. Your name and address; and the name of the person, if any, making the request on your behalf;
2. The address for serving a document to you or the person acting on your behalf;
3. The grounds for appeal;
4. A statement of the relief requested; and
5. A copy of this determination.

The Forest Appeals Commission must receive the appeal within 30 days of this determination.

The provisions governing appeals are set out in sections 82 through 84 of FRPA, the Administrative Review and Appeal Procedure Regulation and the Administrative Tribunals Act. To initiate an appeal, you must file a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. A notice of appeal may be delivered to the following address:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, British Columbia
V8W 9V1

Please note the 30 day time limit for delivering a notice of appeal.

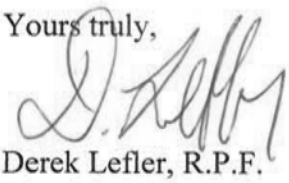
Determination is stayed pending review or appeal.

Under section 78 of FRPA, 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.

Payment of Stumpage

Under section 103(3) of the Forest Act, a person who cuts, damages, destroys or removes Crown timber without authorization must pay stumpage. As stumpage has already been paid, no further determination is necessary.

Yours truly,



Derek Lefler, R.P.F.
District Manager
Sunshine Coast Natural Resource District

ec: Paul Bastarache, Regional Manager, Compliance and Enforcement Branch
Mark Haddock, Forest Practices Board

BRITISH COLUMBIA
Ministry of
Forests, Lands, Natural
Resource Operations
and Rural Development

File: 23060-40 – FSO-34229 / N70030 (2015)

April 30, 2018

Contravention Order No. FSO-34229

Issued under section 26 of the Wildfire Act

AND

Administrative Penalty and Cost Recovery Order No. N70030 (2015)

Issued under section 27(1) of the Wildfire Act

Southview Sorting Ltd.
58930 St. Elmo Road
Hope, BC
V0X 1L2

Attention: Brent Tolmie

Dear Mr Tolmie:

This is further to my letter dated December 1, 2017 and the opportunity to be heard (OTBH) given to Southview Sorting Ltd. (Southview Sorting) on March 8, 2018 respecting the allegation that Southview Sorting contravened sections 6(1) and 6(2) of the *Wildfire Act* and sections 22(1), 22(2) and 22(3) of the *Wildfire Regulation*.

I have now made a determination based on the available evidence and I conclude that Southview Sorting did contravene section 6(1) of the *Wildfire Act* and section 22(3) of the *Wildfire Regulation*. Accordingly, I levy an administrative penalty to Southview Sorting for $6,000 and order Southview Sorting to pay $3,108 to the government for Crown Timber damaged or destroyed as a result of the contraventions.

Ministry of Forests, Lands, Natural Resource Operations and Rural Development
BC Wildfire Service
Prince George Fire Centre
5th Floor, 1001-4th Avenue
Prince George, BC
V2L 3H9L
Tel: (250)565-6124
Fax: (250)565-6672

Authority

The Minister of Forests, Lands, Natural Resource Operations and Rural Development has delegated to me, under section 58(1) of the *Wildfire Act*, the authority to make determinations with respect to administrative contraventions, penalties, and cost recovery under sections 26 and 27 of the *Wildfire Act*.

Legislation

In making my determination, I have considered section 6 of the Wildfire Act, sections 22(1), (2) and (3) of the Wildfire Regulation and the definition of "industrial activity", which requires reference to both the Wildfire Act and Regulation. A copy of the relevant excerpts are included at the end of this determination in Appendix 1.

Background

Southview Sorting is a privately held logging company located in Chilliwack, BC that was working in 2015 on a road right of way under Forest License to Cut A92844 in the vicinity of Houghton Creek in the Southeast Fire Centre. On April 17, 2015, the Ministry issued a burn registration number to Southview Sorting for a Category 3 Open Fire burn related to their Forest License to Cut. This burn registration number expired on May 1, 2015.

On May 7, 2015, Southview Sorting ignited machine piled woody debris from the road right of way clearing which subsequently escaped from the intended burn area and into the surrounding vegetation and downed timber along the road edge. On May 8, 2015, the BC Wildfire Service (BCWS) responded with crews and equipment to the report of this wildfire on the Houghton Forest Service Road.

Natural Resource Officers (NRO) of the Compliance and Enforcement branch of the Ministry allege that Southview Sorting made use of open fire as part of the road clearing operation without meeting the requirements of the legislation.

Issues

The following issues are relevant to this case:

1. Did Southview Sorting contravene any of sections 6(1) and 6(2) of the *Wildfire Act* and sections 22(1), 22(2) and 22(3) of the *Wildfire Regulation*?

2. If Southview Sorting contravened the *Wildfire Act* or *Wildfire Regulation*, do any of the defences of due diligence, mistake of fact or officially induced error apply?

3. If Southview Sorting contravened the *Wildfire Act* or *Wildfire Regulation* and no statutory defence applies, what amount of administrative penalty, if any, is appropriate?

4. If Southview Sorting contravened, what amount of compensation, if any, should be recovered for the government's costs of fire control carried out under section 9 of the *Wildfire Act* and for Crown resources and property damaged or destroyed as a result, directly or indirectly, of the contravention(s)?

Determination

I determine, by an order made under section 26 of the *Wildfire Act*, that Southview Sorting contravened section 6(1) of the *Wildfire Act* and section 22(3) of the *Wildfire Regulation*. I determine that Southview Sorting did not contravene section 6(2) of *Wildfire Act* or section 22(2) of the *Wildfire Regulation*.

I also determine that no independent contravention exists under section 22(1) of the *Wildfire Regulation*. Any non-compliance with section 22(1) should instead be considered a contravention of section 5(1) or 6(1) of the *Wildfire Act*. In this case, Southview Sorting's non-compliance with section 22(1) is captured by the contravention of section 6(1).

Under section 27(1)(a) of the *Wildfire Act*, I levy an administrative penalty against Southview Sorting in the amount of $4,000.00 for the contravention of section 6(1) of the *Wildfire Act* and $2,000.00 for the contravention of section 22(3) of the *Wildfire Regulation*.

Under section 27(1)(b), I determine that the amount of the government's costs of fire control carried out under section 9 of the *Wildfire Act*, for the fire that resulted, directly or indirectly from the contraventions referred to in my order under section 26, is $9,100.00 However, for the reasons described below, Southview Sorting will not be required to pay this amount.

Under section 27(1)(c), I determine that the amount that is equal to the dollar value of Crown timber damaged or destroyed as a result, directly or indirectly, of the contraventions referred to in my order under section 26 is $3,108.00

Under section 27(1)(d), I require Southview Sorting to pay to the government the $3,108.00 that I have determined under section 27(1)(c).

The amounts owing set out above totalling $9,108.00 must be paid by July 6, 2018, subject to the stay imposed by section 36(1) of the *Wildfire Act*, which is described in more detail below.

Summary of the evidence

Southview Sorting did not present any information or evidence or dispute the evidence included in the Ministry's binder. As such, based on the evidence, I am satisfied that the following facts are **not** in dispute:

- In May of 2015, Southview Sorting performed work on a road right of way as part of Forest License to Cut A92844, which was being constructed to access Timber Sale A93081.

- As part of the work performed on the road right of way, Southview Sorting was engaged in industrial activities that included road construction, timber harvesting and debris piling.

- On April 17, 2015, the Ministry issued a burn registration number (R15-N0089) to Southview Sorting for a Category 3 Open Fire burn related to its Forest License to Cut. This burn registration number expired on May 1, 2015.

- Southview Sorting was fully aware of its obligations with regards to Category 3 open fire as required under the *Wildfire Act* and *Wildfire Regulation*.

- Jared Neumann, of Southview Sorting, admitted to the NRO that on May 7, 2015, he ignited a Category 3 Open Fire slash pile containing woody debris that had been piled as a result of the road clearing that Southview Sorting had completed.

- Southview Sorting did not clear the brush and organic debris adjacent to pile to establish a fuel break prior to ignition.

- Southview Sorting did not have an active burn registration number when Mr. Neumann lit the debris pile on May 7, 2015, as Southview Sorting's previous burn registration number had expired on May 1.

- On May 8, 2015, Mr. Neumann called the Provincial Forest Fire Reporting Centre (PFFRC) to report that the fire had escaped slash pile and that Southview Sorting had personnel and equipment trying to extinguish the fire.

- On May 8, 2015, two BCWS Wildfire Assistants and 12 fire crew personnel from BCWS attended to the wildfire (N70030).

- BCWS staff continued with suppression efforts until the wildfire was placed in patrol on May 9, 2015.

- The government's costs of fire control in relation to the wildfire are $9,100.00 and the area burned was approximately 0.30 hectares.

- The damages that the wildfire caused to felled and bucked Crown timber were estimated at $3,108.00

- Southview Sorting was a contractor working for BC Timber Sales and, at the time of the wildfire, there was a memorandum of understanding between the BCWS and BC Timber Sales regarding the recovery of government fire control costs regarding, among other thigs, road construction.

Do the facts support a finding of contravention?

I conclude that Southview Sorting contravened section 6(1) of the *Wildfire Act* and section 22(3) of the *Wildfire Regulation*.

I conclude that Southview Sorting did not contravene section 6(2) of the *Wildfire Act* and 22(2) of the *Wildfire Regulation*.

My reasons for these conclusions follow in the paragraphs below.

Contravention of the *Wildfire Act* and *Wildfire Regulation*

Section 6(1) of the *Wildfire Act* prohibits a person carrying out an industrial activity from lighting an open fire in forest land or grass land or within 1 km of forest land or grass land except in prescribed circumstances. The prescribed circumstances under which a person may light an open fire are set out in section 22(1) of the *Wildfire Regulation*. Southview Sorting admits to lighting a Category 3 Open Fire within 1 km of forest land on May 8, 2015.

To determine whether or not Southview Sorting contravened section 6(1) of the *Wildfire Act*, I must determine if Southview Sorting complied with the requirements of section 22(1) of the *Wildfire Regulation*. With respect to those requirements, Southview Sorting lit the fire on May 8, 2015 without having an active burn registration number. Southview Sorting's previous burn registration number expired on May 1, 2015. Having an active burn registration number is required when lighting a Category 3 open fire pursuant to section 22(1)(c) of the *Wildfire Regulation*.

Southview Sorting also failed to comply with other parts of section 22(1) of the *Wildfire Regulation*. In my view, Southview Sorting did not take the necessary precautions to prevent the fire from escaping, such as establishing fuel breaks [s. 22(1)(e)], and did not ensure that the fire was watched and patrolled to prevent the escape of the fire [s. 22(1)(f)(iii)].

I therefore conclude that Southview Sorting contravened section 6(1) of the *Wildfire Act* by failing to comply with the requirements of section 22(1) of the *Wildfire Regulation*.

Section 22(3) of the *Wildfire Regulation* requires that a person who lights, fuels or uses a Category 3 Open Fire must ensure that the fire does not escape. Southview Sorting admits to lighting the debris pile and previously had a Burn Registration number to burn a debris pile on the site, although that Burn Registration had expired on May 1. I do not believe that Southview Sorting set out to intentionally cause damages to Crown timber resources when lighting the debris pile, which would be a malicious act. As the fire left the area of the debris pile and entered into the felled, bucked and standing timber along the roadside causing damages to Crown resources, it is my view that the fire did escape the intended area of the burn. I therefore conclude that Southview Sorting did contravene section 22(3) of the *Wildfire Regulation*.

No contravention of the *Wildfire Act* and *Wildfire Regulation*

Section 6(2) of the *Wildfire Act* requires that a person who carries out an industrial activity do so at a time and in a manner that can reasonably be expected to prevent fires from starting because of the industrial activity. At the time of the fire, Southview Sorting was engaged in road clearing, timber harvesting and debris piling as part of the road right of way clearing associated with Forest License to Cut A92844. These actions are consistent with the definition of an "industrial activity" as set out in section 1(3)(b) of the *Wildfire Regulation*. These industrial activities did not cause the wildfire and as far as I know, Southview Sorting conducted these activities at an appropriate time and manner in relation to starting a fire. The fire intentionally lit is what caused the wildfire and that is not an industrial activity itself. Accordingly, I determine that Southview Sorting did not contravene section 6(2) of the *Wildfire Act*.

In addition, where a person fails to comply with the circumstances set out in section 22(1)(c) of the *Wildfire Regulation*, which requires a person to obtain a burn registration number prior to lighting a Category 3 Open Fire, then that person cannot contravene section 22(2) of the *Wildfire Regulation* as a person would require an active burn registration number in order to establish a date by which the fire needs to be extinguished. Southview Sorting did not have an active Category 3 burn registration number when it lit the fire on May 7, 2015 and Southview Sorting did not light any open fires on this site before the expiration date of the previous Category 3 Burn Registration number. I therefore conclude that Southview Sorting did not contravene section 22(2) of the *Wildfire Regulation*.

Do any defences apply?

Southview Sorting did not raise any of the defences set out in section 29 of the *Wildfire Act* and I am satisfied that the facts do not support any of these defences.

Is a penalty appropriate and if so how much?

Under section 33(1)(a) of the *Wildfire Regulation*, I am authorized to impose a penalty of up to $100,000.00 for the contravention of section 22(3) of the *Wildfire Regulation*. Under section 33(2)(a) of the *Wildfire Regulation*, I am authorized to impose a penalty of up to $100,000.00 for the contravention of section 6(1) of the *Wildfire Act*. Before I levy a penalty, I must consider the following factors described in section 27(3) of the *Wildfire Act*:

a) Southview Sorting's previous contraventions, if any, of a similar nature;

Southview Sorting's record includes one previous violation of section 6(1) of the *Wildfire Act* on June 6, 2014 which resulted in a Violation Ticket issued for $345.00.

b) The gravity and magnitude of the contravention;

The contraventions resulted in a wildland fire of approximately 0.3 hectares of felled and bucked timber. In relative terms, the wildfire was of low to moderate gravity and magnitude despite the Crown's fire control costs of $9,100.00 and damages of $3,108.00. However, the gravity of the contraventions is somewhat higher because leaving a fire unattended and causing a wildfire is a serious matter and particularly in the high burning conditions that were present at the time of the incident.

c) Whether the contravention was repeated or continuous;

The contraventions were not repeated or continuous.

d) Whether the contravention was deliberate;

Southview Sorting had previously obtained a Burn Registration number in order to burn the debris pile. Although the Burn Registration had expired, by following the process at the outset, I believe it was the intention of Southview Sorting to remain in compliance and I do not believe that the contraventions were deliberate.

e) Any economic benefits derived from the contravention;

Southview Sorting did not derive any economic benefit from the contraventions.

f) Southview Sorting's cooperativeness and efforts to correct the contravention;

Southview Sorting has not disputed the evidence in this case and has been cooperative throughout. Southview Sorting employees immediately responded to

the wildfire upon discovery and called the BCWS to report the wildfire. Southview Sorting obtained a burn registration number on May 8, 2015 the day after the piles were ignited.

Having regard to the factors above and to all of the evidence presented to me, whether specifically referred to or not, I have decided that it is appropriate to levy a penalty in the amount of $6,000.00.

I have based the $6,000.00 penalty amount on a consideration of all of the above factors. Most importantly, Southview Sorting was aware of the requirements associated with lighting a Category 3 Open Fire and, in fact, had a previous contravention of section 6(1) of the *Wildfire Act*. I have also taken into account the fact that Southview Sorting has been cooperative and made good efforts to correct these contraventions and meet its obligations at the time of the incident.

Circumstances for not seeking cost recovery

I have considered the circumstances for not seeking fire control cost recovery set out in section 29 of the *Wildfire Regulation* and conclude that Southview Sorting is not required to pay to the government, the government's $9,100.00 in fire control costs for this wildfire.

As per the Memorandum of Understanding on Fire Preparedness Levy between the BCWS and BC Timber Sales, the government will not seek recovery of the government's fire control costs for the control or suppression of fires that start as a result of timber development or harvesting; road construction, maintenance or deactivation; or silviculture activities undertaken by a holder of a BC Timber Sales agreement or its contractors or by contractors hired by BC Timber Sales.

At the time of this wildfire, Southview Sorting was a contractor working on behalf of BC Timber Sales in the construction of a new road right of way to access Forest License to Cut A92844. As this wildfire was the result of timber development and road construction, I have determined that Southview Sorting may rely on the Memorandum of Understanding and is not required to pay to the government's fire control costs.

Itemized particulars of damage to Crown timber, other Crown resources or Crown property

I have reviewed the Ministry's calculation of the dollar value of Crown timber, resources and property of the government that were damaged or destroyed, directly or indirectly, from the contraventions. In my view, the Ministry's calculations are reasonable in the circumstances.

Pursuant to section 27(1)(c) of the *Wildfire Act*, my determination of the dollar value of Crown timber that was damaged or destroyed was made in accordance with section 30 of the Wildfire Regulation. It is based on the following particulars:

Crown timber, mature	$ 3,108.00
Crown timber, not mature	$0.00
Other forest land resources	$0.00
Grass land resources	$0.00
Other property (replacement value)	$0.00
TOTAL	**$3,108.00**

Having regard to the facts of this case, I have decided that it is appropriate to require Southview Sorting to pay $3,108 for the Crown timber that was damaged in the wildfire. The damage to Crown timber was a direct result of the wildfire that started from Southview Sorting losing control of the burning pile that it lit.

Stay of orders

Under section 36(1) of the *Wildfire Act*, my orders under section 26 and 27 are stayed until Southview Sorting has no further right to have them reviewed or appealed.

Payment of amounts owing

The penalty amount of $6,000.00 and the costs of the damage to Crown timber in the amount of $3,108.00 must be paid by July 6, 2018, subject to the stay imposed by section 36(1) of the *Wildfire Act,* referred to above. Under section 36(1), if you commence a review or appeal of these orders, the amount owing will not be payable until the completion of the review or appeal. Upon completion of the review or appeal, any amount owing will be immediately due and payable.

If the amounts owing are not paid by July 6, 2018 or upon completion of a review or appeal, as the case may be, then under section 130 of the *Forest Act*, the money owed:

a) Bears interest at the prescribed rate;

b) May be recovered in a court as a debt due to the government; and

c) Constitutes, in favour of the government,

   i. a lien on any timber, lumber, veneer, plywood, pulp, newsprint, special forest products and wood residue owned by Southview Sorting, and

ii. a lien on chattels or an interest in them, other than chattels referred to in subparagraph (i), owned by Southview Sorting.

Determination does not forestall other actions that may be taken

Please note that these orders do not relieve Southview Sorting from any other actions or proceedings that the government is authorized to take with respect to the contraventions described above.

Opportunity for correcting this determination

For 15 days after making these determinations and orders, I am authorized under section 35(1) of the *Wildfire Act* to correct typographical, arithmetical, or 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 obvious errors or omissions, you may contact me at 250-263-6841 within this 15 day period.

Opportunities for review and appeal

If you have *new* information that was *not available at the time I made my orders*, you may request a review of the orders on the basis of this new information. A request for review must be in writing, must be signed by a representative of Southview Sorting and must contain:

a) your name, and address; and the name of the person, if any, making the request on Southview Sorting's behalf;

b) the address to which all official letters and documents are to be sent to for Southview Sorting, or the person acting on Southview Sorting's behalf in respect of the review;

c) the new evidence that was not available at the time this determination was made; and

d) a statement of the relief requested.

This request should be directed to:

Kathleen Werstiuk
Manager, Wildfire Risk
BC Wildfire Service
2nd Floor, 2957 Jutland Road
Victoria, BC V8T 5J9

The request must be received ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 37 of the *Wildfire Act* and in the *Administrative Review and Appeal Procedure Regulation*. Please note the **three week time limit** for requesting a review.

Alternatively, if you disagree with my orders, you may appeal directly to the Forest Appeals Commission.

The appeal request must be in writing and must be signed by an authorized representative of Southview Sorting, or on its behalf, and must contain:

a) Southview Sorting's name, address and telephone number;

b) the name and daytime/business telephone number of the person, if any, making the request on Southview Sorting's behalf;

c) the address to which all official letters and documents are to be sent in respect of the appeal;

d) a copy of this determination;

e) a description of why the determination should be changed (the grounds for appeal); and

f) a statement of the outcome requested (the remedy sought).

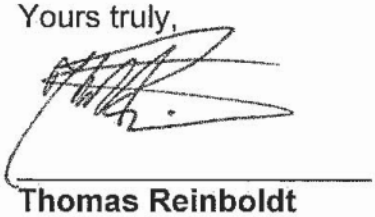
The Forest Appeals Commission must receive the appeal ***no later than thirty days*** after the date this notice of determination is given or delivered to Southview Sorting.

The provisions governing appeals are set out in sections 39 through 41 of the *Wildfire Act*, in sections 140.1 through 140.7 of the *Forest and Range Practices Act*, and in the applicable parts of the *Administrative Tribunals Act* and the *Administrative Review and Appeal Procedure Regulation*. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. The address for the Forest Appeals Commission is:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC
V8W 9V1

Please note the **thirty day time limit** for delivering a notice of appeal.

Yours truly,



Thomas Reinboldt
Deputy Fire Centre Manager
Prince George Fire Centre

cc: Laurence Bowdige, Wildfire Recovery Superintendent, BC Wildfire Service
Kathleen Werstiuk, Manager, Wildfire Risk, BC Wildfire Service
Kevin Melanson, SWO-Prevention, BC Wildfire Service
Iain Hartley, NRO Officer, Compliance and Enforcement Branch
Nathan Murray, Manager Litigation and SDM Support, FLNRO
Mark Haddock, General Counsel, Forest Practices Board
Ian Meier, Director, Wildfire Operations, BC Wildfire Service
John Harkema, Compliance and Enforcement Branch

APPENDIX 1

Wildfire Act

Definitions

1 In this Act:...

"industrial activity" includes

(a) land clearing, and

(b) other activities included in this definition by regulation,

but does not include activities excluded from this definition by regulation;

Industrial activities

6 (1) Except in prescribed circumstances, a person carrying out an industrial activity must not light, fuel or use an open fire in forest land or grass land or within 1 km of forest land or grass land.

(2) A person who carries out an industrial activity must do so

(a) at a time, and

(b) in a manner

that can reasonably be expected to prevent fires from starting because of the industrial activity.

Wildfire Regulation

Definitions

1 (1) In this regulation:

"high risk activity" means

(a) mechanical brushing;

(b) disk trenching;

(c) preparation or use of explosives;

(d) using fire- or spark-producing tools, including cutting tools;

(e) using or preparing fireworks or pyrotechnics;

(f) grinding, including rail grinding;

(g) mechanical land clearing;

(h) clearing and maintaining rights of way, including grass mowing;

(i) any of the following activities carried out in a cutblock excluding a road, landing, roadside work area or log sort area in the cutblock:

(i) operating a power saw;

(ii) mechanical tree felling, woody debris piling or tree processing, including de-limbing;

(iii) welding;

(iv) portable wood chipping, milling, processing or manufacturing;

(v) skidding logs or log forwarding unless it is improbable that the skidding or forwarding will result in the equipment contacting rock;

(vi) yarding logs using cable systems.

(3) Each of the following activities is included in the definition of "industrial activity" in section 1 of the Act:

(a) high risk activities;

(b) operating equipment or machinery in relation to forest management during

(i) road construction, road maintenance and road deactivation,

(ii) timber harvesting, including sorting logs,

(iii) mechanical modification of forest debris and debris piling,

(iv) silviculture treatments, or

(v) portable wood chipping, milling, processing or manufacturing;

(c) operating equipment or machinery in relation to activities other than forest management during

(i) debris piling,

(ii) road construction, road maintenance or road deactivation,

(iii) rock drilling,

(iv) mining operations,

(v) railway operations,

(vi) utility transmission operations, or

(vii) portable wood chipping, milling, processing or manufacturing.

Category 3 open fire

22 (1) The circumstances in which a person described in section 5 (1) or 6 (1) of the Act may light, fuel or use a category 3 open fire in or within 1 km of forest land or grass land are as follows:

(a) the person is not prohibited from doing so under another enactment;

(b) to do so is safe and is likely to continue to be safe;

(c) the person obtains a burn registration number for the fire

(i) by

(A) calling the telephone number made known by the government for that purpose, or

(B) contacting an official by other means, and

(ii) by providing the information referred to in section 24 of this regulation;

(d) the person takes all necessary precautions to ensure the fire is contained in the burn area;

(e) the person establishes a fuel break around

(i) the burn area, or

(ii) each debris pile or windrow;

(f) while the fire is burning and there is a risk of the fire escaping the person ensures that

(i) the fuel break is maintained,

(ii) a fire suppression system is available at the burn area, of a type and with a capacity adequate for fire control if the fire escapes,

(iii) the fire is watched and patrolled by a person to prevent the escape of fire and the person is equipped with at least one fire-fighting hand tool, and

(iv) the fire does not exceed the capacity of the persons, fire-fighting tools and heavy equipment on site for timely action to prevent any fire from escaping.

(2) A person who, in the circumstances set out in subsection (1), lights, fuels or uses a category 3 open fire on a burn area must ensure that

(a) no windrow on the burn area exceeds 200 m in length or 15 m in width, and

(b) the category 3 open fire is extinguished by the date specified by the official or person who issued the burn registration number.

(3) Without limiting subsection (1) or (2), a person who lights, fuels or uses a category 3 open fire must ensure that the fire does not escape.

BRITISH COLUMBIA

File: 23060-20 – DJA-35368
Client Number: 00001271

March 5, 2019

Ian Stephen, RPF
Canadian Forest Products Ltd.
1399 Bearhead Road
Vanderhoof, BC
V0J 3A2

Dear Ian Stephen:

Re: Contravention Determination under Section 71(2)(a) of the *Forest and Range Practices Act* (FRPA)

This is further to my letter dated May 23, 2018 and your July 31, 2018 letter in response providing comments on the alleged contraventions of sections 105(5.2) and 105.1(3) of the *Forest Act* and declining an opportunity to be heard meeting.

I have now made my determination in this matter and conclude that Canadian Forest Products Ltd. (Canfor) contravened the *Forest Act*. I am not levying an administrative penalty for the contravention of section 105(5.2) on the basis that the three year limitation period to do so has expired. I am not levying a penalty for the contravention of section 105.1(3) on the basis that the contravention is trifling and it is not in the public interest to levy a penalty.

Authority

The Minister of Forests, Lands, Natural Resource Operations and Rural Development has delegated to me, under section 120.1 of the *Forest and Range Practices Act* (FRPA), the authority to make determinations with respect to administrative contraventions and penalties under section 71 of FRPA.

Ministry of Forests, Lands, Natural Resource Operations and Rural Development

Stuart Nechako Natural Resource District

1560 Hwy 16 East
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Legislation

The Compliance and Enforcement (C&E) branch of the ministry alleges that Canfor contravened sections 105(5.2) and 105.1(3) of the *Forest Act*. These provisions and other provisions that relate to these ones are reproduced below:

Forest Act

Stumpage rate determined

105(1) Subject to the regulation made under subsection (6) and orders under subsection (7), if stumpage is payable to the government under an agreement entered into under this Act or under section 103(3), the rates of stumpage must be determined, redetermined and varied

(a) by an employee of the ministry, identified in the policies and procedures referred to in paragraph (c),

(b) at the times specified by the minister, and

(c) in accordance with the policies and procedures approved by the minister.

105(5.1) The policies and procedures referred to in subsection (1)(c) may require the holder of an agreement to submit information to the government as necessary or desirable for the determination, redetermination or variation of a stumpage rate.

105(5.2) The holder of an agreement who is required, under the policies and procedures referred to in subsection (1)(c), to submit information referred to in subsection (5.1) must comply with the requirement.

Complete and Accurate Information

105.1(1) In this section:

"**agreement**" means an agreement in the form of a licence, permit or agreement referred to in section 12;

105.1(2) An applicant who is required under this Act to submit information to the government must ensure that, at the time the information is submitted, the information is complete and accurate.

105.1(3) The holder of an agreement who is required under the agreement or this Act to submit information to the government

(a) for use in determining, redetermining or varying a stumpage rate, or

(b) for any other purpose under this Act, must ensure that, at the time the information is submitted, the information is complete and accurate.

The following sections of the Interior Appraisal Manual (IAM) are relevant to my determination because they are 'policies and procedures' referred to in section 105(1)(c) of the *Forest Act*:

The Interior Appraisal Manual – Original July 1, 2013

2.2.1 Changed Circumstances

1. In this manual a changed circumstance means a circumstance where:

   b. The licensee or a contractor working on the licensee's behalf carries out or will carry out development on the cutting authority area such that there will be a difference of at least 15% between:

      i. the total appraised development cost estimate if it is recalculated under chapter 4 on the basis of the development actually carried out, to the extent this development is in accordance with chapter 4, and

      ii. the total appraised development cost estimate used in the most recent appraisal or reappraisal, where this difference results from circumstances other than a change in the manual or a change as a result of a stumpage adjustment.

2.2.1.1 Changed Circumstances Reappraisal Procedure

1. Where the cutting authority was issued prior to August 1, 2005, the licensee must submit an appraisal data submission to the district manager immediately if a changed circumstance has occurred.

2. a. Except for a changed circumstance under section 2.2.1(1)(e), the licensee must submit an appraisal data submission to the district manager within sixty days of completion of log transportation activities or no later than thirty days prior to the expiry of the cutting permit whichever comes first, if the cutting authority must be reappraised because of a changed circumstance under section 2.2.1.

Section 71 of FRPA is relevant to my determination as the statute which authorizes me to determine if a person contravened the *Forest Act*. Section 75 of FRPA describes the limitation period during which the ministry has the power to levy an administrative penalty:

Forest and Range Practices Act

71(1) The minister, after giving a person who is alleged to have contravened a provision of the Acts an opportunity to be heard, may determine whether the person has contravened the provision.

75(1) The period during which an administrative penalty may be levied under section 71(2) or 74(3)(d) or an order may be made under section 74(1) is 3 years beginning on the date on which the facts that lead to the determination that the contravention occurred first came to the knowledge of an official.

Issues

The following issues are relevant to this case:

1. Did Canfor contravene sections 105(5.2) and 105.1(3) of the *Forest Act*?

2. If Canfor contravened the *Forest Act*, do any of the defences of due diligence, mistake of fact or officially induced error apply?

3. If Canfor contravened and no defences apply, what amount of penalty, if any, is appropriate?

After considering the evidence presented to me, and for the reasons presented below, it is my determination that:

1. Canfor contravened sections 105(5.2) and 105.1 of the *Forest Act*;

2. none of the defences apply; and

3. it is not appropriate to levy an administrative penalty.

The rationale for my contravention determination and explanation for not levying a penalty is set out below.

Summary of the evidence and findings of fact

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

- Canfor is the holder of Forest Licence A40873. This Forest Licence is an agreement made under the *Forest Act*. It is with this licence that Canfor applied for Cutting Permit (CP) 97C.

- CP 97C was authorized under A40873 and issued on August 16, 2013 and expired on August 15, 2017.

- On August 8, 2013, Canfor submitted an Ecommerce Appraisal System (ECAS) data submission for CP 97C, which included 16.4 kilometers of tabular roads and one 12 meter bridge. This submission was used in the stumpage rate determination effective August 16, 2013 and included a total road development cost estimate of $274,561.40.

- The August 16, 2013 stumpage rate determination for CP 97C included 21 road segments that would be built for CP 97C. 21 of these road segments were long term with 15 of them receiving gravel stabilization.

- The completion of log transportation activities on CP 97C occurred on June 18, 2015.

- The 60 day timeframe in which Canfor was required to submit any changed circumstance reappraisal in accordance with the IAM, to reflect appraised changes, ended on August 17, 2015.

- On September 18, 2015, C&E representatives conducted an inspection of CP 97C and observed that several road sections appraised as long term were actually built to short term standards. The differences between how Canfor planned to build these roads and how they actually built the roads gave rise to a changed circumstance requiring a reappraisal submission.

- On January 7, 2016, Canfor submitted a reappraisal for CP 97C, which was 143 days past the 60 day requirement to submit a change of circumstance reappraisal.

- Canfor acknowledges, with respect to CP 97C, that it did not file a change of circumstance reappraisal within the 60 day period provided for within the IAM.

Ministry staff presented the following evidence and submissions in the case binder:

- On January 7, 2016, Canfor submitted a reappraisal for CP 97C. This reappraisal included 10 road sections that were to be built to long term standards (21 in the original appraisal), of which 8 were also appraised as receiving gravel stabilization (15 in the original appraisal). The reappraisal submission also included 10 roads that were to be built to short term standards. The reappraisal cost estimate to build the 20 road sections was $182,938.80.

- On April 20, 2016 and May 3, 2016, C&E conducted field inspections over CP 97C. During these inspections, C&E identified that information submitted within Canfor's ECAS ID 76361 reappraisal was not consistent with the developments that were completed. C&E submitted their inspection results to Canfor on June 22, 2016.

- On March 23, 2017, C&E forwarded Canfor a notice of investigation letter, which stated that Canfor's activities on CP 97C may be in contravention of section 105.1(3) and 105(5.2) of the *Forest Act*.

- On May 5, 2017, C&E completed a further inspection to confirm the January 7, 2016 reappraisal submission for accuracy. C&E's inspection confirmed that 11 of the 20 roads were built as appraised (2 roads were built to long term standards and 9 roads had been built to short term standards). The remaining 9 roads not built as appraised had the following deficiencies. Three of the roads were appraised to be built to long term standards but were built to short term standards, one road was appraised to be built to short term standards, but was not built at all, and five roads were appraised to be built to long term standards with gravel, but the inspection identified that gravel was missing over various sections of these roads. On June 13, 2017, C&E forwarded the results of their inspection to Canfor. C&E's revised cost estimate for road building was $176,955.10. These changes represented a difference of approximately $97,606.30 ($274,561.40 - $176,955.10). The cost differential is approximately 35% ($97,606.30 ÷ $274,561.40) from the original appraised estimate.

- When a total appraised development cost estimate has a difference of greater than 15% from the actual costs, a change of circumstance reappraisal is triggered pursuant to paragraph 2.2.1 of the IAM. The cost difference of 35% here is above the 15% threshold and therefore a change of circumstance reappraisal was required.

- On October 12, 2017, Ministry and Canfor representatives completed a field review of C&E's May 5, 2017 inspection findings. Both parties agreed with the results found during the May 5, 2017 inspection.

- Canfor subsequently agreed to allow the Ministry Timber Pricing Officer to submit a reappraisal under section 2.5 of the IAM on Canfor's behalf.

- Canfor's January 6, 2016 reappraisal missed the change of circumstance 60 day timeframe in which to submit a reappraisal by 143 days. In addition, the engineering cost estimate details from Canfor's January 6, 2016 reappraisal was not an accurate representation of the road development findings later agreed upon by Ministry and Canfor staff in October 2017.

In turn, you presented the following evidence and submissions in a July 31, 2018 letter to me on behalf of Canfor:

- Canfor declined the opportunity to be heard for these alleged contraventions and takes no position on the alleged contraventions of sections 105(5.2) and 105.1(3) of the *Forest Act*.

- Canfor acknowledges that it did not submit a notice of changed circumstance within the 60 day time period provided in the IAM in respect of CP 97C. Canfor agrees that the 60 day change of circumstance expiry date was August 17, 2015 and that the reappraisal was not submitted until January 7, 2016.

- Canfor identified several issues that created circumstances that impacted their ability to gain access into the CP area which ultimately led to their failure to miss the deadline to provide the necessary change of circumstance information:

- CP 97C was a target of vandalism. Harvest operations on CP 97C encountered operational shutdowns due to threats of blockades and vandalism to equipment by a stakeholder. Canfor also wrote about instances where operational boundary ribbon was removed which impacted the harvest contractor's ability to complete the harvesting activities. These threats resulted in Canfor moving their operations to a different area until Canfor was able to resolve the issues with the stakeholder and return to this CP.

- The incidents described above led to delays in harvesting CP 97C and resulted in two different harvesting supervisors being involved in the activities on the CP. The change in harvesting supervisors inadvertently impacted Canfor's timely reporting of any development changes.

- A solid Canfor change of circumstance process was not fully in place when the first harvesting supervisor was responsible for CP 97C. Canfor's new process was being implemented when the second harvesting supervisor took over CP 97C.

- In January 2016, Canfor started internally distributing revised change of circumstance reports that highlighted those CP's that would require reappraisals. These reports were provided weekly. When the new process was initiated, Canfor identified CP 97C as being outstanding. Canfor quickly submitted a reappraisal for CP 97C on January 7, 2016.

- Canfor made a final visit to the CP in October 2017, at the request of Ministry Timber Pricing staff, and found agreement on the status of most of the road changes. As a result, the final reappraisal for CP 97C was completed by Omineca Region Timber Pricing staff. CP 97C has been final billed and Canfor has paid the additional stumpage for the cutting permit. Canfor did not receive any economic benefit from the change in appraisal costs.

Did Canfor contravene sections 105(5.2) and 105.1(3) of the *Forest Act*?

The facts set out above support a conclusion that Canfor contravened sections 105(5.2) and 105.1 of the *Forest Act*, provided the defences set out in section 72 of FRPA do not apply.

Section 105(5.2) - Stumpage Rate Determined

Canfor acknowledges and I agree that it contravened section 105(5.2) of the *Forest Act* by failing to submit a changed circumstance appraisal within the required period of time.

Section 2.2.1.1 of the IAM outlines the Changed Circumstances Appraisal Procedure. Paragraph 2(a) includes that:

> "…the licensee must submit an appraisal data submission to the district manager within sixty days of completion of log transportation activities or no later than thirty days prior to the expiry of the cutting permit whichever comes first, if the cutting authority must be reappraised because of a changed circumstance under section 2.2.1."

Section 2.2.1. of the IAM describes the circumstances when a licensee is required to submit a changed circumstance reappraisal. When a total appraised development cost estimate has a difference of greater than 15% from the actual costs, the requirement for a change of circumstance reappraisal is triggered.

Log transportation activities on CP 97C were completed on June 18, 2015. Accordingly, Canfor had 60 days from that date to submit any required changed circumstance re-appraisals.

Canfor's January 7, 2016 reappraisal cost estimate identified 20 road sections that would be built for CP 97C. 10 long term and 10 short term roads, with 8 of the 10 long term road sections receiving gravel stabilization for an overall appraised cost of $182,938.80. C&E identified eight road sections that had not been built as appraised and one road that was appraised to be built to short term standards, but was not built. The revised cost estimate for the changes was $176,955.10. These changes represented a difference of approximately $97,606.30 or 35% between the original appraisal and Canfor's reappraisal submission. If Canfor's reappraisal amount is used to determine whether there was a change in circumstance, the cost differential is about 33%.

Cost differentials of 35% and 33% are both above the 15% threshold and therefore a change of circumstance reappraisal was required. The date in which a change of circumstance reappraisal was required was August 17, 2015.

The date on which Canfor submitted its changed circumstance reappraisal for CP 97C was January 7, 2016, which was 143 days beyond the 60 day reappraisal data submission deadline. Canfor agrees that it missed the deadline to submit a change of circumstance reappraisal.

Section 105.1 – Complete and Accurate Information

Log transportation activities for CP 97C were completed on June 18, 2015. Canfor's January 7, 2016 reappraisal cost estimate identified 20 road sections that were built for CP 97C. 10 long term and 10 short term roads, with 8 of the 10 long term road sections receiving gravel stabilization.

On April 20, 2016 and May 3, 2016, C&E conducted field inspections over CP 97C. During these inspections, C&E identified that information submitted within Canfor's ECAS ID 76361 appraisal was not consistent with the developments that were completed. C&E submitted their inspection results to Canfor on June 22, 2016.

On May 5, 2017, C&E completed a further inspection to confirm the January 7, 2016 reappraisal submission for accuracy. C&E's inspection identified eight road sections that had not been built as appraised and one road that was appraised to be built to short term standards, but was not built. On June 13, 2017, C&E forwarded the results of their May 5, 2017 inspection to Canfor.

An additional inspection was completed by Ministry Timber Pricing staff and Canfor's harvesting supervisor on October 12, 2017. This inspection was conducted to review road sections that C&E identified and questioned in the June 13, 2017 inspection report #056806.

The joint inspection in October 2017 included a review of the roads in question and both parties ultimately agreed that seven of the nine road sections were not consistent with Canfor's reappraisal submission.

I accept that seven on the nine road sections in CP 97C were not consistent with Canfor's reappraisal submission and therefore conclude that Canfor contravened section 105.1(3) of the *Forest Act*.

Do any defences apply?

Canfor did not raise any of the defenses described in section 72 of FRPA and I conclude that none of them apply.

With respect to the defence of due diligence, the timeframe and nature of the contravention in this determination have similarities to another *Forest Act* contravention by Canfor. The harvest completion for CP 97C was approximately one year after the harvest completion for CP 99X, the cutblock related to the similar contravention. In that determination (case file DJA-32361), Canfor also contravened section 105(5.2) of the *Forest Act* for failing to submit a change of circumstances reappraisal within 60 days.

In DJA-32361, Canfor was unable to demonstrate that their standard work procedures were robust enough to meet a due diligence defence. CP 97C was being administered by Canfor's harvesting supervisors during the same period of time and within a similar geographic area to CP 99X. As a result, the issues regarding a lack of an appropriate and robust standard work procedure, identified in DJA-32361, are identical to the issues identified in this determination in relation to Canfor not meeting the criteria for a due diligence defence.

Since Canfor identified a weakness in their standard work procedures, it should be noted that Canfor has updated their procedures, which should reduce the risk of missing the 60 day change of circumstance reappraisal timeframe in the future.

Is a penalty appropriate and if so how much?

Under section 71(2)(a)(i) of FRPA and section 8(a) of the *Administrative Orders and Remedies Regulation*, I am authorized to levy a maximum penalty of $500,000 for a contravention of section 105(5.2) and a maximum penalty of $100,000 for a contravention of section 105.1(3) of the *Forest Act.*

Alternatively, under section 71(2)(a)(ii) of FRPA, I may refrain from levying a penalty if I consider that the contravention is trifling and that it is not in the public interest to levy a penalty.

Having regard to the facts of this case, I must turn my attention to section 75(1) of FRPA. This section identifies the period of time in which an administrative penalty may be levied. This period of time is three years beginning on the date on which the facts that lead to the contravention first came to the knowledge of an official. Here, the facts that led to the section 105(5.2) contravention came to the knowledge of C&E representatives on September 18, 2015 when C&E conducted an inspection of CP 97C and observed sufficient changes to know that Canfor failed to submit a change of circumstance reappraisal within 60 days. As such, the three year limitation period to assess a penalty for this contravention therefore ended on September 18, 2018. Therefore, I have no authority to levy a penalty for the contravention of section 105(5.2).

The facts that led to the section 105.1(3) contravention first came to the knowledge of C&E representatives on April 20, 2016 when C&E had sufficient knowledge of the facts to know that Canfor's reappraisal submission was not accurate. The three year limitation period ends on April 20, 2019.

In my view, the contravention of section 105.1(3) was trifling and it is not in the public interest to levy a penalty for this contravention. The contravention is trifling in large part because Canfor made genuine efforts to provide accurate information in its reappraisal submission and only after correspondence and a site visit with C&E, agreed that the reappraisal submission was still not accurate. The contravention is both trifling and it is not in the public interest to levy a penalty because of the timing of this case and the similarity to DJA-32361. In that determination, I levied a penalty of $3,000 to Canfor for near identical circumstances. I do not think Canfor making the same mistake twice as a result of its admittedly inadequate internal procedures should result in another penalty given the steps that Canfor has taken to improve the internal procedures. In a sense, doing so would result in penalizing Canfor twice for the same mistake. I do not believe that any additional deterrence is required to encourage Canfor to comply with section 105.1(3) of the *Forest Act* in the future.

Determination does not forestall other actions that may be taken

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 contraventions described above.

Opportunity for correcting this determination

For 15 days after making my contravention determination and penalty determination under section 71, I am authorized under section 79 of FRPA 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.

Opportunities for review and appeal

If you have new information that was not available at the time I made this determination, you may request a review of my determination on the basis of this new information. A request for review must be in writing, must be signed by you, or on your behalf, and must contain:

a. your name and address; and the name of the person, if any, making the request on your behalf;

b. the address for serving a document to you or the person acting on your behalf;

c. the new evidence that was not available at the time this determination was made; and

d. a statement of the relief requested.

This request should be directed to me, at P.O. Box 190, Vanderhoof, BC, V0J 3A0 and I must receive it ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 80 of FRPA and in the *Administrative Review and Appeal Procedure Regulation*. Please note the **3 week time limit** for requesting a review.

Alternatively, if you disagree with this determination, you may appeal directly to the Forest Appeals Commission.

The appeal request must be signed by you, or on your behalf, and must contain:

a. your name and address; and the name of the person, if any, making the request on your behalf;

b. the address for serving a document to you or the person acting on your behalf;

c. the grounds for appeal;

d. a statement of the relief requested; and

e. a copy of this determination.

The Forest Appeals Commission must receive the appeal within **30 days** of this determination.

The provisions governing appeals are set out in sections 82 through 84 of FRPA, in sections 131 through 141 of the *Forest Practices Code of British Columbia Act*, and in the *Administrative Review and Appeal Procedure Regulation*. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. A notice of appeal may be delivered to the following address:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **30 day appeal period** for filing a notice of appeal.

Yours truly,

David Van Dolah, RFT
District Manager
Stuart Nechako
Natural Resource District

pc: Ian Brown, RPF, Regional Compliance Leader, Omineca Region
Compliance and Enforcement Branch (CEHQAdmin@gov.bc.ca)
Forest Practices Board (Mark.Haddock@bcfpb.ca)

File: 23060-40 – DOS–33811

February 23, 2018

REGISTERED MAIL

(Original sent via electronic mail)

Cherry Ridge Management Committee
158 North Fork Road
Cherryville, British Columbia
V0E 2G3

Attention: Joyce Fleury, President, Cherry Ridge Management Committee

Dear Ms. Fleury

Re: Contravention Determination and Notice of Penalties Levied under Section 71 of the *Forest and Range Practices Act*

This is further to my letter dated January 16, 2017 and the opportunity to be heard (OTBH) given to Cherry Ridge Management Committee (CRMC) on February 24, 2017, respecting the alleged contravention of sections 52(1) and 52(3) of the *Forest and Range Practices Act* (*FRPA*), section 84(3) of the *Forest Act* and section 86(3) of the *Forest Planning and Practices Regulation* (*FPPR*). I have now made my determination in this matter and conclude that CRMC contravened all four of these sections. Accordingly, I levy an administrative penalty in the amount of $1,000 and issue a remediation order as described later in this determination.

Authority

The Minister of Forests, Lands, Natural Resource Operations and Rural Development (FLNRORD) has delegated to me, under section 120.1(1) of *FRPA*, the authority to make determinations with respect to administrative contraventions and penalties under section 71 of *FRPA* and remediation orders under section 74 of *FRPA*.

Ministry of Forests, Lands, Natural Resource Operations and Rural Development

Okanagan Shuswap
Natural Resource District

Location:
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Mailing Address:
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Vernon, BC V1T 8Z1

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Legislation

The Compliance and Enforcement (C&E) branch of FLNRORD alleges that CRMC contravened sections 52(1) and (3) of *FRPA*, section 84(3) of the *Forest Act* and section 86(3) of the *FPPR*.

Forest and Range Practices Act

Sections 52(1) and (3) - Unauthorized timber harvesting

52 (1) A person must not cut, damage or destroy Crown timber unless authorized to do so

(a) under this Act, the *Forest Act* or an agreement under the *Forest Act*,

(b) by the minister, for silviculture, stand tending, forest health, abating a fire hazard related to wildfires or another purpose,

(b.1) under the *Wildfire Act*,

(c) under a grant of Crown land made under the *Land Act*,

(d) under the *Park Act*, or

(e) under the regulations, in the course of carrying out activities

(i) under an authorization referred in section 51 or 57, or

(ii) that are incidental to or required to carry out activities authorized or approved under this Act, the *Forest Act*, the *Range Act* or another prescribed enactment…

(3) A person must not remove Crown timber unless authorized to do so

(a) under the *Forest Act* or an agreement under the *Forest Act*,

(b) under a grant of Crown land made under the *Land Act*, or

(c) under the *Park Act*.

Forest Act

Section 84(3) - Timber marks

84 (3) A person must not

(a) store unscaled timber in decks or piles on Crown land or, in prescribed circumstances, on private land, or

(b) remove or transport unscaled timber from Crown land or private land unless the timber has been marked in the prescribed manner with a timber mark that pertains to that land.

Forest Planning and Practices Regulation

Section 86 - Annual reports

86 (1) In this section and in section 86.1:

"location" means the approximate location;

"reporting period", in respect of the year in which the report referred to in subsections (2) to (5) is to be furnished, means the 12 month period beginning on April 1 of the immediately preceding calendar year.

(2) Repealed. [B.C. Reg. 104/2008, s. 1 (a) (ii).]

(3) Before June 1 of each year, an agreement holder must report to the district manager

(a) for each area in which timber harvesting was completed during the reporting period and to which section 29 of the Act applies or to which section 44(4) of this regulation applies, the following information:

(i) the area in which the harvesting occurred;

(ii) the amount of area that was harvested;

(iii) an update of the forest cover inventory;

(iv) the location and approximate size of all associated wildlife tree retention areas,

(b) the location of any resource feature or wildlife habitat feature in or contiguous to a cutblock or road of which feature the holder is aware during the reporting period if

(i) the holder has not, in a previous reporting period, reported the resource feature or wildlife habitat feature, and

(ii) the order establishing the resource feature or wildlife habitat feature requires the location of the resource feature or wildlife habitat feature to be reported under this section,

(c) the pertinent information about seeds used during the reporting period to grow seedlings planted by the holder in cutblocks on the land to which the agreement pertains,

(d) an update of the forest cover inventory for each area in which during the reporting period

(i) the requirements for the regeneration date have been met,

(ii) the requirements for the regeneration date have not been met but the regeneration date has passed,

(iii) a free growing stand has been declared under section 97 or 97.1 of this regulation or the requirements of section 46.11 (2) (b) of this regulation have been met, or

(iv) a free growing stand has not been established, but the free growing date has passed, and

(e) a summary of any silviculture treatments that were carried out during the reporting period.

Section 58.1 of FRPA is relevant to my determination since one of the alleged contraventions is of the *Forest Act*:

Definition for Part 6

58.1 In this Part, **"the Acts"** means one or more of this Act, the regulations or the standards or the *Forest Act*, the *Range Act* or a regulation made under the *Forest Act* or the *Range Act*.

Issues and summary of my determination

The following issues are relevant to this case:

1. Did CRMC contravene any of sections 52(1) and 52(3) of *FRPA*, section 84(3) of the *Forest Act* or section 86(3) of the *FPPR*?

2. If CRMC contravened *FRPA*, the *Forest Act* or the *FPPR*, do any of the defences of due diligence, mistake of fact or officially induced error apply?

3. If CRMC contravened and none of the defences apply, what amount of penalty, if any, is appropriate?

After considering the evidence presented to me, it is my determination that:

1. CRMC did contravene sections 52(1) and 52(3) of *FRPA*, section 84(3) of the *Forest Act* and section 86(3) of the *FPPR*.

2. The defences of due diligence, mistake of fact and officially induced error do not apply.

3. It is appropriate to levy a $8,500 penalty under section 71(2)(a)(i) of *FRPA* for the four contraventions which, subject to the stay referred to below, must be paid by June 29, 2018. A separate invoice will be sent to CRMC after all review and appeal periods have passed.

Summary of allegations, evidence and findings of fact

Compliance and Enforcement Allegations

- In a meeting with CRMC staff on May 29, 2015, ministry staff became aware that CRMC may have harvested and removed timber from areas within Community Forest License (CFA) K3T outside the approved cutblock boundaries of CP SS and CP 01.

- During a field visit to CFA K3T on October 27, 2015, C&E investigators discovered small harvested areas that were not consistent with the Forest Tenure Administration (FTA) cutblock submission for CP SS.

- C&E investigators estimated the area in which CRMC harvested Crown timber outside of cutblocks approved in FTA to be 10.9 ha.

- C&E investigators also discovered log decks hammer marked with timber mark K3T002, an invalid timber mark. They estimated the decked volume to be 250 m^3.

- C&E investigators allege that CRMC harvested a total of 5,279.3 m^3 of Crown timber without authority, within CFA K3T.

- C&E investigators allege that CRMC removed 5,029.3 m^3 of that Crown timber from CFA K3T without authority.

- C&E investigators allege that CRMC stored and/or transported 5,279.3 m^3 of Crown timber under a timber mark that did not pertain to the area approved for harvest under any valid cutting permit within CFA K3T.

- Ministry staff found that harvesting occurred between 2011 and 2013 within CFA K3T and that harvesting was not accurately reported to the District Manager (RESULTS) as required under section 86 of the *FPPR*.

- Ministry staff found that CRMC failed to report silviculture activities to the District Manager (RESULTS) specifically, mechanical site preparation and planting that occurred between 2012 and 2015 within CFA K3T.

CRMC Representations

At the February 24, 2017 OTBH, CRMC representatives provided written and oral representations with respect to allegations, specifically:

- CRMC agreed that, *"as the holder of CFA K3T, is in contravention of all 4 counts as listed in the Investigative Report DOS-33811."*

- The '4 counts' are the contraventions of sections 52(1) and 52(3) of *FRPA*, section 84(3) of the *Forest Act* and section 86(3) of the *FPPR*.

- CRMC acknowledged that they harvested timber outside the cutblock boundaries per their FTA submission.

- At the OTBH, CRMC introduced Bert Pereboom, RPF of TRP Forestry Consultants, Inc., retained by CRMC to inventory the unauthorized harvesting and prepare a plan to remedy outstanding obligations.

- Mr. Pereboom introduced TRP's *"Report on harvesting and sivicultural activities on CFA K3T CP SS with regards to File 23060-40-DOS-33811*." Mr. Pereboom's estimates of the areas and volumes harvested are:

    - 25.7 ha harvested , in total,
    - 9.3 ha harvested within authorized CP SS cutblock areas as submitted in FTA,
    - 16.4 ha harvested outside approved CP SS authorized cutblock areas,
    - Estimated volume harvested in areas unauthorized is 4,208 m^3,
    - Estimated volume in decks onsite is 250 m^3.

- The contraventions were not committed deliberately or with intent, but rather under the mistaken assumption that the correct permitting was in place. CRMC believed that appropriate data had been submitted to FTA and RESULTS, had used a valid timber mark (K3TSS) and had stored timber under a valid timber mark (K3T 002).

- Even though CRMC harvested timber without authority, CRMC was acting as a responsible licensee by managing forest health issues such as Fir Bark Beetle and wind damaged timber, consistent with the intent of CP SS.

- All of the unauthorized harvesting was conducted within CRMC's license area of CFA K3T.

- The total harvesting within CFA K3T, authorized and unauthorized, did not exceed established cut control limits for CFA K3T for the cut control period commencing January 1, 2009 and ending December 31, 2014.

- CRMC argued that had it followed the proper cutting permit application procedures, there was a high likelihood that a cutting permit would have been issued to deal with the forest health issues in the areas alleged to be unauthorized.

- This being the case, the economic gain for both the Crown and the CRMC would have been the same as what occurred under the unauthorized harvest, as full stumpage was paid for the 4,208 m^3 harvested and removed without proper authorization.

- CRMC is a not for profit society and donated over $15,000 derived from CFA K3T harvesting revenues to the community of Cherryville from 2011 to 2016.

- A considerable portion of the economic benefit derived from unauthorized harvest will be invested in TRP's continuing work to rectify RESULTS inaccuracies, ensure that all outstanding silvicultural activities are appropriately completed and install an

appropriate system to ensure that the risk of future contraventions of this nature are minimized.

Facts not in dispute

Based on the evidence and the information provided by CRMC at the February 24, 2017 OTHB, I am satisfied that the following facts are not in dispute:

- CRMC is the holder of a CFA, located in the vicinity of Cherryville, British Columbia.
- CFA K3T was issued to CRMC on January 1, 2009.
- CFA K3T has an annual allowable cut of 1,500 m^3 and a maximum harvest limit of 7,500 m^3 (+/- 10%) over a five year cut control period.
- Cutting Permit CP SS was issued on January 7, 2011 and expired on January 6, 2015.
- Cutting Permit CP 01 was issued on February 9, 2011 and expired on February 8, 2015.
- Between January 7, 2011 and May 29, 2015, CRMC conducted primary harvesting activities within the license area of CFA K3T.
- On December 10, 2013, CRMC reported in RESULTS that harvesting had taken place in 2012 over 30.4 ha. within CFA K3T.
- During the cut control period for CFA K3T commencing January 1, 2009 and ending December 31, 2013, CRMC harvested 7,968 m^3 (106.2%) and was in compliance with the cut control requirements of their license.
- Between January 7, 2011 and May 29, 2015, CRMC harvested areas within CFA K3T that were not consistent with their FTA cutblock submission for CP SS.
- CRMC harvested and transported Crown timber from CFA K3T without authority, under a timber mark (KT SS) that did not pertain to the land from which it was harvested.
- Approximately 250 m^3 of harvested timber was stored onsite without authority and was hammer marked with an invalid timber mark (K3T002).
- Harvesting that occurred between 2011 and 2013 and silviculture treatments that occurred within 2012 and 2015 were not reported to the District Manager (RESULTS) per the annual reporting requirements set out in section 86(3) of the *FPPR*.

Facts in dispute

Ministry staff estimated that the area under unauthorized harvesting is 10.9 ha, while TRP estimates the area to be 16.4 ha.

Ministry staff estimated that the volume associated with unauthorized harvesting and hauling under TK0SS to be 5,029.3 m^3, while TRP estimates the volume to be 4,208 m^3.

I am inclined to accept Mr. Pereboom's estimate of the area harvested without authorization, given the time and effort that Mr. Pereboom has invested in refining his estimate including finding additional areas that CRMC harvested without authorization.

In consideration of the conflicting unauthorized harvest volume estimates between C&E and Mr. Pereboom, and the significant expected margin of error that exists for estimates like this, I find that the volume of timber that CRMC harvested and hauled without authorization to be a number between the two estimates, that being 4,618 m^3.

Did CRMC contravene any of sections 52(1) and 52(3) of *FRPA*, section 84(3) of the *Forest Act* or section 86(3) of the *FPPR*?

I conclude, and CRMC acknowledges, that the facts set out in this determination support a finding that CRMC contravened sections 52(1) and 52(3) of *FRPA*, section 84(3) of the *Forest Act* and section 86(3) of the *FPPR* if the defences set out in section 72 of *FRPA* do not apply.

Do any defences apply?

CRMC raised the defence of due diligence as described in section 72 of *FRPA*. CRMC did not directly raise a defence of mistake of fact or officially induced error. Nonetheless, I will consider the due diligence defence that CRMC raised and a mistake of fact defence in relation to the section 52(1) and (3) contraventions because some of the submissions that CRMC made could be reasonably applicable to the defences.

Due Diligence

For the defence of due diligence to succeed, it must be shown that CRMC took all reasonable care to avoid the contraventions. This does not require achieving a standard of perfection or doing everything that could possibly be done to prevent a contravention, but it does require CRMC to prove on a balance of probabilities that it took all measures that would reasonably be expected in the circumstances to avoid the contravention.

CRMC contends that it took reasonable steps to ensure that correct permitting was in place prior to conducting harvesting activities.

It is the responsibility of a licensee to have a system in place that ensures that all primary forest activities are enabled and conducted consistent with legislated requirements. People operating in this system should be expected to make accurate data submissions and maintain accurate records.

In this case, it is evident that CRMC did not have an effective system in place to:

- make accurate and timely information submissions in FTA and RESULTS,
- ensure that approvals were in place prior to the commencement of harvesting activities,
- conduct harvesting activities within authorized areas,
- ensure that timber was stored and transported under a valid timber mark, and
- retain records or legal documentation specific to authorizations pertaining to primary harvesting activities within CFA K3T.

I find these errors and omissions to be symptomatic of an inadequate management system and that CRMC did not exercise due diligence in this regard.

I therefore find that the defence of due diligence fails.

Mistake of Fact

For the defence of mistake of fact to succeed, CRMC must show that it was reasonably mistaken about some fact or set of facts that resulted in a contravention.

CRMC argued that the contraventions in this case were not deliberate, occurring under the mistaken assumption that they had taken all required and reasonable steps to ensure they had correct permitting in place.

It is incumbent upon a person with an effective system to produce accurate records related to their obligations to perform under a license. It is difficult for me to accept a mistake of fact argument as CRMC failed to produce appropriate license document information or relevant records to C&E staff during the investigation or to myself at the OTBH to support why they believed that correct permitting was in place and how that was reasonable.

I find that mistake of fact does not apply.

Officially Induced Error

CRMC did not raise the defence of officially induced error and it does not apply.

Determination

Having determined that the due diligence, mistake of fact and officially induced error defences do not apply, I find CRMC in contravention of sections 52(1) and 52(3) of *FRPA*, section 84(3) of the *Forest Act* and section 86(3) of the *FPPR*.

Is a penalty appropriate and if so how much?

Under section 71(2)(a)(i) of *FRPA* and section 13(2)(b) of the *Administrative Orders and Remedies Regulation* (*AORR*), I am authorized to impose a penalty of up to a maximum of $1,640,000 (16.4 ha x $100,000/ha) for the contravention of each of sections 52(1) and 52(3) of *FRPA*. Under section 8 the *AORR*, I am authorized to impose a penalty of up to $100,000 for the contravention of section 84(3) of the *Forest Act* and under section 14(e) of the *AORR*, up to $5,000 for the contravention of section 86(3) of the *FPPR*.

Alternatively, under section 71(2)(a)(ii) of *FRPA*, I may refrain from levying a penalty for any of the contraventions if I consider that contravention to be trifling and that it is not in the public interest to levy a penalty. I do not find the contraventions in this case to be trifling and as such, will levy a penalty. Before I levy a penalty, I must consider the following factors in section 71(5)(a)(ii) of *FRPA*:

(a) CRMC's previous contraventions, if any, of a similar nature;

CRMC has no contravention history with sections 52(1) and 52(3) of *FRPA*, section 84(3) of the *Forest Act* or section 86(3) of the *FPPR*.

(b) the gravity and magnitude of the contraventions;

In my view, the gravity of sections 52(1) and 52(3) of *FRPA*, section 84(3) of the *Forest Act* and section 86(3) of the *FPPR* contraventions is low. I consider the magnitude of the section 52(1) and 52(3) of *FRPA*, section 84(3) of the *Forest Act* and section 86(3) of the *FPPR* contraventions to be significant.

The total area of Crown land over which the unauthorized harvesting occurred is 16.4 ha. The volume of timber harvested without authorization is 4,868 m^3 and the volume of timber removed without authorization is 4,618 m^3. I consider these to be significantly large volumes as compared to similar contraventions of this nature.

That said, I consider the gravity of these contraventions to be low based on the general area where the unauthorized activities took place and CRMC's good intentions with respect to the nature of the trees that it harvested.

All unauthorized harvesting occurred within the license area of CFA K3T and as such, was confined to CRMC's exclusive area based tenure. The fact that this activity did not infringe on Crown land within the Okanagan Timber Supply Area (hence, other licensee rights and opportunities) is significant when considering gravity.

Harvesting was targeted to the salvage of imperilled timber, damaged timber or both, consistent with the intent of CP SS. Ministry staff support CRMC's assumption that these areas would have been approved for harvest had they been properly applied for.

The majority of areas harvested were in the general vicinity of the cutblock shapefiles submitted under CP SS and I believe that CRMC thought them to be accurate. CRMC hauled 4,618 m^3 under timber mark that they assumed pertained to the land on which the trees were cut.

(c) whether the contraventions were repeated or continuous;

I do not consider any of the contraventions to be repeated or continuous.

(d) whether the contraventions were deliberate;

The contraventions were not deliberate. The directors of CRMC believed that CRMC had the authority to harvest the areas in question.

(e) any economic benefit that CRMC derived from the contraventions;

After considering development, silviculture and logging costs, along with stumpage paid by CRMC on the timber that they estimated to be harvested and transported without authority (5,029m3), Ministry staff estimate that CRMC derived an economic benefit in excess of $60,000. I am mindful that this value is likely high in this case, given that I have determined that a lesser volume was harvested and transported without authority (4,618 m3). Therefore and by extrapolation, I am inclined to consider that an economic benefit closer to $55,000 is more accurate.

At the OTBH, CRMC that they are a not-for-profit society. CRMC provided evidence to me that a significant amount of the economic benefit that it derives from harvesting revenues from CFA K3T is donated to the community of Cherryville (approximately $15,000 from 2011 to 2016). Although this is not one of the mandatory factors to consider under section 71, in my view, this is a relevant factor when it comes to determining the appropriate penalty amount.

CRMC argued further that a significant portion of the remaining benefit has been invested in the retention of TRP Forestry Consultants, Inc., who is continuing remedial work associated with the unauthorized harvesting and to develop a more effective management system for CFA K3T. This, in CRMC's view will adequately address and rectify outstanding obligations and implement an adequate management system for CFA K3T.

(f) CRMC's cooperativeness and efforts to correct the contraventions;

CRMC representatives were co-operative during the investigation by providing information and interviews when requested and acknowledged the contraventions during the OTBH.

I appreciate that CRMC has made considerable effort to ensure that all post harvesting obligations on the areas specific to unauthorized harvesting are appropriately carried out and reported in RESULTS. CRMC representatives have retained the services of TRP, who presented a report and a plan at the OTBH to perform this work.

I am satisfied that CRMC is well on the way to implementing a system that will significantly reduce the risk of similar contraventions to those discovered in this case from reoccurring.

(g) any other considerations that the Lieutenant Governor in Council may have prescribed.

No other considerations have been prescribed.

CRMC committed four separate contraventions. However, all four contraventions were derived from precisely the same set of circumstances and I think that the appropriate penalty amounts should reflect this fact. Further, I will take into consideration the distribution of economic benefit gained per the factors, above.

While the size of the area impacted by the contraventions is significant, (16.4 ha), I find that the values impacted were not very significant. I remain concerned however, that the standard

of care demonstrated by CRMC was low. While I do appreciate the proactive and voluntary efforts made to date by CRMC to remedy outstanding obligations and implement a better management system for CFA K3T, I find it appropriate to levy the following penalties as a deterrent to the likelihood of future contraventions of this nature.

section 52(1) of *FRPA*	-	**$5,500**
section 52(3) of *FRPA*	-	**$1,000**
section 84(3) of the *Forest Act*	-	**$1,000**
section 86(3) of the *FPPR*	-	**$1,000**
Total		**$8,500**

Is it appropriate to issue a remediation order?

I find that it is appropriate to issue a remediation order in this case. The elements of the remediation order are as follows:

1. CRMC will apply to the Okanagan Shuswap Natural Resource District to authorize the remaining trespass timber (approximately 250 m^3, decked in the vicinity of the trespass) under a valid CRMC license and permit and transport the timber under a valid timber mark to a legal scale site if the district issues authorization, no later than June 29, 2018.

2. CRMC will ensure that all post-harvest activities (including RESULTS entries) on the trespass areas are current and compliant with legislation no later than June 29, 2018.

Determination does not forestall other actions that may be taken

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

Opportunity for correcting this determination

For 15 days after making my contravention determination and penalty determination under section 71 and the remediation order under section 74, I am authorized under section 79 of *FRPA* 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 250-558-1700 within this 15 day period.

Opportunities for review and appeal

If you have new information that was *not available* at the time that I made this determination, you may request a review of my determination on the basis of this new information. A request for review must be in writing, must be signed by a representative of CRMC, or on CRMC's behalf, and must contain:

a. CRMC's name and address; and the name of the person, if any, making the request on CRMC's behalf;

b. the address for serving a document on CRMC you or the person acting on CRMC's behalf;

c. the new evidence that was not available at the time this determination was made; and

d. a statement of the relief requested.

This request should be directed to me, at 2501-14th Avenue, Vernon, British Columbia, V1T 8Z1 and I must receive it ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 80 of FRPA and in the *Administrative Review and Appeal Procedure Regulation*. Please note the **3 week time limit** for requesting a review.

Alternatively, if you disagree with this determination, you may appeal directly to the Forest Appeals Commission.

The appeal request must be signed by a representative of CRMC, or on CRMC's behalf, and must contain:

a. CRMC's name and address; and the name of the person, if any, making the request on CRMC's behalf;

b. the address for serving a document on CRMC or the person acting on CRMC's behalf;

c. the grounds for appeal;

d. a copy of this determination; and

e. a statement of the relief requested.

The Forest Appeals Commission must receive the appeal ***no later than thirty days*** after the date this notice of determination is given or delivered to CRMC.

The provisions governing appeals are set out in sections 82 through 84 and sections 140.1 through 140.7 of FRPA, and in the *Administrative Review and Appeal Procedure Regulation*. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. A notice of appeal may be delivered to the following address:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **30 day time limit** for delivering a notice of appeal.

Determination is stayed pending review or appeal

Under section 78 of FRPA, my contravention and penalty determinations under section 71and remediation order under section 74 are stayed until you have no further right to have this determination reviewed or appealed, after which time they take immediate effect.

Performance Record

As CRMC is the holder of an agreement under the *Forest Act*, my determinations under section 71 will become part of CRMC's performance record, pursuant to section 85(2) of FRPA, subject to decisions made on review or appeal.

Payment of Stumpage

Under section 103(3) of the *Forest Act*, a person who cuts, damages, destroys or removes Crown timber without authorization must pay stumpage. The amount of stumpage is based on a determination under section 103(3) of the *Forest Act* of:

- The volume of timber that has been cut, damaged, destroyed or removed; multiplied by two.
- the stumpage rate that an employee of the ministry referred to in section 105(1) of the *Forest Act* would likely have applied to the timber if rights to the timber had been granted under a forest agreement.

As the minister's designate under section 103(3), I am authorized to make a determination of volume or quantity for the purposes of that section. I have determined that CRMC damaged or destroyed 4,868 m^3 of Crown timber without authorization. CRMC has already paid stumpage on most of this volume. For the purposes of section 103(3) of the Forest Act, I determine that CRMC has yet to pay stumpage on 250 m^3 of Crown timber cut and removed without authorization.

Please note that the *Forest Act* does not provide for review or appeal of my volume determination under section 103(3); however, if you disagree with my determination, you may wish to consult your legal counsel with respect to other options that may be available to you, such as judicial review.

I will forward this file to the appropriate ministry employee to determine a stumpage rate and stumpage owing under section 103(3) of the *Forest Act*. That stumpage rate determination is appealable to the Forest Appeals Commission. A separate invoice will be sent to you to cover the cost of stumpage owing on Crown timber damaged or destroyed without authority.

Yours truly,

RayCrampton

Ray Crampton
District Manager
Okanagan Shuswap Natural Resource District

pc: Brad Faucett, Regional Manager, Thompson Okanagan, C&E Branch
Forest Practices Board, via email: fpboard@gov.bc.ca

BRITISH COLUMBIA

Ministry of Forests, Lands,
Natural Resource Operations
and Rural Development

File: 23060-40/DOS-35013
Client:

March 5, 2019

REGISTERED AND BY EMAIL

Guy Maris
s.22

c/o St. Regis Management Inc.
18113-107 Ave.
Edmonton, Alberta
T5S 1K4

Email: gMaris@stregis.ca

Dear Mr. Maris:

Re: Contravention Determination and Notice of Penalty Levied Under Section 71(2)(a)(i) of the *Forest and Range Practices Act*

This letter is further to letters dated December 20, 2017 and January 16, 2018, respecting the alleged contraventions of sections 57(1) and 66(1) of *Forest and Range Practices Act* (*FRPA*) and e-mail correspondence of April 12, 2018, staying the alleged contravention of section 66(1) and alleging a contravention of section 112(3) of *FRPA.* This letter is also further to the Opportunity to Be Heard meeting (OTBH) that you and Rene St. Onge attended together on May 9, 2018 in Vernon, British Columbia.

After considering all evidence presented to me in writing, by email, and at the OTBH, I have determined that you contravened sections 57(1) and 112(3) of *FRPA* and that none of the statutory defences to a contravention apply. I am levying a penalty against you in the amount of $20,000.

I have concluded that Mr. St. Onge also contravened section 57(1) and 112(3) of *FRPA.* Mr. St. Onge tragically passed away recently and I am not levying a penalty against him.

Ministry of Forests, Lands,
Natural Resource Operations
and Rural Development

Okanagan Shuswap
Natural Resource District

Location:
2501 14 Ave
Vernon BC

Mailing Address:
2501 –14th Ave
Vernon, BC V1T 8Z1

Tel: (250) 558-1700
Fax: (250) 549-5485

Authority

The Minister of Forests, Lands, Natural Resource Operations and Rural Development has delegated his authority to me under section 120.1 of *FRPA* to make determinations under section 71 of *FRPA*.

Alleged Contraventions

Compliance and Enforcement Branch (CEB) staff with the Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNRORD) provided evidence in support of allegations that you and Mr. St. Onge contravened sections 57(1) and 112(3) of *FRPA* in that you and Mr. St. Onge:

- conducted works on the Eagle Pass Ridge lookout without authority; and
- failed to comply with a Stop Work Order (SWO).

Legislation

CEB alleges that you and Mr. St. Onge contravened sections 57(1) and 112(3) of *FRPA*:

Unauthorized trail or recreation facility construction

> **57** (1) Unless authorized in writing by the minister or under another enactment, a person must not
>
> (a) construct,
>
> (b) rehabilitate, or
>
> (c) maintain
>
> a trail or other recreation facility on Crown land.

Power to impose conditions

> **112** (3) If a person is the subject of an order, exemption or condition under this Act, the person must comply with the order, exemption or condition.

Background and Summary

My determination is based on information and evidence that CEB staff provided to me, both in writing and during the OTBH on May 9, 2018 in Vernon, British Columbia. At the OTBH, CEB was represented by Natural Resource Officers (NRO) Sara DeVita and Sheila Crombie.

My determination is also based on information and evidence that you and Mr. St. Onge provided to me during the OTBH. At the OTBH, you and Mr. St. Onge were accompanied by s.22 District of Sicamous, Gord Bushell, General Manager of the Eagle Valley Snowmobile Club and Councilor for the District of Sicamous,s.22 ands.22 s.22 boths.22 .

Below is a summary of the case and evidence. I have considered all of the evidence and submissions provided to me in writing, in correspondence, by email, and at the OTBH, whether expressly referred to in my determination or not. I refer to some of the evidence before me in this section and refer to other evidence for the first time in subsequent sections.

In August 2016, the Recreation Sites and Trails Branch of British Columbia (RSTBC) was made aware that a group of people were making improvements to a Forest Service fire lookout building at Eagle Pass Ridge, west of Revelstoke, BC. The building is located on Crown land within a designated recreation site. In September 2016, RSTBC referred the incident to CEB. NRO Tammy Jones conducted an inspection and confirmed that recent construction had been undertaken on the fire lookout at Eagle Pass Ridge. NRO Jones confirmed with RSTBC that it was not aware of any authorization for the construction work on this building.

CEB's initial inspection led to an investigation. In the course of the investigation, CEB staff determined that Mr. St. Onge and Mr. Maris led a construction project to build a cabin at the Eagle Pass Ridge recreation site using the stone foundation from a fire lookout building originally constructed by the Dominion government in 1922.

On or about April 18, 2017, CEB informed Mr. Maris and Mr. St. Onge that they were under investigation for a possible contravention of section 57(1) of *FRPA*.

On June 16, 2017, an agent of Mr. Maris sent a letter to the Minister of FLNRORD on Mr. Maris's behalf, and copied the MLA for the Shuswap, the Director of Recreation Sites and Trails and the Director of the Columbia-Shuswap Regional District. The letter included:

- "An ad hoc committee of people, led by Rene St. Onge and Guy Maris raised approximately $30,000 in funds" for the reconstruction of the fire lookout at Eagle Pass Ridge.

- Reference to a BC government news article from September 2012 stating that the forestry department has "been encouraging local community groups, to sponsor/maintain, repair and provide funds for restoration of numerous historic fire lookouts all around the province".

- Mr. St. Onge had made enquiries to Okanagan Shuswap Forest District office in October 2008 and was directed to speak to s.22 Director, Frontcounter BC in Kamloops, B.C.

- s.22 told Mr. St. Onge that the restoration and repair efforts would be appreciated.

- Construction efforts were initiated in the spring of 2016 and the main structure of the Eagle Pass Ridge fire lookout was repaired in August of 2016.

On July 13, 2017, Andrew Calarco, who was the Executive Director of RSTBC at the time, replied to Mr. Maris's June 16, 2017 letter on behalf of the Minister. Mr. Calarco advised that the matter was under CEB investigation because no application to re-build the fire lookout under section 57(1) of *FRPA* was submitted before construction and because no approvals were granted for the construction and occupation of Crown land.

On July 13, 2017, Mr. Maris's agent sent an email to NRO DeVita on behalf of Mr. Maris and Mr. St. Onge in response to interview questions that CEB forwarded to them on June 13, 2017. In the email, Mr. Maris and Mr. St. Onge indicated that the structure was built as a 'General Public Emergency Shelter' for back country hikers. In the email, Mr. Maris and Mr. St. Onge requested provincial government assistance and resources to assist in the restoration efforts.

At the OTBH, CEB staff introduced an email dated August 28, 2017, forwarded from Kevin Eskelin, Regional Manager, RSTBC, to NRO DeVita. Mr. Eskelin had been recently notified that "the Eagle Pass lookout cabin is currently being redeveloped by some Sicamous locals" and "it appears to be nearing completion."

On September 5, 2017 CEB staff attended the site, witnessed recent, and apparently ongoing, construction efforts on the fire lookout and posted a stop work order (SWO) on the fire lookout pursuant to section 66 of *FRPA*:

NOTICE

ALL construction activities must cease effective September 5, 2017.

A stop work order has been issued under section 66 of the Forest and Range Practices Act and applies to:
All persons undertaking construction activities on this building.

Consent from the Minister must be obtained under FRPA to continue with construction.
Failure to comply with a stop work order may result in monetary penalties.

Please contact the Ministry of Forests, Lands, Natural Resource Operations and Rural Development at 1866837-7611 or in person at 1761 Big Eddy Road, Revelstoke, BC for any inquiries related to this notice.

On September 5, 2017, CEB mailed a copy of the SWO to Mr. St. Onge ordering him, Mr. Maris and any other person involved in the construction of the fire lookout to cease construction activity until authorization had been obtained by the Minister:

> "TO Rene St. Onge, Guy Maris and All persons engaged in the construction activities at the Eagle Pass Lookout Recreation Site"
>
> "Therefore, under Section 66 of the Forest and Range Practices Act (FRPA), I order you to cease the following activities on the date and to the extent specified: Cease ALL construction activity on the lookout building at Eagle Pass."

Although the mail to Mr. St. Onge was returned to CEB as undeliverable, Mr. St. Onge is deemed to have received a copy of the SWO pursuant to section 110(2) of *FRPA*. On September 27, 2017, CEB also send an email copy of the SWO to Mr. St. Onge. CEB did not have contact information for Mr. Maris and could not directly send a copy of the SWO to him.

On October 4, 2017, Mr. St. Onge phoned NRO DeVita. During that call, NRO DeVita responded to an inquiry from Mr. St. Onge by confirming that the SWO precludes anyone from installing beds in the fire lookout.

On December 7, 2017, NRO DeVita and others conducted an inspection of the fire lookout from the air in a helicopter. Based on her observations, NRO DeVita determined that improvements had been made to the fire lookout since issuing the SWO including the installation of bunk beds, a table, a solar panel and flag. On November 8, 2017, the Revelstoke Review published an article describing an October 28, 2017 helicopter trip that Mr. St. Onge, Mr. Maris and others took to the fire lookout to install bunk beds, mattresses, a table and a flag.

As a result of the investigation, CEB determined that Mr. St. Onge and Mr. Maris contravened sections 57(1) and 112(3) of *FRPA*.

RSTBC, Ecosystems Section and Heritage Branch, all part of FLNRORD, prepared impact statements on CEB's request to inform the decision making process. CEB recommended that I levy a penalty and issue a remediation order against Mr. St. Onge and Mr. Maris.

Issues

1. Did Mr. Maris and Mr. St. Onge contravene section 57(1) of *FRPA*?
2. Did Mr. Maris and Mr. St. Onge contravene section 112(3) of *FRPA*?
3. If Mr. Maris and Mr. St. Onge contravened *FRPA*, do any of the defences of due diligence, mistake of fact or officially induced error apply?
4. If Mr. Maris or Mr. St. Onge contravened, what penalty amount is appropriate and is it appropriate to issue a remediation order?

Issue #1: Did Mr. Maris and Mr. St. Onge contravene section 57(1) of *FRPA*?

Mr. Maris and Mr. St. Onge contravened section 57(1) of *FRPA* when each of them constructed and rehabilitated a recreation facility on Crown land without authorization.

At the OTBH, CEB provided evidence that Mr. Maris and Mr. St. Onge led a construction project for building a cabin at the Eagle Pass Ridge recreation site using the stone foundation from a fire lookout building originally constructed by the Dominion government in 1922.

CEB's evidence also included a description of an RSTBC recreation officer's site visit in March 2017 where the officer observed the partially completed structure, tools, ladders and timber. CEB's evidence included numerous photographs showing that beams, walls, a staircase and a roof were built and that windows, a door and a stove were installed. CEB also provided evidence from a member of the public who attended the structure in 2016 including a photograph of a beam with multiple names written on it including those of Mr. Maris and Mr. St. Onge.

CEB's evidence further connects Mr. Maris and Mr. St. Onge to the construction of the structure by showing that they procured funding from the public through a crowd funding campaign to complete the project. In addition to funding, Mr. Maris and Mr. St. Onge recruited volunteers to assist in the construction efforts.

CEB argued that this construction work was undertaken without written authorization, which is required under section 57(1) of *FRPA*. In particular, CEB searched for but did not find any authorizations in connection with the construction activities at the Eagle Pass Ridge recreation site.

During the OTBH, Mr. Maris and Mr. St. Onge did not dispute their involvement with the construction of the structure. This is consistent with Mr. Maris's letter to the Minister in June 2017, multiple radio interviews and newspaper articles that Mr. St. Onge provided statements for in 2017 and comments that Mr. St. Onge made on Facebook.

Neither Mr. Maris nor Mr. St. Onge produced any evidence to indicate that they had authorization in writing from the Province to undertake the construction activities, which is a requirement of section 57(1).

In my view, the structure falls within the meaning of 'recreation facility' as it is used in section 57(1) of *FRPA*. The term 'recreation facility' is not defined in *FRPA* but the ministry has developed policy to assist public servants and the public in understanding section 57 of *FRPA*, including the meaning of 'recreation facility'. The ministry's policy, which I agree with, indicates that a recreation facility includes, among other things, significant structures of a long-term or permanent nature. The structure in question here is of a permanent nature and is located within a designated recreation site.

I have considered whether Mr. Maris's and Mr. St. Onge's construction activities did not require authorization pursuant to section 3 of the *Forest Recreation Regulation*:

> **3** (1) For the purposes of section 57 of the Act, the construction, rehabilitation or maintenance of a trail or recreation facility does not include
>
> (a) marking a route with ribbons, cairns or other directional indicators, or

(b) minor clearing of brush, downed trees or repairs to a trail or recreation facility.

(2) Despite section 57 of the Act, a person may construct, rehabilitate or maintain a trail without the authorization of the minister if doing so is the only reasonable means of minimizing a risk to personal safety.

In my view, Mr. Maris's and Mr. St. Onge's construction activities are not captured by any of the activities or circumstances described in section 3(1) and therefore confirm that each of them contravened section 57(1).

Issue #2: Did Mr. Maris and Mr. St. Onge contravene section 112(3) of *FRPA*?

Mr. Maris and Mr. St. Onge contravened section 112(3) of *FRPA* when each of them failed to comply with an SWO that the ministry issued under section 66(1) of *FRPA*.

Under section 66(1) of *FRPA,* an official may order a person or persons to stop work if there are reasonable grounds to believe that a person is contravening a provision of FRPA or other specified statutes.

Mr. Maris and Mr. St. Onge were made aware that their construction activities were under investigation as early as April 18, 2017. CEB staff determined that despite this, significant work continued in the summer of 2017.

On September 5, 2017, CEB sent a copy of an SWO to Mr. St. Onge's last known address by registered mail prohibiting all construction activities at the fire lookout at Eagle Pass Ridge. On the same day, CEB posted a copy of the SWO on the fire lookout during an inspection of the site. It was apparent to CEB that there had been recent and ongoing construction efforts on the structure in contravention of FRPA.

On October 4, 2017, NRO DeVita received a telephone call from Mr. St. Onge during which he suggested that if they installed beds at the fire lookout, it should not be considered non-compliance with the SWO because it is not considered construction. NRO DeVita disagreed and advised Mr. St. Onge not to put the beds in the structure.

On October 5, 2017, Mr. St. Onge gave an interview to the CBC during which he said:

> "...And Forestry has acted upon it and put a stop work order, which is pretty sad because some people from Alberta actually just paid for some custom beds made on Vancouver Island to be flown up there, and they won't let us put those in and we were gonna put some solar lights with a solar panel in there and they won't let us do that either, so..."

CEB staff inspected the fire lookout again on September 27 and December 7, 2017. At the OTBH, CEB produced evidence indicating that, despite the order, improvements were made to the fire lookout between the issuance of the SWO and the December 7th inspection. In particular, CEB provided evidence that beds, a solar panel and a flag were installed.

Mr. Maris and Mr. St. Onge do not deny being present on October 28, 2017 when the beds, solar panel and flag were installed at the fire lookout but deny that they physically did the work. Both dispute the alleged contravention of section 112(3) for non-compliance with the SWO on this basis.

In a November 8, 2017 article from the Revelstoke Review, the reporter cited a "helicopter trip" that Mr. Maris and Mr. St. Onge made to the fire lookout to haul in and assemble new bunk beds and mattresses, add a table and hang a flag. The author of the article wrote that "St. Onge stressed the recent work in the fire lookout was done solely by the politicians, not himself or Maris". The politicians that Mr. St. Onge was referring to are s.22 and s.22 . Photographs in the article show s.22 s.22 installing beds and working on a table.

In light of this evidence and despite their contention at the OTBH that they did not do this work, I conclude that Mr. St. Onge and Mr. Maris participated in these improvements to the extent that they failed to comply with the SWO. Whether Mr. St. Onge and Mr. Maris physically helped install the beds, table, solar panel and flag or not is of little relevance to me. I find that Mr. St. Onge and Mr. Maris were both familiar with the SWO and at a minimum, were present and in charge of the bed, table and solar panel installation. If it is accurate that the October 28th construction work was "done solely by the politicians", I conclude that s.22 were acting as agents for and under the direction of Mr. St. Onge and Mr. Maris pursuant to section 71(3) of *FRPA*:

> "Subject to section 72, if a person's contractor, employee or agent contravenes a provision of the Acts in the course of carrying out the contract, employment or agency, the person also contravenes the provision."

I consider the installation of beds, table, solar panel and flag to be 'construction activities' for the purposes of the SWO. The first definition of 'construction' in Black's Law Dictionary is:

> "The act of building by combining or arranging parts or elements…"

Construction activities are not limited to making structural improvements to a building. In my view, the phrase "combining and arranging parts or elements" also applies to installing beds, a table, solar panel and flag.

Although Mr. Maris did not receive a copy of the SWO by mail, the evidence as a whole supports that he was fully aware of the SWO. Notably, CEB posted a copy of the SWO on the fire lookout and Mr. Maris did not dispute at the OTBH that he was aware of and familiar with the SWO.

For these reasons, I determine that Mr. St. Onge and Mr. Maris contravened section 112(3) of *FRPA*.

Issue #3: Do any of the defences of due diligence, mistake of fact or officially induced error apply?

In accordance with section 72 of *FRPA*, I must consider whether any of the defences of due diligence, mistake of fact, or officially induced error has been established. Every person is entitled to rely on any defence for every contravention.

After considering the defences, I conclude that none of them apply to any of the contraventions.

Due Diligence

A successful defence of due diligence relies on the premise that a person took all of the steps that a reasonably prudent person would have taken in the same circumstances to avoid the same contravention. Exercising due diligence would include taking reasonable steps to satisfy a legal requirement.

Section 57(1)

At the OTBH, CEB staff argued that for the contravention of section 57(1), as it pertains to Mr. St. Onge, a successful due diligence defence should include but not necessarily be limited to:

- providing building plans and/or engineering inspection reports to a government official;
- completing a ministry application form for authorization and obtaining written approval under section 57 of *FRPA*;
- corresponding with government officials over the seven years between Mr. St. Onge's initial enquiry and the start of construction in 2016;
- researching the applicable acts, regulations, policies and standards, most of which is easily accessible online;
- retaining a consultant who has experience building back country cabins;
- discussing plans with relevant branches of the provincial government including the RSTBC, the Heritage Branch, and the Crown Lands Authorizations Division; and
- contacting public interest groups who may have knowledge of the area.

At the OTBH, Mr. St. Onge asserted that he exercised due diligence by enquiring with the ministry about conducting work on the Eagle Pass Ridge fire lookout. Mr. St. Onge recounted meeting with provincial government staff in the fall of 2008 at the Okanagan Shuswap Forest District office in Vernon, B.C. to discuss a new backcountry trail that he wanted to construct. Mr. St. Onge also recalled asking for information regarding the approval process for restoring

the Eagle Pass Ridge fire lookout. Mr. St. Onge provided me with an affidavit from Dennis Kelly, District Compliance and Enforcement Technician, who declared that he met with Mr. St. Onge at that time and directed him to the FrontCounter BC office in Kamloops B.C.

Mr. St. Onge then recounted a meeting that he had with s.22 a former FrontCounter BC Director, who Mr. St. Onge says advised him that as the lookout was an existing structure, no authorization was required to make improvements to it. Mr. St. Onge stated at the OTBH that he relied upon s.22 verbal approval and was of the mind that he had exercised due diligence in the matter.

Mr. St. Onge also provided me with an affidavit at the OTBH from s.22 s.22 In the affidavit, s.22 declared that:

- he accompanied Mr. St. Onge in his 2008 meetings at the Vernon "Forestry Office" and with s.22 in Kamloops;
- s.22 told Mr. St. Onge that "he needed a permit and needed to see Ken Gibson in Revelstoke for the trail he wanted behind his lodge"; and
- s.22 also said that the 1922 cabin was already existing and he gave verbal approval to us to clean it up and put a roof back on."

CEB conducted an interview with s.22 In the transcript of that interview, s.22 s.22 did not remember a specific meeting with Mr. St. Onge but stated that he would not have given verbal approval for the work described as he was not the decision maker for that particular decision or that jurisdiction.

At the OTBH, CEB highlighted Mr. St. Onge's previous experience applying to use Crown land. CEB staff presented evidence of Mr. St. Onge's September 2009 application to construct a trail near his business in Sicamous, B.C. CEB provided me with Mr. St. Onge's signed section 57 application *"Proposal Form for Trails and Recreation Facilities"* to conduct works on a trail on Crown land in the vicinity of his Eagle Valley Lodge. The application form included the phrase *"use this form to apply to the Forest Service to construct, rehabilitate or maintain a trail or recreation facility"*.

Over the next three years, Mr. St. Onge corresponded with Ken Gibson, Recreation Officer in Revelstoke regarding the trail application. In an interview with CEB staff, Mr. Gibson stated that Mr. St. Onge never raised the topic of restoring the Eagle Pass Ridge fire lookout in their correspondence. Mr. Gibson ultimately refused Mr. St. Onge's trail application.

CEB staff also relied on an email exchange between NRO DeVita and Mr. Gibson. In the email, Mr. Gibson confirmed that he dealt with Mr. St. Onge's section 57 application to construct the trail, he had no recollection of Mr. St. Onge bringing up the subject of the Eagle Pass Ridge fire lookout.

At the OTBH, CEB staff presented an electronic record of an enquiry that Mr. St. Onge submitted to the ministry on December 14, 2014, to "establish snowmobile access from a

public road to his property." According to FrontCounter BC staff notes on the file, Mr. St. Onge explained that RSTBC had advised him that "it is not a recreation trail." FrontCounter BC staff directed Mr. St. Onge to a website with information regarding making application for a *Land Act* tenure (road).

I find that the defence of due diligence for Mr. St. Onge fails. Mr. St. Onge may have exercised diligence in his efforts to determine whether or not he was authorized to establish access from his lodge to existing snowmobile networks. He appears to have made adequate enquiries with the ministry to determine if he could do so or not. However, Mr. St. Onge's earlier diligence works against him in relation to the current matter involving his work on the Eagle Pass Ridge fire lookout. Specifically, I do not think that Mr. St. Onge made sufficient inquiries with the ministry regarding his plans to reconstruct the Eagle Pass Ridge fire lookout to establish a due diligence defence, especially given his previous knowledge and experience applying to build a trail.

In consideration of these facts, Mr. St. Onge should have been familiar enough with ministry application procedures to at least seek clarification of the requirements to reconstruct a historic building in a designated recreation site like the Eagle Pass Ridge fire lookout. To be duly diligent, it was incumbent on Mr. St. Onge to make additional inquiries after his meeting with s.22 . If Mr. St. Onge's description of s.22 advice is accurate, that advice was vague and warranted additional inquiries from Mr. St. Onge to confirm that he had the necessary approval to construct the Eagle Pass fire lookout and be in compliance with section 57 of *FRPA*.

In my opinion, to raise a successful due diligence defence, Mr. St. Onge should have made additional inquiries with the ministry to clarify what he was and was not authorized to do, in particular where about eight years had passed since his meeting with s.22 Mr. St. Onge should have provided specific details and design about the lookout structure to the ministry. Mr. St. Onge also should have read section 57 of *FRPA* which includes a specific requirement that authorization be in writing. To establish a successful due diligence defence, I would have expected Mr. St. Onge to follow the steps referred to above that CEB presented as reasonable actions a person should take to confirm ministry approval. Based on Mr. St. Onge's experience with a trail application from 2009 to 2014, it was unreasonable for him not to follow the same process in relation to the construction of a significant structure like the Eagle Pass Ridge fire lookout.

Mr. Maris played a significant role in the construction, starting with conceptual conversations with Mr. St. Onge in 2012, and including establishing an online fundraiser and using his private helicopter to transport supplies, materials and people associated with the project as late as November of 2017.

At the OTBH, Mr. Maris raised due diligence as a defence, indicating that he relied upon Mr. St. Onge's assertion that he had made adequate enquiry to determine that no authorization was required for construction efforts on the Eagle Pass fire lookout. Further, Mr. Maris stated that he relied on information from Mr. Bushell, Councillor for the District of Sicamous, that no building permits were required within the Columbia Shuswap Regional District at that time.

Mr. Maris stated that he considered the efforts on Eagle Pass fire lookout to be "repairs" and stated that "you don't always need a building permit for repairs," citing his experience as a property manager.

Mr. Maris indicated at the OTBH that he made no efforts to independently research the applicable laws or speak with a provincial government official regarding these activities. He relied solely on the conversations that he had with Mr. Bushell and Mr. St. Onge, citing that a reasonable person would be satisfied that he exercised due diligence.

Given the length of time that Mr. Maris was involved in the project and the significant role that he played in the reconstruction efforts over four years, to raise a successful defence of due diligence, I would expect Mr. Maris to have similarly taken additional steps to satisfy himself that he was authorized to re-construct and rehabilitate the Eagle Pass Ridge fire lookout. In the absence of seeing written authorization from the ministry, Mr. Maris should have made independent enquiries about obtaining ministry authorization and enquired with an appropriate government official to confirm whether and what authorizations were in place and if others were necessary. In response to Mr. Maris's comment that building permits are not always required, the inverse is true in that sometimes building permits or other government authorizations are required. With respect to the facts here, the scope of the construction here would lead all reasonable persons to thoroughly research if and what authorizations are required to undertake significant activities not only on Crown land but on a historic building within a designated recreation site.

The defence of due diligence for Mr. Maris also fails.

Section 112(3)

Neither Mr. St. Onge nor Mr. Maris specifically raised the defence of due diligence for the contravention of section 112(3) of *FRPA*, however, given that they continued to make improvements to the Eagle Pass fire lookout in defiance of the SWO in the fall of 2017, I will consider it as a possible defence.

At the OTBH, Mr. St. Onge and Mr. Maris challenged CEB staff, contending that works conducted under the SWO were not, in their minds, in contravention of the SWO. Since I concluded earlier in this determination that installing beds, a table, a solar panel and flag were construction activities within the meaning of the SWO, the question here is whether Mr. St. Onge and Mr. Maris took reasonable steps to understand the terms of the SWO.

At the OTBH, CEB staff argued that a successful defence of due diligence would include, but not necessarily be limited to:

- contacting an appropriate ministry office to speak with an official about the SWO;
- discontinue making improvements to the structure until a decision was made on the investigation or until authorization had been obtained from the Minister;

- appeal the SWO to the Forest Appeals Commission or provide evidence to CEB in support of a request to review the SWO; and

- refrain from having volunteers assist in construction activities at the Eagle Pass Ridge fire lookout.

CEB's evidence demonstrates that both Mr. St. Onge and Mr. Maris were aware of the SWO and nonetheless continued with plans to complete work on the fire lookout.

Mr. St. Onge took an appropriate step by contacting NRO DeVita when the SWO was in effect (October 4, 2017) to ask whether they could install beds in the fire lookout. NRO DeVita advised him not to. A reasonable person would conclude that the same applies for a table and solar panel.

Mr. St. Onge failed to show diligence when he proceeded to participate in the installation of beds after his phone call with NRO DeVita. He essentially assumed all risk of contravening section 112(3) following that call.

Mr. Maris also failed to be duly diligent. He did not make any enquiries with the ministry, request clarification of the SWO or seek a review or appeal of the SWO.

Given all of the evidence related to Mr. St. Onge's and Mr. Maris's activities in the fall of 2017, I find it not plausible that they did not understand their obligations related to the SWO and that they deliberately contravened the SWO. In those circumstances, it is not possible to be duly diligent.

Mistake of Fact

Mr. Maris raised the defence of mistake of fact at the OTBH with respect to the section 57(1) contravention. Mr. Maris argues that he reasonably believed, based on information from Mr. St. Onge, that ministry authorization was not required to re-build the Eagle Pass Ridge fire lookout.

Mr. St. Onge also relied on the defence of mistake of fact for the section 57(1) contravention on the basis that he reasonably believed authorization was not required to re-build the Eagle Pass Ridge fire lookout.

A defence of mistake of fact relies on the premise that a person is not responsible for a contravention if it was a result of honestly and reasonably believing a fact that, if correct, would not have led to a contravention.

At the OTBH, CEB staff argued that it was unreasonable for Mr. St. Onge and Mr. Maris to believe that no approval was needed mainly for two reasons; the scope of the project and prior knowledge of the approval process under section 57 of *FRPA*. In my view, both of these factors apply to Mr. St. Onge but the second factor does not apply to Mr. Maris. However, an important factor that is unique to Mr. Maris's mistake of fact defence is the reasonableness of his reliance on Mr. St. Onge.

Scope of the Project

It was not reasonable for Mr. St. Onge and Mr. Maris to believe that authorization was not required based on the scope of the project. It is not reasonable to believe that a large project like theirs on Crown land in a designated recreation site and in relation to a historic building did not require ministry authorization simply because a foundation and stonework remained from the previous lookout structure. The existence of concrete and stonework is not an invitation for the public to build any structure of their choice.

The scope of the work to complete the building required extensive work, well beyond minor repairs. Mr. St. Onge and Mr. Maris raised upwards of $30,000, not including donated supplies, and involved a team of volunteers to construct the building. Materials and tools for the construction project were flown in by helicopter. The project specifically included, but was not limited to installing masonry work on the original stone wall, erecting timber, constructing a roof that could withstand 100,000 pounds, installing a door, blow-in insulation, windows, and stairs leading to the roof.

It is unreasonable to believe that a project of this scope would not require some level of ministry oversight and authorization.

Knowledge of Section 57(1)

It was also unreasonable for Mr. St. Onge to believe that ministry authorization was not required based on his previous experience applying for an authorization pursuant to section 57(1) of *FRPA*.

In September 2009, Mr. St. Onge submitted an application to build a trail near his business, Eagle Valley Lodge in Sicamous to access Crown land for recreational use. His application was ultimately denied after several years but the circumstances demonstrate that Mr. St. Onge was aware of the need to obtain ministry authorization to perform work on Crown land and was familiar with the process.

Mr. Maris's reliance on Mr. St. Onge

It was unreasonable for Mr. Maris to rely on information from Mr. St. Onge that ministry authorization was not required for the construction at the Eagle Pass Ridge fire lookout without making any additional inquiries on his own.

There is no evidence before me to indicate that Mr. St. Onge's experience, knowledge and expertise constructing on and using Crown land was sufficient to eliminate the need for Mr. Maris to conduct an independent enquiry into the possible need for ministry authorization. There is also no evidence before me to indicate what questions Mr. Maris asked Mr. St. Onge to satisfy himself that authorization was not required. By asking some basic questions, Mr. Maris would have realized, for example, that about eight years had passed since Mr. St. Onge's conversation with s.22 When planning a significant building project on

Crown land, it would not be reasonable to proceed on the basis of a brief conversation eight years earlier.

Given the magnitude and nature of the project, I would have expected someone in Mr. Maris's position to review *FRPA* and review provincial government websites, both of which make it clear that applications and authorizations are required to perform this kind of work on Crown land, before starting to re-construct the fire lookout. In particular, if Mr. Maris had reviewed *FRPA*, he would have known that construction activities under section 57(1) require written authorization from the Ministry. Even if Mr. Maris did not appreciate the significance of section 57(1), the numerous other sections in *FRPA* that require ministry authorization would have been a strong indicator to Mr. Maris that re-building a fire lookout is likely the kind of project that requires authorization.

Mr. St. Onge's and Mr. Maris's mistake of fact defence is weakened by the fact that they continued with construction even after being informed that CEB initiated an investigation regarding the unauthorized construction of the Eagle Pass fire lookout. CEB staff discovered that work on the lookout structure continued during the summer of 2017, specifically, the installation of windows, a wood stove, insulation and stairs to the roof of the building. It should have been clear to Mr. St. Onge and Mr. Maris that ministry authorization was required especially after an investigation was underway and after receiving a letter that specifically referred to the re-construction of the fire lookout without authorization.

To the extent that Mr. St. Onge relied on a mistake of fact defence for the contravention of section 112(3), I do not think that it was reasonable for Mr. St. Onge to believe that the SWO did not prohibit installing beds in the lookout structure. Mr. St. Onge took this position in his phone call with NRO DeVita on October 4, 2017 but NRO DeVita disagreed with him and advised him not to install beds. Despite NRO DeVita's advice, Mr. St. Onge, Mr. Maris and their agents proceeded to install the beds and make other improvements to the structure.

In my view, it was not reasonable for Mr. St. Onge to proceed with installing beds in the lookout structure after his conversation with NRO DeVita. Although NRO DeVita was stating CEB's position rather than making a legal interpretation of the SWO, I find again that Mr. St. Onge assumed the risk that proceeding with installing beds would be a contravention and in these circumstances cannot successfully rely on a mistake of fact defence.

In summary, the mistake of fact defence does not apply to any of the contraventions. There is no evidence before me to support that Mr. St. Onge or Mr. Maris reasonably believed in the existence of facts that if true, would establish that they did not contravene section 57(1) or 112(3). Accordingly, I find that the mistake of fact defence does not apply.

Officially Induced Error

I conclude that Mr. St. Onge has not established a valid defence of officially induced error. Mr. St. Onge's basis for the defence was that s.22 told him that no authorization was required to re-construct the Eagle Pass fire lookout.

It is relevant to point out that Mr. St. Onge indicated that s.22 gave him "verbal approval" to re-construct the fire lookout structure in some of the statements that he made to the media and ministry staff, . In other instances, Mr. St. Onge stated that s.22 advised him that no authorizations were required to conduct the works. At the OTBH, I asked Mr. St. Onge to clarify this discrepancy and he asserted that s.22 had told him that no authorizations were required. I considered both versions of Mr. St. Onge's defence and came to the same conclusion that neither establishes a successful defence of officially induced error.

Mr. Maris did not raise officially induced error as a defence and I find that this defence does not apply to him. Mr. Maris did not rely on any advice or legal opinion from an official in relation to the contravention of section 57(1) or 112(3) of *FRPA*.

A defence of officially induced error relies on a premise that a person commits a contravention as a result of having reasonably relied on an incorrect legal interpretation or opinion from an official who is responsible for the administration of that particular law.

The essential elements of a successful officially induced error are the following: (a) the person must be (or become) mistaken as to the law after inquiry, nor merely ignorant of the law; (b) the person must seek advice from an official, who will usually be a member of a government or a government agency; (c) the official must be one who is involved in the administration of the law in question; (d) the official must give erroneous advice; (e) the erroneous advice must be apparently reasonable; (f) the error of law must arise because of the erroneous advice; (g) the person must be innocently misled by the erroneous advice; (h) the person's error in law must be apparently reasonable; and (i) the person, when seeking the advice of the official, must act in good faith and must take reasonable care to give accurate information to the official whose advice he solicits. If a person fails to establish any of these elements, the defence of officially induced error fails.

In consideration of the elements of officially induced error as it relates to this case:

(a) the person must be (or become) mistaken as to the law after inquiry, not merely ignorant of the law;

I do not think that Mr. St. Onge was mistaken about the law after inquiry or ignorant of the law. While I am satisfied that Mr. St. Onge made an inquiry, that is only one part of this element and is the focus of element (b) below.

(b) the person must seek advice from an official, who will usually be a member of a government or a government agency;

Mr. St. Onge sought advice from appropriate ministry officials. Mr. St. Onge approached the Okanagan Shuswap District Vernon office in 2008 about re-building the Eagle Pass fire lookout. The district office referred Mr. St. Onge to FrontCounter BC in Kamloops. Mr. St. Onge met with s.22 in October 2008 in Kamloops.

(c) the official must be one who is involved in the administration of the law in question;

Although s.22 was not delegated to make decisions under section 57(1) of *FRPA*, I accept that from Mr. St. Onge's perspective, s.22 appeared to be an appropriate person to obtain advice from.

s.22 was in a senior position in a branch of the ministry that provides a single point of contact service to assist the public with licenses, permits, registrations and other authorizations required for activities on Crown land.

(d) the official must give erroneous advice;

Based on the evidence before me, I am not convinced that s.22 gave any explicit advice to Mr. St. Onge that he did not require approval or had verbal approval to re-build the Eagle Pass fire lookout. Accordingly, s.22 did not provide Mr. St. Onge with any erroneous advice. Rather, it appears that Mr. St. Onge inferred or assumed that authorization was not required based on his conversation with s.22 s.22

In a June 8, 2017 letter to a former Minister of Forests, Lands, and Natural Resource Operations, Mr. Maris wrote:

> "The communication expressed by the Official Forestry Recreation Officer, s.22 s.22 was, "that if it was an existing abandoned facility, in need of restoration and repair, those efforts would be looked upon as being very worthy and appreciated."

Mr. St. Onge is quoted in the Revelstoke Review that s.22 told him:

> "If you're building a new cabin or road or trail, you need to do an application, but he said this is existing, if you want to clean it up and put the roof back on, awesome". Mr. St. Onge added "He gives verbal approval".

In an interview with Global News, Mr. St. Onge quoted s.22 as saying

> "You know, I can give you approval on that one but if you're doing a new trail or a new cabin, then we have to go through the application process."

While the Global News quote could conceivably be interpreted as some kind of verbal approval, I find that Mr. St. Onge either misunderstood what s.22 told him or Mr. St. Onge's recollection of the quote is not accurate. In a July 7, 2017 interview with CEB staff, s.22 said that he had no recollection of a specific conversation with Mr. St. Onge. s.22 also stated that in circumstances like this, he would have directed the individual to the appropriate ministry branch or corresponded with the other branch himself and required an authorization or proper documentation:

> "Certainly I would have contacted the fire centre or somebody that would have had the authorization over that – over the area, and you know, I would have said "Would you guys support this, or this approach or this – this idea?... And if they did I may have said to them "Sure, go ahead and do it, but it would have been

> under some level of authorization or they would have had to have a plan in place that had been sent to us or a management working plan or something like that."

s.22 does not think that he would have given a verbal approval for this kind of work:

> "Oh, yeah, it wouldn't have been a carte blanche or just verbal approval… There would have had to have been some sort of plan with it, and really vetted through other agencies as well."

s.22 also confirmed that approvals are usually in writing or under a lease or licence document.

In an interview with CBC Radio One in Vernon, BC, Mr. St. Onge responded to a question about approaching the province and said "I talked to them in 2008 and then I talked to them again around 2012 when they were working on six other fire looks." There is no other evidence before me about Mr. St. Onge's conversation with the province in 2012 that could support an argument that an official gave him erroneous advice at that time.

While I find it plausible that Mr. St. Onge may have inferred from his meeting with s.22 s.22 that he did not require approval conduct works on the fire lookout, I do not believe, on a balance of probabilities, that s.22 would have given unconditional approval to conduct works to the extent that Mr. Maris and Mr. St. Onge did.

(e) the erroneous advice must be apparently reasonable;

Even if s.22 provided Mr. St. Onge with erroneous advice in the form of verbal approval to re-build the Eagle Pass fire lookout or that no approval was required, it would have been unreasonable for Mr. St. Onge to rely on that advice.

Mr. St. Onge had some knowledge of the law and the approval process under section 57(1) of *FRPA* having applied for approval in 2009 to construct a trail on Crown Land.

Section 57(1) of *FRPA* includes the specific requirement "unless authorized in writing…". Given the scope of the planned construction on the fire lookout, I find that it was unreasonable for Mr. St. Onge to proceed on the basis of s.22 comments alone without reviewing *FRPA* and without reflecting on his previous experience submitting an application under section 57(1) of FRPA.

The advice that Mr. St. Onge relies on in support of this defence was from 2008. Construction of the Eagle Pass fire lookout started in 2016. In my opinion, it was unreasonable for Mr. St. Onge to rely on any advice from the ministry eight years earlier. A reasonable person would have made inquiries with the ministry at the time of the planned construction to ensure that he or she understands the current law and policy of the government.

As described in the previous section, it was unreasonable for Mr. St. Onge to interpret s.22 comments as a formal approval of the planned activities or that approval was not required. I do not accept that s.22 gave unequivocal advice to Mr. St. Onge that he could proceed with construction of a historical building on Crown land. The public should by default think that the construction and rehabilitation of historic structures on Crown Land require written authorization of the Minister.

(f) the error of law must arise because of the erroneous advice;

This element of an officially induced error does not apply because I have concluded that s.22 did not provide erroneous advice to Mr. St. Onge.

(g) the person must be innocently misled by the erroneous advice;

This element of an officially induced error does not apply because I have concluded that s.22 did not provide erroneous advice to Mr. St. Onge.

Even if s.22 did provide erroneous advice, I do not believe that Mr. St. Onge was innocently misled. To be innocently misled, I would have required Mr. St. Onge to, at a minimum, make enquiries with the ministry in 2016 rather than relying on a conversation from 2008.

(h) the person's error in law must be apparently reasonable;

Mr. St. Onge's error in law was not reasonable for the reasons described above. In addition, section 57(1) of *FRPA* is explicit with respect to activities that require written authorization and activities which qualify for an exemption (ie: marking a route with ribbons and minor clearing of brush, downed trees or repairs to a trail or recreation facility). The exemptions obviously do not apply in this case due to the magnitude of the construction efforts on the Eagle Pass fire lookout.

(i) the person, when seeking the advice of the official, must act in good faith and must take reasonable care to give accurate information to the official whose advice he solicits;

Mr. St. Onge did not provide me with specific details of the information that he provided to s.22 He also did not provide me with any documents that he provided to s.22 or other government official showing his plans for the construction or rehabilitation of the fire lookout at Eagle Pass Ridge.

Mr. St. Onge claimed that he showed s.22 his plans and was told that he had verbal approval. Mr. St. Onge's recollection of that conversation is inconsistent with some of his other statements and inconsistent with the approach that s.22 says he took in situations like this around 2008.

Ultimately, the evidence before me does not support that Mr. St. Onge provided Mr. St. Onge with sufficient and accurate information to s.22 in 2008.

In summary, Mr. St. Onge cannot establish a defence of officially induced error. No ministry officials gave erroneous advice to Mr. St. Onge that led to the contravention. In addition, I am not convinced that Mr. St. Onge's understanding that he did not require authorization or received verbal approval to proceed with construction was reasonable.

There is no evidence before me to support a defence of officially induced error for the contraventions of section 112(3).

Issue 4: What penalty amount is appropriate and is it appropriate to issue a remediation order?

Pursuant to section 71(2) of *FRPA*, I am levying an administrative penalty of $10,000 to Mr. Maris for the contravention of each of sections 57(1) and 112(3). The total penalty amount is $20,000.

I am not making an order pursuant to section 57(4) to remove or destroy the Eagle Pass Ridge fire lookout or to restore the land below it, mainly because I would be concerned for the safety of those who would be doing the remediation. It is important for me to emphasize that the lookout remains Crown property and any decisions to manage, modify or destroy the lookout are under the jurisdiction of the Crown.

I am not levying a penalty to Mr. St. Onge. As mentioned earlier in this determination, Mr. St. Onge unexpectedly and tragically passed away in 2018. While I do not condone Mr. St. Onge's decision to unlawfully re-construct the Eagle Pass Ridge fire lookout, levying an administrative penalty in the circumstances would not serve any legitimate purpose. If the contraventions resulted in an economic loss to the Ministry, I may have considered levying a penalty to Mr. St. Onge.

Pursuant to section 71(2)(a)(ii) of *FRPA*, I may refrain from levying an administrative penalty against Mr. Maris if I consider the contraventions to be trifling and that it is not in the public interest to levy a penalty. In my view, neither of these criteria applies and I therefore must consider the factors described in section 71(5) to determine the appropriate penalty amount:

(a) previous contraventions of a similar nature by the person;

I am not aware of any previous contraventions for Mr. Maris.

(b) the gravity and magnitude of the contraventions;

CEB provided me with impact statements from RSTBC, the Ecosystems Section of the ministry and the Heritage Branch of the ministry. The main points from each statement are the following:

RECREATION SITES AND TRAILS BC

- Impacts to public safety related to construction that has not been built to standard or inspected by a Qualified Professional (stairs, helicopter pad, woodstove and integrity of stone foundation);

- Concerns with liability since there has been no formal oversight or engagement with the builders and there is no management plans or insurance;

- RSTBC may have lost an opportunity to restore the building to the historic standard that was used to restore other fire lookout buildings in the Province (Appendix F.6 depicts some of these restoration projects). Historic values were not incorporated in the unauthorized construction and the current structure would need to be dismantled to reconstruct the building to an acceptable standard;

- RSTBC stated there have been impacts to relationships with community partners which are important for the program to add capacity in managing resources on Crown Land;

ECOSYSTEMS SECTION

- Impacts from disturbance to mountain goats and caribou with increased human activity and stress caused by helicopters;

- Potential for increased human-bear interactions from increased waste at the lookout and lack of signage; and

- The recommendations included:

    - Restricting helicopter access at the site with most critical period from September 15 to July 15.

    - Installing signage reminding users not to feed wildlife and to pack out food

    - Cabin should be closed and locked during winter period

    - Overnight use should be restricted since no waste management plan is in place.

HERITAGE BRANCH

- Heritage Branch uses a values-based methodology for heritage conservation projects where values are understood, characterdefining elements are identified and the appropriate intervention is chosen;

- The impact statement identifies which guidelines should have been followed to undertake responsible conservation methods on the Eagle Pass fire lookout and clearly indicates that the General Standards for Heritage Conservation projects were not implemented; and

- The impact statement identifies character defining elements and evaluates the current structure against those heritage values. Some key components identified included:

    - The integrity of the stone foundation has been compromised by the use of incorrect mortar and use of inappropriate bolts and anchors. Failure to use appropriate type of lime mortar will result in accelerated damage to the stone foundation.

    - Use of spray-foam insulation is irreversible and has impaired the integrity of the character-defining elements.

    - Removing the low squat door and changing the number of lights from three to two compromises a person's ability to understand the need for a 360 degree view with as few impediments as possible.

    - Surviving authentic materials were removed from the building which can often be incorporated into a rehabilitation project and provide information for making responsible conservation decisions.

    - A flat roof may cause excessive pressure on the historic foundation which was originally designed to have a pyramid roof.

I have considered these impact statements, along with other evidence presented at the OTBH, in assessing the gravity and magnitude of the contraventions. In my view, the gravity of Mr. Maris's contravention of section 57(1) is high and the gravity of the contravention of section 112(3) is very high.

With respect to section 57(1), the gravity is high because Mr. Maris knowingly contravened the law and solicited well-meaning members of the public to fund and partake in unlawful construction efforts. In addition, Mr. Maris essentially treated Crown land and historical Crown property as his own private property which is an affront to the rest of the province.

For section 112(3), the gravity is very high because Mr. Maris directly and knowingly contravened a SWO and recruited local government officials to assist in the contravention. Government orders serve an important purpose and I think deliberate non-compliance with these orders should always be treated seriously. Disregarding an SWO can have significant social impacts as it undermines the law and the process for protecting Crown land under *FRPA*.

The magnitude of Mr. Maris's contravention of section 57(1) is high and is moderate for section 112(3).

With respect to section 57(1), I particularly agree with the parts of the impact statements that speak to the historical structure and modifications that appear to be irreversible. The actions of Mr. St. Onge and Mr. Maris have left the Crown with considerable work to do to mitigate the potential risk to the environment and to public safety.

I find the magnitude of Mr. Maris' s contravention of section 112(3) to be moderate sincethe activities that the group performed after the SWO was issued are relatively minor.

(c) whether the contravention was repeated or continuous;

I consider the contravention of section 57(1) to be repeated on the basis that Mr. Maris (and Mr. St. Onge) made improvements to the fire lookout after CEB sent a letter in June 2017 informing them that their activities may be in contravention of section 54(1) of *FRPA*. Although the contravention against Mr. Maris is now pursuant to section 57(1) instead of section 54(1), he was aware of the ministry's position in June 2017 and assumed the risk of a repeated contravention by making improvements to the Eagle Pass Ridge fire lookout. Mr. Maris made improvements again after CEB issued the SWO in early September 2017.

I do not consider the contravention of section 112(3) to be repeated or continuous. I am only aware of Mr. Maris contravening section 112(3) on one occasion.

(d) whether the contravention was deliberate;

Mr. Maris deliberately contravened sections 57(1) and 112(3) of *FRPA*.

I suspect that Mr. Maris deliberately contravened from the start of the construction project. However, most of the evidence in support of that conclusion relies on an assumption that Mr. St. Onge passed on his knowledge to Mr. Maris about applying for authorizations to build trails on Crown land. I am not making that assumption here and instead focusing on Mr. Maris contravening after CEB made him and Mr. St. Onge aware that they were under investigation for the unauthorized construction of the fire lookout. Construction continued into August 2017 with no efforts made by Mr. St. Onge or Mr. Maris to obtain authorization.

I am satisfied that Mr. Maris deliberately contravened section 112(3). Mr. Maris worked closely with Mr. St. Onge throughout the construction project and was aware of the terms of the SWO. I believe that Mr. Maris knew that NRO DeVita advised Mr. St. Onge not to install beds and other things in the fire lookout and believe that Mr. Maris knew about Mr. St. Onge's statements to the media about the province not letting them install beds and solar panels. Having s.22 exclusively perform the actual work after the SWO was in effect supports my belief that Mr. Maris deliberately contravened section 112(3). It is an indication that he and Mr. St. Onge thought that doing so would prevent them from contravening.

(e) any economic benefit derived by the person from the contraventions;

Mr. Maris did not derive an economic benefit from the contraventions.

CEB provided evidence and submissions to me suggesting that Mr. Maris and Mr. St. Onge planned to use the Eagle Pass fire lookout for commercial tourism purposes. CEB submitted that the location of the lookout and the installation of permanent beds is an indication that the fire lookout would be used for tourism purposes and not necessarily as a "General Public Emergency Shelter", which Mr. Maris suggested in a letter. CEB explained that the location

of the fire lookout (on a high elevation and difficult to access ridge) does not make for an ideal place for an emergency shelter. CEB also suggested that building a roof that could withstand 100,000 pounds of pressure suggests that Mr. Maris and Mr. St. Onge planned to offer commercial helicopter trips to the fire lookout.

In my view, this factor only requires me to consider any economic benefit that was 'derived'. All of the economic benefit that CEB raised is speculative and hypothetical and not relevant to this particular factor.

(f) the person's cooperativeness and efforts to correct the contravention;

Mr. Maris was not entirely cooperative during CEB's investigation and the OTBH process. Mr. Maris did respond in writing to some questions that NRO DeVita sent but did not make himself available for an interview. Mr. Maris also failed to respond to NRO DeVita's request for his contact information and proof of identity.

Mr. Maris did not make any efforts to correct the contravention. To the contrary, Mr. Maris continued working on the Eagle Pass fire lookout after having notice of the SWO. I acknowledge the existence of the SWO has prevented Mr. Maris from correcting the contraventions since October 2017 even if he wanted to.

(g) any other consideration that the Lieutenant Governor in Council may prescribe.

The Lieutenant Governor in Council has not prescribed any other considerations.

In addition to the factors described in section 71(5) of *FRPA*, I may also consider any other relevant factors to determine the appropriate penalty amount.

CEB implied that other relevant factors warrant a higher penalty amount. In particular, CEB asks that I consider the difficult position that Mr. St. Onge and Mr. Maris put the ministry in, in terms of the future responsibility for the Eagle Pass fire lookout. CEB also proposes that I consider that Mr. St. Onge and Mr. Maris indirectly involved the public in their unlawful activities. They crowd funded the unlawful construction of the lookout and offered incentives to donors including installing plaques inside the lookout with the names of donors. CEB maintains that Mr. St. Onge and Mr. Maris had no authority to install plaques like this on Crown property.

CEB also provided circumstantial evidence that Mr. St. Onge and Mr. Maris intended to use the Eagle Pass fire lookout for commercial interests. Mr. St. Onge, who owned a lodge in the area advertised services for $395 per day as a "group photographer/equipment manager," for snowmobilers. The roof of the fire lookout was apparently designed to accommodate the weight of a helicopter. The installation of furniture and lighting in the building also support that Mr. St. Onge and Mr. Maris had a commercial motive.

Given this, I am inclined to believe that on the balance of probabilities, Mr. St. Onge and Mr. Maris intended to use the Eagle Pass lookout for commercial purposes.

I agree with CEB's submissions that the commercial purpose and other relevant factors warrant a higher penalty amount.

Penalty Assessment

I levy an administrative penalty to Mr. Maris in the amount of $10,000 for the contravention of section 57(1). I recognize that this is the maximum penalty for the contravention of section 57(1).

I am levying the maximum penalty because of the gravity and continuous nature of Mr. Maris's actions and the magnitude of the contravention. Mr. Maris knowingly solicited public funding for an illegal act and continued construction through the summer of 2017 after being made aware that authorization was required. Mr. Maris and his associates have indefinitely altered and impacted the Eagle Pass fire lookout for what appears to be primarily in the interest of financial gain for Mr. St. Onge and Mr. Maris.

The maximum penalty for the contravention under section 57(1) is warranted to deter Mr. Maris and others from treating Crown land and historic property as their own. The Crown will have to spend money on the fire lookout as a result of Mr. Maris's activities whether that means repairing, maintaining, modifying, upgrading or destroying it. This high penalty amount is meant to compensate the Crown for some of these expenses and is essentially meant to address some of the expense that Mr. Maris would incur if he was subject to a remediation order.

I also levy a penalty to Mr. Maris in the amount of $10,000 for the contravention of section 112(3) which is 10% of the maximum. This penalty amount is mainly based on the gravity and deliberateness of the contravention.

Mr. Maris not only continued work on the Eagle Pass lookout despite knowing first about the ministry's concerns and later about the SWO, but used s.22 s.22 in an attempt to avoid contravening himself. It is unacceptable for a person deliberately contravene a government order and even more so when the person uses volunteers to commit the contravention on their behalf. The penalty under section 112(3) would have been higher if the magnitude of the contravention was higher or if Mr. Maris failed to comply with the SWO more than once.

Remediation

I am not making an order pursuant to section 57(4) of *FRPA* to remove the structure or return the Crown land to the state that it was in before Mr. St. Onge and Mr. Maris started construction. As described above, the structure continues to be the property of and jurisdiction of the Crown.

The SWO remains in effect until it is rescinded by the Crown.

Opportunity for correcting this determination

For 15 days after making this contravention and penalty determination under section 71, I am authorized under section 79 of *FRPA* 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 250-558-1729 within this 15-day period.

Opportunities for review and appeal

If you have new information that was not available at the time I made this determination, you may request a review of my determination on the basis of this new information. A request for review must be in writing, must be signed by a representative of and must contain:

a. your name and address; and the name of the person, if any, making the request on your behalf;

b. the address for serving a document on or the person acting on your behalf;

c. the new evidence that was not available at the time this determination was made; and

d. a statement of the relief requested.

This request should be directed to me, at 250-558-1729 and I must receive it ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 80 of *FRPA* and in the *Administrative Review and Appeal Procedure Regulation*. Please note the **three week time limit** for requesting a review.

Alternatively, if you disagree with this determination, you may appeal directly to the Forest Appeals Commission.

The appeal request must be signed by you or your representative and must contain:

a. your name and address; and the name of the person, if any, making the request on your behalf;

b. the address for serving a document on you or the person acting on your behalf;

c. the grounds for appeal;

d. a statement of the relief requested; and

e. a copy of this determination.

The Forest Appeals Commission must receive the appeal within **30 days** of this determination.

The provisions governing appeals are set out in sections 82 through 84 and in sections 140.1 through 140.7 of *FRPA*, and in the *Administrative Review and Appeal Procedure Regulation*. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. A notice of appeal may be delivered to the following address:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **30-day time limit** for delivering a notice of appeal.

Determination is stayed pending review or appeal

Under section 78 of *FRPA*, my determinations under section 71 is stayed until you have no further right to have this determination reviewed or appealed after which it becomes immediately payable.

Sincerely,

Ray Crampton
District Manager
Okanagan Shuswap Natural Resource District

pc. Gerald Hills, Regional Manager, Compliance & Enforcement Branch
Compliance & Enforcement Branch Headquarters (CEHQAdmin@gov.bc.ca)
Mark Haddock, Forest Practices Board

BRITISH COLUMBIA

File: 23060-40 / DSE–34367

September 17th, 2018

Randy Waterous
Interfor Corporation
570 – 68th Avenue,
Grand Forks, BC
V0H 1H0

Via Email:
randy.waterous@interfor.com

Dear Mr. Waterous:

Re: Contravention Determination and Notice of Penalty Levied under Section 71 of the *Forest and Range Practices Act* (FRPA)

This is further to my letter dated December 22, 2017 and the opportunity to be heard (OTBH) given to Interfor Corporation Ltd. ("Interfor") on March 14, 2018. I have also considered your May 11, 2018 response to the April 3, 2018 written submissions of a Compliance & Enforcement (C&E) Natural Resource Officer (NRO) respecting the alleged contravention of section 79(6) of the *Forest Planning and Practices Regulation* (FPPR) and section 10 of the *Forest Service Road Use Regulation* (FSRUR).

I have concluded that Interfor did not contravene section 10 of the FSRUR but Interfor did contravene section 79(6) of the FPPR and I levy a penalty of $10,000.

Authority

The Minister of Forests, Lands, Natural Resource Operations and Rural Development has delegated to me, under section 120.1(1) of FRPA, the authority to make determinations with respect to contraventions and administrative penalties under section 71 of FRPA.

Ministry of Forests, Lands, Natural Resource Operations and Rural Development
Selkirk Natural Resource District
Mailing Address:
1907 Ridgewood Road
Nelson, BC, V1L 6K1
Tel: (250) 825-1100
Fax: (250) 825-9657

Legislation

In this section, I am reproducing the sections of the FPPR, the FSRUR and FRPA that are relevant to my determination. In particular, section 79(6) of the FPPR and section 10 of the FSRUR are the sections that Interfor is alleged to have contravened. I am also reproducing section 81 of the FPPR, which is relevant to the alleged contravention of section 79(6). I am also reproducing section 71(3) of FRPA which relates to situations where a person's contractor contravenes a provision.

Forest Planning and Practices Regulation

Road Maintenance

79 (6) A person required to maintain a road must ensure all of the following:

(a) the structural integrity of the road prism and clearing width are protected;
(b) the drainage systems of the road are functional;
(c) the road can be used safely by industrial users.

Wilderness Roads

81 Despite section 22.2 *[non-industrial use of a road]* of the Act and section 79 *[road maintenance]*, if a forest service road, or a road authorized under a road permit, a cutting permit, a timber sale licence that does not provide for cutting permits, a special use permit or a woodlot licence is not being used by industrial users,

(a) section 79(6)(a) and (b) apply to that road only to the extent necessary to ensure there is no material adverse effect on a forest resource, and

(b) section 79(6)(c) does not apply to that road.

Forest Service Road Use Regulation

Damage to roads

10 (1) A person must not use a forest service road or operate or cause to be operated a motor vehicle or other equipment on it in a manner that damages the forest service road.

Forest and Range Practices Act

Administrative penalties

71 (3) Subject to section 72, if a person's contractor, employee or agent contravenes a provision of the Acts in the course of carrying out the contract, employment or agency, the person also contravenes the provision.

Issues

The following issues are relevant to this case:

1. Did Interfor contravene one or both of section 79(6) of the FPPR and section 10 of the FSRUR?

2. If Interfor contravened the FPPR or the FSRUR, do any of the defences of due diligence, mistake of fact or officially induced error apply?

3. If Interfor contravened the FPPR or the FSRUR and none of the defences apply, what amount of penalty, if any, is appropriate?

After considering the evidence presented to me it is my determination that:

1. Interfor contravened section 79(6) of the FPPR.

2. The defences of due diligence, mistake of fact, and officially induced error fail or do not apply.

3. It is appropriate to levy a penalty of $10,000 under section 71(2)(a)(i) of FRPA.

Subject to the stay referred to below, Interfor must pay the penalty amount by November 17, 2018. An invoice will be sent after all review and appeal periods have passed.

The rationale for my determination and decision to levy a penalty is set out below.

Background

This case involves a landslide that initiated off of the Boundary Creek Forest Service Road (FSR) in the Selkirk Natural Resource District on or about April 10, 2016.

Interfor held a Road Use Permit (RUP) on the Boundary Creek FSR and was the RUP holder responsible to maintain the Boundary Creek FSR. Interfor's contractor, R&A Logging, used the Boundary Creek FSR for timber harvesting purposes from October 2015 to January 2016, when it concluded harvesting operations in the area for the season.

C&E inspected the Boundary Creek FSR on March 21, 2016. During this inspection, C&E noted that snow plowing during the previous winter resulted in snow berms that had not been breached to allow surface water to run off in a normal pattern. C&E noted that surface water on the Boundary Creek FSR was causing deep ruts and that repairs would be required. C&E's inspection report was forwarded to Interfor on March 22, 2016.

Interfor hired Bearing Outward to complete a routine inspection of the Boundary Creek FSR. As part of this inspection, Bearing Outward discovered a crushed culvert at 24.5 km on the Boundary Creek FSR on April 8, 2016, as well as three other areas requiring attention. The contractor determined the crushed culvert to be minor and recommended that repair be scheduled in due

course. Interfor reviewed and accepted this recommendation.

On April 10, 2016, an erosion event occurred at 24.5 km on the Boundary FSR, at the location of the crushed culvert. Interfor reported the erosion event to the Ministry of Forests, Lands and Natural Resource Operations and Rural Development (FLNRORD) on April 13, 2016. Sediment from this erosion event entered the S6 stream adjacent to the road. The S6 stream flows directly into a fish bearing stream roughly 75 meters downstream.

Summary of the evidence and findings of fact

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

- Interfor held RUP 10/3719/01 on the Boundary Creek FSR at all relevant times.
- RUP 10/3719/01 indicates that Interfor is the RUP holder required by the District Manager to maintain the Boundary Creek FSR.
- There were no other authorized industrial users of the Boundary Creek FSR between October 2015 and April 2016.
- An erosion event occurred at 24.5 km on the Boundary Creek FSR on April 10, 2016.
- The Boundary Creek FSR runs through cutblock 01N-21, which Interfor's contractor harvested from October 2015 to January 2016.
- The Boundary Creek FSR pre-existed cutblock 01N-21.

Compliance and Enforcement's Evidence and Submissions

C&E alleges that Interfor failed to adequately maintain the Boundary Creek FSR after completing harvesting operations in the area in October 2015. C&E also believes that Interfor damaged the Boundary Creek FSR by crushing the culvert at 24.5 km, which led to the erosion event.

C&E included the following chronology in the case binder:

March 21, 2016	Compliance and Enforcement inspected the Boundary Creek FSR to approximately 26 km. The inspection noted that the road had developed deep channels on the road surface from meltwater on the running surface. The inspection identified a lack of breaches in the snow berms as the cause of water failing to exit the road at normal locations.
April 1, 2016	Interfor responds to the March 21 inspection report.
April 10, 2016	Stated date of erosion event.

April 13, 2016	Interfor submits a landslide report to FLNRORD, estimating that 1,200 cubic meters of sediment and debris entered the S6 stream.
April 15, 2018	C&E inspects the erosion event at 24.5 km on the Boundary Creek FSR. C&E photos document that the 600 mm culvert at the point of initiation of the slide was crushed at the inlet, effectively reducing the culvert capacity to 240mm. The inspection noted a deck of logs piled within 1 meter of the crushed culvert inlet.

C&E inspected the Boundary Creek FSR in March of 2016 and reported concerns to Interfor that snow berms from the previous year's snow plowing had not been breached, which was causing meltwater to flow outside of natural drainage patterns. The inspection report is described as being in relation to the section of road at 12 – 13 km on the Boundary Creek FSR. Although the inspection location is not the same as the location of the erosion event, the NRO stated at the OTBH that persistent snow berms were typical of the road.

C&E presented photographic evidence of the channeling on the road surface. However, the locations shown in these photos cannot be linked to the specific location of the erosion event. C&E believes that the channeling on the road surface contributed to the erosion event by directing water to the erosion site as opposed to allowing natural drainage patterns to occur.

In response to C&E's inspection, Interfor stated that a professional engineer would review the drainage in question and make recommendations.

C&E presented photographic evidence of a crushed culvert intake at the point of initiation of the erosion event, within very close proximity to a log deck. C&E posits that either the logs or the machine moving the logs crushed the intake of the culvert during harvesting operations. Additionally, C&E states that a broken culvert marker at the culvert location, as well as infilling of the culvert ditch with processed limbs, indicate that the logging contractor was unaware of the culvert location.

With respect to section 10 of the FSRUR, C&E submits that Interfor's contractor crushed the inlet of the culvert during harvesting operations, and thereby damaged the road by damaging the drainage structures of the road. Pursuant to section 71(3) of FRPA, Interfor contravenes any provision that its contractor contravenes in the course of carrying out a contract.

With respect to section 79(6) of the FPPR, C&E submits that the culvert at 24.5 km of the Boundary Creek FSR was crushed during operations, and therefore Interfor failed to ensure that the drainage systems of the road were functional. C&E also submits that Interfor's failure to breach the snow berms caused water to flow outside of natural drainage patterns and thereby directed an unnatural volume of water to the damaged culvert which contributed to the erosion event.

Interfor's Evidence and Submissions

In turn, Interfor presented written evidence and submissions on March 6, 2018, March 28, 2018 and May 11, 2018 to the two alleged contraventions. My summary of Interfor's evidence and

submissions is in the paragraphs below.

Interfor acknowledges that the erosion event occurred, however, Interfor submits that at the time of the erosion event, there was no industrial use of the road. Interfor therefore contends that at the time of the erosion event it was only required to maintain the drainage systems to the that standard of a wilderness road as described in section 81 of the FPPR (ie: maintain the drainage systems and structural integrity of the road and clearing width to the extent that there would be no material adverse effect on a forest resource). Interfor disputes that damage to the road was caused by the use of the road or equipment on the road.

Interfor maintains Sustainable Forestry Initiative (SFI) certification. As such, Interfor has an Environmental Management System (EMS) in place that addresses many aspects of harvesting, road construction, road maintenance and road deactivation. Interfor submitted a number of Standard Operating Procedures that support its EMS.

Interfor relies on its contractors to carry out road maintenance and inspections. To this end, Interfor provides an annual training seminar for contractors to refresh their knowledge of the legal requirements and the EMS. Interfor provided evidence that staff from R&A Logging attended Interfor's contractor training held in Nakusp on May 15, 2015. Interfor stated that R&A Logging is an experienced contractor.

Interfor completed a pre-work inspection of cutblock 01N-21 on October 26, 2015 and provided R&A Logging with a logging plan map. The detailed pre-work inspection report states that the contractor is to ensure that culverts are clean and functioning post-harvest and prior to freshet.

Interfor generally completes site inspections, although it did not produce any documents showing that a site inspection of 01N-21 or the Boundary Creek FSR was completed before the contractor removed its equipment for the winter. Interfor stated that it relies on the contractor's understanding of expectations to ensure that the FSR and culverts are properly maintained.

R&A Logging suspended operations and removed their equipment from the site in January of 2016. Interfor states that there were no timber harvesting activities between January 6, 2016 and May 2016. Interfor submits that the road was required to be maintained to a wilderness standard at the time of the erosion event.

Interfor employed a contractor, Bearing Outward, to complete a road inspection on the Boundary Creek FSR on April 8, 2016. The contractor noted a blocked culvert at 25 km on the Boundary Creek FSR, the approximate location of the erosion event. The contractor deemed this blockage to be a minor issue. Based on the contractor's assessment, Interfor planned to further assess the crushed culvert but generally considered the issue less urgent in nature.

Interfor submitted a number of documents to demonstrate that the weather at the time of the erosion event was unseasonably warm, which resulted in rapid run off during that time.

Interfor submits that the proximity of the log bundle to the crushed culvert inlet is evidence that the culvert could not have been crushed by equipment operating on the road during harvesting operations, as equipment moving logs to the location of the log deck would have been operating from within the block. Interfor further states that soil and vegetation growing on the crushed culvert inlet indicate that the culvert was crushed before harvesting was done in the immediate vicinity and at least one growing season before the erosion event occurred.

After the erosion event, Interfor obtained a repair prescription from a geotechnical engineer and completed repairs to the Boundary Creek FSR at 24.5 km.

To summarize, with respect to section 10 of the FSRUR, Interfor submits that damage to the culvert was caused before harvesting, as evidenced by soil and vegetation growing on the crushed inlet, or by harvesting equipment operating in the block and not on the road. As such, neither Interfor nor its contractors used the FSR or operated equipment in a manner that damaged the culvert or FSR.

With respect to section 79(6) of the FPPR, Interfor submits that they have adequate systems in place to identify and rectify road maintenance issues as they arise. Interfor also submits that the road was not being used for industrial purposes at the time of the erosion event and therefore was only required to be maintained to the extent that there is no material adverse effect on a forest resource. Interfor asserts that C&E has not proven a material adverse effect to a forest resource.

Did Interfor contravene the FPPR and the FSRUR?

After considering the evidence provided to me, I conclude that Interfor contravened section 79(6) of the FPPR but did not contravene section 10 of the FSRUR.

Section 79(6) of the FPPR: Road Maintenance

Interfor contravened section 79(6) of the FPPR by failing to adequately maintain the crushed culvert on the Boundary Creek FSR.

Interfor was responsible for maintaining the Boundary Creek FSR by way of the RUP. One of the conditions contained in the permit states "the Permittee is hereby required to carry out all maintenance activities for roads identified". Boundary Creek FSR was identified on Interfor's RUP 10/3719/01. Once an applicant takes on an RUP, it is responsible for the road maintenance until the permit is terminated and the applicant is relieved of the obligation under the RUP.

To find Interfor in contravention of section 79(6), I must find that the road, drainage system or both were not being properly maintained. Section 79(6) describes the level of road maintenance that a person is typically required to perform:

> **Road maintenance**
>
> **79 (6)** A person required to maintain a road must ensure all of the following:
>
> (a) the structural integrity of the road prism and clearing width are protected;

(b) the drainage systems of the road are functional;

(c) the road can be used safely by industrial users.

I will first address C&E's evidence and allegations that Interfor did not breach the snow berms created by snow ploughing. C&E submitted that these berms caused water to be redirected away from its natural drainage and ultimately directed an abnormally high volume of water into the damaged culvert. While this may have been the case, on a balance of probabilities, I find that C&E's evidence is not sufficient to establish a failure to breach the snow berms in the vicinity of the erosion event. C&E inspected a part of the Boundary Creek FSR that is distinctly different than the location where the erosion event occurred. The data associated with C&E's photographs did not include reference data and therefore cannot be attributed to a specific location. I find that there is insufficient information to prove that misdirected water contributed to the erosion event.

Next, I will address C&E's allegations that Interfor failed to sufficiently maintain the crushed culvert on the Boundary Creek FSR. I find that there is sufficient evidence to support that the culvert was not in a proper functioning state during industrial operations. In other words, Interfor failed to ensure that the drainage systems of the road were functional up to and including the time harvesting equipment was removed in January 2016, and thereby contravened section 79(6) of the FPPR.

Section 79 of the FPPR requires a person to ensure that the drainage systems of the road are functional. This requirement applies whether there is a negative outcome during industrial operations or not. While section 81 of the FPPR indicates that the holder of the RUP is not held to the same standard when there are no industrial users, if it can be demonstrated that the non-functional drainage system was present during industrial operations, then section 79 is not met, regardless of whether or when a negative outcome occurred.

I am not persuaded that the presence of grass growing on the crushed culvert inlet indicates that the culvert was crushed at least one growing season prior to harvesting, as some species of annual grasses germinate in cool temperatures and grow very early in the season. However, I find that the proximity of the log deck to the crushed culvert intake indicates that the culvert could not have been damaged after the logs were placed in the deck. It would not have been possible for another road user to operate equipment near the culvert intake causing it to be crushed, there were no other known users, and the road was not plowed after January 2016.

In Interfor's presentation, they submitted evidence that the damage to the culvert occurred at some time prior to harvesting. This indicates that Interfor believes that the culvert was in a crushed condition when the contractor removed its harvesting equipment.

Interfor discovered the damaged culvert just prior to the erosion event, and high temperatures likely contributed to a higher than average runoff volume. However, spring breakup and early or rapid snowmelt are not unexpected, and road impacts can occur early in the season before any maintenance can be completed. It is my expectation that a RUP holder ensures that the drainage systems of the road are functional at the seasonal suspension of industrial activities which includes being able to withstand water levels that one should expect in the area.

Section 10 of the FSRUR: Damage to Roads

I find that neither Interfor nor its contractor damaged the road as per section 10 of the FSRUR.

> **Damage to roads**
>
> **10** (1) A person must not use a forest service road or operate or cause to be operated a motor vehicle or other equipment on it in a manner that damages the forest service road.

The proximity of the log deck to the crushed culvert strongly suggests that the culvert was somehow damaged during harvesting operations by equipment moving the logs. However, C&E did not sufficiently demonstrate how or when the culvert was damaged and satisfy me, on a balance of probabilities, that Interfor or its contractor caused the damage.

The presence of soil and grass growing on the crushed culvert inlet raises some doubt as to when the culvert was damaged. It is possible that the culvert was damaged prior to the commencement of harvesting operation on 01N-21. More importantly, there are no inspection records available for the Boundary Creek FSR, either completed by Ministry staff prior to the issuance of the RUP or by Interfor staff any time after the RUP was issued.

The lack of inspection records prior to the issuance of the RUP leads me to find that there is insufficient evidence to demonstrate that Interfor or its contractor crushed the culvert and by extension, the road.

Do any defences apply?

I have determined that the facts do not support any of the defences described in section 72 of FRPA for the reasons described in the paragraphs below in relation to the contravention of section 79(6) of the FPPR. Interfor raised a defence of due diligence but did not raise the defences of mistake of fact or officially induced error and I agree that there is no basis for these defences.

Due Diligence

To successfully rely on the defence of due diligence, Interfor must prove, on a balance of probabilities, that it took all reasonable care to avoid the contravention. This does not require doing everything that could possibly be done to prevent a contravention, but it does require Interfor to show that it took all measures that would reasonably be expected in the circumstances to avoid contraventions. I find that Interfor did not take appropriate steps in the circumstances to identify culvert locations and ensure that the drainage systems of the road were functioning, and therefore the defence of due diligence does not apply.

Interfor maintains SFI certification, and as part of this must develop and implement an EMS which includes Standard Operating Procedures (SOP). I have reviewed the SOP in Interfor's evidence binder and in the material submitted in response to a request made at the OTBH. Although Interfor submitted a large number of policies, field cards and procedures, I find that few are relevant to the requirement to ensure that drainage systems are kept functional. Interfor's documents do not include any practical steps to identify and protect culvert locations and instead only include high level objective to keep ditches and culverts functional.

At the OTBH, Interfor stated that it is difficult in winter to identify the location of every culvert, but in spite of this they do not take special measures to mark culvert locations prior to the commencement of winter operations. While Interfor stated that it does its best to identify culvert locations, it did not submit any SOP or best management practices that convey the expectation that its contractor must identify and protect culverts during operations. I find that a reasonable licensee would have a plan in place to identify and protect drainage structures, particularly where operations are planned during the winter when it is acknowledged that culverts are difficult to see.

Interfor submitted a risk rating assessment report and a road maintenance inspection report as examples of their road inspection and maintenance procedures in general, although they did not produce any completed risk rating or inspection report for the Boundary Creek FSR. Interfor stated at the OTBH that FSRs are lower risk and receive fewer inspections, and that roads are normally inspected during certain weather events and in known problem areas.

According to the risk matrix that Interfor submitted, this section of the Boundary Creek FSR would likely be Moderate risk due to the proximity of the road to an S4 creek. However, Interfor did not produce evidence to show that any routine inspections were completed. Interfor did not demonstrate that it had a reliable system in place to ensure that the drainage systems of the road are functional during industrial operations.

Interfor submitted an example of an Operations Inspection Report that is considered a checklist for review at the conclusion or seasonal interruption of harvest operations. The checklist includes a checkbox to assess whether culverts are in satisfactory condition. There is no evidence that this checklist was completed by Interfor or R&A Logging when the contractor shut down for the season in January of 2016. Interfor stated that R&A Logging is an experienced contractor and demonstrated that R&A Logging's workers were in attendance at the annual training session held in the spring of 2015. Interfor states that it requires each of its harvesting contractors to take responsibility for all necessary maintenance, inspections and repair of the roads they use while providing harvesting services. Interfor did not submit any documentation of the means they used to determine whether their expectations were being met. To demonstrate due diligence, I would have expected Interfor to provide this kind of documentation or other evidence that Interfor monitored R&A Logging's performance and compliance with Interfor's requirements.

Interfor has processes in place to risk rate and inspect the roads for which they are responsible, as well as to review the condition of cutblocks and roads prior to seasonal shutdown. There is no evidence to show that Interfor implemented any of these processes with respect to the Boundary Creek FSR at a time when any potential deficiencies could have been remedied. Had any one of these processes been rigorously followed there is a reasonable likelihood that the crushed culvert would have been identified and repaired. I find that although Interfor has processes in place they are not sufficiently rigorous enough to ensure that drainage structures are functional.

Is a penalty appropriate and if so how much?

Under section 71(2)(a)(i) of FRPA, I am authorized to levy a penalty for a contravention of section 79(6) up to a maximum of $20,000. The maximum penalty amount is set out in the *Administrative Orders and Remedies Regulation*. Alternatively, under section 71(2)(a)(ii) of FRPA, I may refrain from levying a penalty if I consider the contravention to be trifling and that it is not in the public interest to do so. If I do levy a penalty, I must consider the following factors described in section 71(5)(a)(ii) of FRPA:

(a) Interfor's previous contraventions, if any, of a similar nature;

There are no past similar contraventions reported for Interfor. There is a history of compliance notices across the province for the Interfor Corporation, but none specifically for the Grand Forks Division.

(b) the gravity and magnitude of the contravention;

Interfor is aware of its responsibility to ensure that drainage structures are functional. Interfor has some procedures in place, but did not ensure that the procedures were followed nor did it adequately oversee the contractor to ensure that its expectations were met.

In my view, the magnitude of the contravention is significant as Interfor's activities have impacted forest resources. Approximately 1,200 m^3 of soil and debris entered the S6 creek adjacent to the Boundary Creek FSR. Some portion of this volume would have been transported to the S4 fish bearing stream roughly 75 metres downstream and had a temporary and unquantified impact on fish habitat.

(c) whether the contravention was repeated or continuous;

There is no evidence to indicate that Interfor's failure to maintain the FSR was repeated or continuous. C&E did note that Interfor failed to breech snow berms on some portion of the Boundary Creek FSR, but that evidence was not linked to the contravention of FPPR 79(6).

(d) whether the contravention was deliberate;

The contravention was not deliberate. There was no evidence that Interfor deliberately failed to maintain or repair the culvert.

(e) any economic benefit that Interfor derived from the contravention;

Interfor did not derive any economic benefit from this contravention.

(f) Interfor's cooperativeness and efforts to correct the contravention; and

Interfor has been forthcoming and cooperative throughout this process. Interfor self-reported the landslide to the Ministry, and took immediate steps to close the road and remedy the road failure.

Interfor immediately contracted a geotechnical engineer and repaired the road failure at their cost. The reported cost of the repairs was roughly $43,000. I am cognizant of the fact that Interfor cannot recoup the cost of the repair if the cost is as a result of a failure to comply with legislation.

(g) any other considerations that the Lieutenant Governor in Council may have prescribed.

There are none.

In reviewing the evidence, it is clear to me that Interfor's failure to adequately maintain Boundary Creek FSR caused a significant erosion event. Interfor did not ensure that the drainage systems of the road were functional during industrial operations. The contractor's equipment was removed leaving the road in a vulnerable condition whereby the culvert was not able to properly direct the spring runoff.

In light of my findings in this case, there is a need to provide a meaningful deterrent against future contraventions of a similar nature by Interfor. The fact that Interfor will not be able to recoup the cost of the road repair factors into my decision. I am levying a penalty of $10,000 for the contravention of section 79(6) of the FPPR.

I am confident that this penalty amount will provide an appropriate deterrent against future contraventions and convey a message to others regarding the critical importance of complying with the applicable legislation.

Determination does not forestall other actions that may be taken

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 contraventions described above.

Opportunity for correcting this determination

For 15 days after making my contravention determination and penalty determination under section 71, I am authorized under section 79 of FRPA 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 within this 15 day period at 250-825-1101.

Opportunities for review and appeal

If you have new information that was not available at the time I made this determination, you may request a review of my determination on the basis of this new information. A request for review must be in writing, must be signed by you, or on your behalf, and must contain:

(a) your name and address; and the name of the person, if any, making the request on your behalf;
(b) the address for serving a document to you or the person acting on your behalf;

(c) the new evidence that was not available at the time this determination was made; and
(d) a statement of the relief requested.

This request should be directed to me, at 1907 Ridgewood Road, Nelson, BC, V1L 6K1 and I must receive it ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 80 of FRPA and in the *Administrative Review and Appeal Procedure Regulation*. Please note the **three week time limit** for requesting a review.

Alternatively, if you disagree with this determination, you may appeal directly to the Forest Appeals Commission.

The appeal request must be signed by you, or on your behalf, and must contain:

(a) your name and address; and the name of the person, if any, making the request on your behalf;
(b) the address for serving a document to you or the person acting on your behalf;
(c) the grounds for appeal;
(d) a statement of the relief requested; and
(e) a copy of this determination.

The Forest Appeals Commission must receive the appeal ***within 30 days*** of the date of this determination.

The provisions governing appeals are set out in sections 82 through 84 of FRPA and in the *Administrative Review and Appeal Procedure Regulation*. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. A notice of appeal may be delivered to the following address:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **30 day time limit** for filing a notice of appeal.

Determination is stayed pending review or appeal

Under section 78 of FRPA, 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.

Performance Record

As Interfor is the holder of an agreement under the *Forest Act*, my determinations under section 71 will become part of its performance record, pursuant to section 85(2) of FRPA, subject to decisions made on review or appeal.

Yours truly,

Tara DeCourcy, RPF
District Manager
Selkirk Natural Resource District
Ministry of Forests, Lands, Natural Resource Operations
and Rural Development

pc: Compliance and Enforcement Branch (by email CEHQAdmin@gov.bc.ca)

Gerald Hills, Regional Manager, Kootenay Boundary Compliance and Enforcement Branch (by email Gerald.Hills@gov.bc.ca)

Forest Practices Board (by email mark.haddock@bcfpb.ca)

File: 23060-20 – DPG-32638
00143067-00

Date: January 22, 2018

Hartwood Holdings Ltd.
5446 Hartway Drive
Prince George, B.C.
V2K-5B6

Dear Shane Garner:

Re: Contravention Determination and Notice of Penalty Levied under the *Forest and Range Practices Act*

This is further to my letter dated August 14, 2017 and Hartwood Holdings Ltd.'s (HARTWOOD) opportunity to be heard (OTBH) on September 13, 2017 respecting the alleged contraventions of sections 55(1), 72 and 75 of the *Forest Planning and Practices Regulation (FPPR)* for construction and use of three stream crossings on Road Permit R 19679. After considering the evidence and in accordance with section 71(1) of the *Forest and Range Practices Act* (FRPA), I have determined that HARTWOOD contravened sections 55(1), 72 and 75 of FRPA and that it is appropriate to levy a penalty in the amount of $35,753.28.

Authority

The Minister of Forests, Land, Natural Resource Operations and Rural Development has delegated to Greg Rawling, Regional Executive Director, under section 120.1 of FRPA, the authority to make determinations with respect to administrative contraventions and penalties under section 71 of FRPA and remediation orders under section 74 of FRPA. As the Minister's delegate and in accordance with section 120.2 of FRPA, Greg Rawling has sub-delegated that authority to me. This sub-delegation is valid in respect to Case File DPG-32638.

Legislation

The Ministry of Forests, Land, Natural Resource Operations and Rural Development (Ministry) alleges that HARTWOOD contravened sections 55(1), 72 and 75 of FPPR:

Stream crossings

Ministry of Forests, Lands, Natural Resource Operations and Rural Development

Prince George Natural Resource District

Mailing Address:
2000 South Ospika Boulevard
Prince George BC V2N4W5
Tel: (250) 614-7400
Fax: (250) 953-0413

55. (1) An authorized person who builds a stream crossing as part of a road, a temporary access structure or permanent access structure must locate, build and use the crossing in a manner that

(a) protects the stream channel and stream bank immediately above and below the stream crossing, and

(b) mitigates disturbance to the stream channel and stream bank at the crossing.

Roads and associated structures

72. A person who constructs or maintains a road must ensure that the road and the bridges, culverts, fords and other structures associated with the road are structurally sound and safe for use by industrial users.

Structural defects

75. A person who maintains a road must do one or more of the following if a structural defect or deficiency occurs on a bridge that is part of that road:

(a) correct the defect or deficiency to the extent necessary to protect

(i) industrial users of the bridge, and

(ii) downstream property, improvements or forest resources that could be affected if the bridge fails;

(b) close, remove or replace the bridge;

(c) restrict traffic loads to a safe level;

(d) place a sign, on each bridge approach, stating the maximum load capacity of the bridge

Issues

The following issues are relevant to this determination:

1. Did HARTWOOD contravene sections 55(1), 72 and 75 of the FPPR?

2. If HARTWOOD contravened the FPPR, do any of the defences of due diligence, mistake of fact or officially induced error apply?

3. If HARTWOOD contravened the FPPR and none of the defences apply, what amount of penalty, if any, is appropriate?

4. If HARTWOOD contravened the FPPR and none of the defences apply, is a remediation order appropriate?

After considering the evidence presented to me, and for the reasons presented below, it is my determination that:

1. HARTWOOD did contravene sections 55 (1), 72 and 75 of the FPPR;

2. none of the defences apply;

3. it is appropriate to levy a penalty in the amount of $35,753.28 under section 71(2)(a)(i) of FRPA, which, subject to the stay referred to below, must be paid by March 22, 2018 (60 days from the date on determination); and

4. it is not appropriate to order any remediation.

The rationale for my contravention determination and the decision to levy a penalty is set out below.

Summary of the evidence and findings of fact

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

- HARTWOOD is the holder of Road Permit R 19679 which authorized the construction, maintenance and deactivation of the road accessing Timber Sale License (TSL) A89966. Specifically, three crossings were to be installed over three "default" S4 streams.

- Shane GARNER was a director and controlling mind of HARTWOOD at all material times. GARNER's decisions and actions are the decisions and actions of HARTWOOD.

- HARTWOOD installed three crossings between January 12, 2015 and January 28, 2015 on Road Permit R19679 and located at; 1+126, 1+550 and 1+728. GARNER was responsible for installing the crossings.

- None of the installed structures (three) were at the prescribed span of 6 metres in length as noted in the drawings for the crossings that BC Timber Sales (BCTS) provided to HARTWOOD in the sales package for TSL A8996.

- Water was flowing at all three crossings when the crossings were installed and used.

- GARNER acknowledged that the crossings were not built as per the certified drawings supplied to him by the BCTS program in the timber sales license package for TSL A89966 for the crossings on Road Permit R19679. GARNER constructed the crossings based on his own design. s.22
  s.22

- On January 30, 2015, GARNER was issued a Stop Work Order (SWO) by ministry staff for failing to install certified stream crossings at four locations; 0+647, 1+126, 1+550 and 1+728.

- At the January 30, 2015 meeting with ministry staff, GARNER admitted that he had not used geotextile cloth in the construction of the crossings to minimize sediment from entering into the stream from the bridge decks.

- On or about February 3, 2015, Aaron FLETT, who is a Forest Professional hired by HARTWOOD to certify the bridge crossings, submitted certification documents to the ministry on behalf of HARTWOOD certifying the crossings in question.

- On or about February 5, 2015, FLETT withdrew the bridge certification documents after a discussion with Ministry Regional Engineer, Jason OLMSTED. FLETT stated that he would re-submit certification documents for approval.

- As of February 13, 2015, the existing crossings had still not been upgraded and the Ministry had not received bridge certification documents from HARTWOOD, FLETT or anyone else.

- On February 23, 2015, Mark CULLEN, a BCTS Forest Technician, asked HARTWOOD, in a BCTS inspection form, for the bridge certification documents and reminded HARTWOOD that no hauling or industrial traffic was to cross the structures in question.

- HARTWOOD engaged professional engineer, Christina HUTCHINSON from TDB Forestry Consultants (TDB) to design a certified log culvert structure for three crossings (1+126, 1+550 & 1+728) in question. However HUTCHINSON did not certify the structures that were in place, but rather left this step to FLETT.

- On March 5, 2015 HARTWOOD re-submitted certifications for the three crossings, signed off by FLETT.

- Between February 18 and March 10, 2015, 199 logging truck loads were hauled from TSL A89966 and in doing so crossed the structures in question.

- On March 16, 2015, a second SWO was issued by Natural Resource Officer DEROSIER and delivered to the known addresses for HARTWOOD. However, it was not confirmed if GARNER received the SWO from HARTWOOD's employee or copies physically left at the known company address.

- Between March 14 and March 18, 2015, a further 41 loads of timber from TSL A89966 had crossed the scales at West Fraser in Quesnel.

- HARTWOOD took some measures to reduce/mitigate the flow of sediment into the streams being crossed. For example, HARTWOOD installed cross ditches and hay bales.

- The bridge rating, as set by FLETT, was 60 tonnes for the structures installed on Road Permit R19679. Ministry records show that a total of 331 loads were hauled over the structures. 325 of those loads were over 60 tonnes and 71 of them were over 64 tonnes. Overall, only 6 of the 331 loads were less than 60 tonnes.

C&E provided me with the following additional evidence and submissions:

- Ministry staff provided information that the crossing structures in question were not built in a manner so as to protect the stream channel and stream bank above and below the stream crossing and to mitigate the disturbance to the stream channel and stream bank immediately at each crossing. The Ministry contends that the structures were not the required length of 6 metres and thus the structures were encroaching on the stream channel and banks at the crossings and no sediment control measures were taken. Ministry staff provided me with inspection reports with photos showing that no mitigation methods were employed to reduce or prevent sediment from flowing directly into the streams before March 13, 2015. After this date, hay bales were only found to be installed at station 1+728, with some additional erosion and sedimentation mitigation measures being employed. However, Ministry staff noted that the effectiveness of this was very questionable.

- Ministry staff provided evidence that BCTS staff had stated to HARTWOOD on four occasions (February 2, 5, 13 and 23, 2015) that no industrial use of the crossings could occur until certification documents were received and accepted by Ministry staff.

- The bridge structures originally put in place were not to any recognized standard and as such, there was no way to determine if the structures were safe for industrial purposes. Based on testimony from Regional Engineer OLMSTED, the materials that HARTWOOD used in the construction of the crossings did not match approved Ministry standards for bridges or log culverts. GARNER submitted initial bridge certifications for the crossings from FLETT, on behalf of HARTWOOD, after the first SWO was issued, but this submission was subsequently withdrawn by FLETT after discussion about the crossing certifications with OLMSTED. HARTWOOD provided a second submission for a certified log culvert drawing for three of the crossings from TBD engineer HUTCHISON, along with Crossing Assurance Statements from FLETT for the three crossings in dispute. OLMSTED also reviewed this second submission and rejected it since, in his professional opinion, it was impossible to determine what the legal weight rating was and if they were safe for industrial use. This was due to the fact that the materials used to construct the crossings looked nothing like what was asked for in the certified drawing from HUTCHISON. Hence, OLMSTED recommended that the crossings be closed for industrial use.

- On February 5, 2015, GARNER stated to CULLEN from BCTS that no industrial traffic would cross the structures in question for approximately three weeks or until the crossings were certified safe for industrial use by a qualified professional. Ministry evidence shows that logging truck traffic did start using the crossings on or about February 18, 2015 despite the fact the crossings were not certified for safe industrial use.

- GARNER stated at the OTBH that 12 millimetre drift pins had been added to the existing structures to help provide additional strength along with wire rope lashing. However Ministry staff was unable to visually confirm the added drift pins. GARNER stated at the OTBH that the pins were installed from underneath side of the structures. As for the wire rope lashing, the Ministry submitted that it was quite loose and thought to be of little value in providing added support to the structures. GARNER claims that the loose wire rope was due to the “freeze/thaw” action of the winter weather and that he checked the crossings

regularly to ensure that they were okay for industrial use. GARNER has no physical records to show the checks were done.

- GARNER was informed about the second set of comments on the latest certification submission from OLMSTED on March 12, 2015. GARNER did not agree with the comments from OLMSTED and stated that he had had professionals certify the crossings as safe. GARNER was informed that a SWO would be issued as the structures were not safe for industrial use. As such, Compliance & Enforcement (C&E) staff would be issuing a SWO to HARTWOOD. However, GARNER stated that he would not make himself available to receive the SWO.

- Between March 12 and March 19, 2015, when GARNER was informed that his crossing designs were not to standard and that another SWO was going to be issued to him, a total of 41 loads were hauled from TSL A89966 and over the crossings. GARNER was aware that the crossings were deemed not to be safe for industrial purposes and yet hauling continued.

- On March 12, 2015, Ministry staff pointed out to GARNER the structural defects and deficiencies for the three crossings. GARNER was informed that a SWO would be issued to HARTWOOD stating that until the defects were remedied to a satisfactory manner, no hauling was to occur over the structures in question. GARNER made no efforts to correct the deficiencies and continued to use the structures for industrial purposes after this date based on the ministry Harvest Billing System (HBS) data. As such, the crossings were not closed, removed or replaced and traffic loads were not restricted to a safe level. Also, no signs were placed on the bridge approaches stating the maximum load capacity of the crossings. The only action taken by GARNER was to add the wire rope lashing and add bridge delineators.

- Ministry staff estimates that HARTWOOD received an economic benefit from building the crossings in the way that it did. The Ministry estimates that HARTWOOD's cost savings were $40,253.28 or $90,200. C&E estimated an economic benefit of $40,253.28 by multiplying the volume of timber to be harvested under the TSL (19,732 m^3) by the difference in stumpage rate for the TSL ($10.17/$m^3$) versus the stumpage rate that would have applied if the stumpage rate was based on the log box culverts and road upgrade that HARTWOOD used ($12.21/$m^3$). The difference between these stumpage rates is $2.04. C&E's estimate of HARTWOOD's economic benefit of $90,200 is based on the cost of four six-metre steel span structures ($21,000 each) and a $6,200 expense to deliver them.

In turn, GARNER and FLETT, both of whom represented HARTWOOD at the opportunity to be heard on September 13, 2017, presented the following:

- A letter dated May 31, 2016 from Len Stratton, Woodlands Manager for the Prince George Business Unit for the BCTS program noting that all obligations have been completed for TSL A89966 and Road Permit R19679 and the security deposit has been returned to HARTWOOD.

- A BCTS post logging inspection report sent to HARTWOOD dated June 10, 2015. GARNER noted the following comments on the report from CULLEN:

    - the damage to environment was not inspected;

  - the inspection report stated that fish passage was "met", which is in contrast to C&E staff who said that it was not; and

  - the inspection report included that *"all bridge sites look good and that some revegetation is coming back and hay bales seem to be doing their job for now".*

- A TSL Harvest completion and deposit release form from GARNER dated November 3, 2015 and requesting release of security deposit.

- Undated photos of Road Permit R19679 including the crossings in question. The photos show crossings sometime after de-activation was completed.

- Curriculum Vitae (CV) for FLETT to establish knowledge and experience in construction and certifying of bridge crossings and design.

- Copies of the original BCTS bridge design drawings, survey notes and photos for the TSL A89966 sales package from TDB. This work was completed in May 2013 and was included in the original sales bid package for TSL A89966. Also included in the information received from TDB was a copy of the certified drawings signed off by HUTCHINSON on February 27, 2015 for all S4 crossings in Block 2.

- GARNER stated that spiral drift pins were installed in a manner that did not make it easy to visually see the pins. The pins were installed from underneath after a portion of the structures had been pulled up to allow access to the underside of the structure. FLETT stated the addition of the pins was suggested by the engineer HUTCHISON.

- GARNER stated that wire rope lashing was "tight" at the time of the installation, but loosened over time with the freeze/thaw pattern of the weather.

- GARNER stated that HARTWOOD used night hauling to deal with the melting conditions occurring on the road access and on TSL A89966 being experienced during day time. Night hauling would allow driving over the crossings when they would be frozen as opposed to being unfrozen or soft ground.

- GARNER stated that visual checks were done on the crossings regularly (two to three times a week) to ensure that the bridges looked safe and could handle a machine going across it.

- GARNER spoke to CULLEN's final inspection report (BCTS report) noting that obligations are complete and good. Specifically, the hay bales look good and crossings are fine.

- FLETT stated that HARTWOOD did rectify deficiencies on site as per direction from the engineer HUTCHISON.

- GARNER stated that by switching to night shift, HARTWOOD did mitigate damage to the environment.

- GARNER stated that he personally did not see or receive the second SWO to stop operations, so HARTWOOD continued operations.

- GARNER stated that all of the wood was hauled out of block with no issues and no significant environmental damage.

- FLETT stated that he felt the casefile presented by C&E (Page 38 2nd paragraph) was inaccurate or reaching and full of opinions. Specifically, FLETT brought on point regarding the compacting of soils at the crossings, but that this was not needed for temporary bridge installs.

- FLETT and GARNER stated that the cost estimates at page 60 of the OTBH package were flawed. In particular, with respect to an economic benefit, they argued that the estimates overestimate the value of the bridge by $20,000. GARNER stated that this information is irrelevant as it had nothing to do with it as HARTWOOD did not have to follow the original design and the TSL document (A89966) gave the option to put in something different for crossings.

- In response to page 55 of the OTBH package, FLETT noted that the previous contraventions of similar nature should be excluded from this case as they were reaching and not relevant or similar to this case.

- FLETT noted that some of the information that C&E provided from the Forest Practices Code guideline books is dated and should not be a part of the case. FLETT also suggested, in opposition of C&E's submissions, that s.22
  s.22

Having regard to the foregoing evidence, I have made the following findings of fact:

- HARTWOOD is the holder of Road Permit R19679 which authorized the construction of, maintenance and deactivation of the road accessing TSL A89966. Specifically three crossings were to be installed over three "default" S4 streams.

- HARTWOOD constructed log culvert type structures at 1+126, 1+550 & 1+728 on Road Permit R19679 leading to TSL A89966. These structures are each considered a 'stream crossing' as part of a road within the meaning of section 55 of the FPPR and a 'bridge' as it is used in sections 72 and 75 of the FPPR. HARTWOOD was responsible for maintaining the roads in question and was subject to the requirements of section 75 that arise when there is a structural defect or deficiency that occurs on a bridge.

- The access structures in question were not constructed in a manner that protected the stream channel and stream bank immediately above and below the crossings or at the crossings themselves. Photographic evidence and inspection reports supplied by C&E staff showed disturbed soil on the stream banks as the stream banks were encroached upon and the structures were located within the high water mark of the stream banks. No geotextile cloth was used in the construction of the crossings and with the large gaps between the bridge log decks and cross ties/deck logs, it allowed dirt and material to enter into the streams from the bridge decks. The placement of hay bales and hay mulch in the ditch lines on either side of the crossings had minimal impact as again photographic evidence from C&E showed dirt and debris traveling into to the streams from the ditch lines. HARTWOOD was

supplied with design drawings from BCTS that called for a 6 metre bridge design in order to protect the streams above and below and at the crossings themselves. However, GARNER used his own design for the crossings that were less than the prescribed 6 metre lengths and by doing so encroached on the stream banks. HARTWOOD was issued two SWOs in relation to the bridges and was informed on multiple occasions of the Ministry's concerns about the crossings and in particular that the crossings did not meet any recognized standard. I share the Ministry's concerns and accept the Ministry's evidence showing that GARNER's designs resulted in dirt and debris entering the streams and caused damage to the stream banks.

- The access structures in question were also not used in a manner that protected the stream channel and stream bank. HARTWOOD did switch to night hauling in an effort to drive on frozen soils to provide protection to the stream banks and channels. However, given the fact that the streams were flowing at the time of hauling, it is my belief that this action had minimal impact on protecting the stream. Given my reasons why the crossings were not constructed in a manner that protected the stream and stream bank, I find that HARTWOOD's use of the crossings was also problematic.

- HARTWOOD used the crossings for an industrial use by hauling 331 loads over the crossings with 325 of those exceeding 60 tonnes and 74 exceeding 64 tonnes. HARTWOOD's own representative set the bridge limit at 60 tonnes. However, Ministry evidence from OLMSTED, showed that it was impossible to determine what the safe load limit was based on the construction materials used in the crossings. I find the ongoing use of the crossings troubling and concerning given the risk of a catastrophic event such as a collapse one or more of the crossings..

- HARTWOOD took some steps to mitigate the disturbance to the stream channel and stream bank, but in my view, those efforts were minimal and insufficient. HARTWOOD placed some hay bales at one crossing in the ditch lines leading to the crossings. However, Ministry evidence showed this action was ineffective in keeping dirt from flowing down ditches and into streams. Over 331 loads travelled over the road and crossings over approximately a month. With the weather conditions presented and the fact that the streams were flowing, a prudent operator would have taken additional steps to mitigate the flow of dirt in the streams right from the commencement of hauling operations. This could have included the use of geotextile cloth in the bridge construction to stop dirt and debris from entering into the streams from the bridge deck and installed road ditches in a manner that would have re-directed surface water prior to it reaching the streams.

- HARTWOOD did not construct or maintain the structures in a manner that made them structurally sound and safe for industrial users. With GARNER's choice to use a bridge design of his own, he was still responsible to have the crossings certified for industrial use. HARTWOOD's first submission to certify the crossings was withdrawn, due to deficiencies, by FLETT. A second attempt was made, along with a new design drawing for the crossings. Based on Ministry evidence from OLMSTED and pictures and data collected on the crossings, I accept that the certification was not approved and accept OMLSTED's opinion that the crossings were not built to any recognized standard, making it impossible to assess the structural soundness of the bridges and safety for industrial use. GARNER took some steps to improve the structural integrity of the bridges by adding wire rope lashing, however these steps were insufficient. Ministry evidence showed the wire rope lashing was loose and not tightly wrapped around the log materials as one would expect. HARTWOOD submits that it

added drift pins to the crossings from the underside of the structures to increase the structural integrity, but I do not have any concrete evidence to support this submission. Ministry staff could not visually see the pins when inspecting the crossings and HARTWOOD did not provide me with any documents to show that the pins were installed.

- In my view, the concerns that the Ministry raised with respect to the crossings were sufficient to establish deficiencies with the crossings. As such, HARTWOOD was required under section 75 of the FPPR to take certain steps:

    - There is no evidence that HARTWOOD corrected the deficiencies to the extent necessary. HARTWOOD placed bales of hay, installed wire rope lashing and claims to have installed drift pins, but further effort was needed to remedy the deficiencies and make the crossings safe for industrial use.

    - There is no evidence that HARTWOOD closed, took adequate steps to replace the crossings or restricted the traffic loads to a safe level. To the contrary, the evidence supports that HARTWOOD continued to use the bridges in the same way even after HARTWOOD was aware of the Ministry concerns with the crossings.

    - Finally, there is no evidence that HARTWOOD placed signs at the approaches to the bridges stating the maximum load capacity of the bridge.

- For the purposes of section 75(1) of FRPA, I find that the Ministry first became aware of the facts that relate to the alleged contraventions of section 55(1) and 72 of the FPPR on January 28, 2015 and the alleged contravention of section 75 of the FPPR on or about February 13, 2015.

Determination

The facts support a determination that HARTWOOD contravened sections 55(1), 72 and 75 of the FPPR.

I conclude that HARTWOOD did not build or use the crossings at 1+126, 1+550 and 1+725 to sufficiently protect the stream channel or stream bank immediately above or below the crossing and did not take steps to mitigate the disturbance to the stream channel and stream bank. This is a contravention of section 55(1) of the FPPR.

I also conclude that the facts support that HARTWOOD did not construct or maintain the crossing structures to ensure they were structurally sound and safe for use by industrial users, which is a contravention of section 72 of the FPPR.

Lastly, I conclude that the facts support that HARTWOOD took insufficient steps to correct the deficiencies that the Ministry brought to its attention to protect industrial users travelling over the structures. Furthermore, HARTWOOD did not close, remove or replace any of the deficient bridges, restrict traffic loads to a safe level or place any signs stating the maximum load capacity of the bridge. This is a contravention of section 75 of the FPPR.

Do any of the Defences apply?

Due Diligence

In my view, HARTWOOD has not established the defence of due diligence for any of the contraventions. For the defence of due diligence to succeed, the person raising it must have taken all reasonable care to avoid the contravention. This does not require achieving a standard of perfection or doing everything that could possibly be done to prevent a contravention, but it does require the person to take all measures that would reasonably be expected in the circumstances to avoid the contraventions.

The due diligence of a corporation will turn on whether or not the acts or omissions that led to the contraventions were directed or approved by the corporation, and, if not, whether the directing or controlling mind of the corporation established a proper system to prevent the contraventions and whether the corporation took reasonable steps to ensure the effective operation of that system.

GARNER is a director of HARTWOOD Holdings Ltd. Thus GARNER's acts and omissions, therefore, are the acts and omissions of HARTWOOD.

HARTWOOD's conduct generally fell below the standard of due diligence when building and using the stream crossings but also fell below the requisite standard in numerous specific ways.

HARTWOOD's conduct was not reasonable in terms of protecting the stream channel and bank. The original crossing designs that BCTS provided to HARTWOOD showed a 6 metre bridge to be installed to prevent damage to the stream banks, but HARTWOOD did not to use BCTS's design. Instead, HARTWOOD used GARNER's design using materials found on site and built the crossings only 5.5 metres in length. It was a significant risk for HARTWOOD to proceed with GARNER's design. I agree that a licensee can use a design that is different than the one provided to them and remain compliant with the applicable laws, but it is still incumbent on the licensee to ensure the crossings meet the said design and can be certified. In HARTWOOD's case and even after engaging qualified professionals, no changes were made to the structures that would restrict the flow of loose dirt and debris into the streams as depicted in photographs that the Ministry provided to me. For example, HARTWOOD did not modify the crossings to comply with HUTCHISON's drawings.

HARTWOOD only made minimal efforts to mitigate dirt and debris from entering into the streams by placement of hay bales along the ditch lines prior to de-activation and hay mulch on either side of the crossings during de-activation of the crossings. GARNER also admitted that the streams continued to flow the whole time the crossing were being used for industrial purposes. In my view, this was not sufficient to comply with the requisite standard of care required to establish the defence of due diligence. To comply with the requisite standard of care, I would have expected HARTWOOD, among other things, to use geotextile cloth during construction of the crossings and to place hay bales, hay mulch or both along the ditch lines of all crossings once hauling operations had commenced.

Although GARNER engaged a forest professional to review the crossings and have the crossings certified for industrial use after receiving the first SWO, Ministry engineer OLMSTED reviewed HARTWOOD's plans and found that they were insufficient. HARTWOOD's forest professional FLETT voluntarily withdrew the plans due to the deficiencies found. GARNER was contacted again by BCTS staff CULLEN and said that the concerns with the crossing certifications would be straightened out and that no industrial traffic should cross the structures until this was done. In my view, this was not done.

While FLETT continued to pursue certification of the crossings with the engagement of HUTCHISON to look at the crossings, log hauling had commenced on or about February 18, 2015. Ministry evidence shows HARTWOOD was aware that the crossings were not certified due to the fact that it was impossible to determine if the crossings were safe for industrial purposes. HARTWOOD similarly did not take sufficient steps to ensure the structural soundness of the crossings. By using crossing designs that are not recognized by any standard, it would be difficult for HARTWOOD to establish a due diligence defence. I am concerned that HARTWOOD continued to use the crossings after the ministry expressed legitimate concerns with the structural soundness of the crossings and their potential to damage the stream and stream bed. In my view, a reasonably diligent licensee would have stopped using the crossings until those issues were resolved.

HARTWOOD did not supply any evidence to show any efforts to close, replace or restrict the traffic loads at the crossings. Once HARTWOOD was aware of the Ministry's concerns about the crossings, I would expect a reasonably diligent licensee to take steps outlined in section 75 of the FPPR. Instead, HARTWOOD continued to use the crossings even after being informed by Ministry staff that the crossings were not sufficient. It appears that it was more important from a business point of view to get the logs to the mill as opposed to ensuring the crossings were built in a manner that would ensure they were safe for industrial use. GARNER said at the OTBH that the design used was one that he had used a number of times over his career and that he had never had a failure to date. This is certainly laudable, but appears to be based on a measure of luck rather than using a design that is certifiable for safe industrial use.

Mistake of Fact

While HARTWOOD did not raise a mistake of fact defence, I have considered whether the facts in this case could support the defence and concluded that they do not. For a reasonable mistake of fact defence to be successful, a person must prove on a balance of probabilities that they reasonably believed in a mistaken fact that, if true, would establish that they did not contravene the provision.

Officially Induced Error

HARTWOOD did not raise the defence of officially induced error in relation to any of the alleged contraventions and I similarly find that the facts do not support the application of that defence.

Is a penalty appropriate and if so how much?

Under section 71(2)(a)(i) of FRPA and section 14 of the *Administrative Orders and Remedies Regulation*,
I am authorized to impose a maximum penalty of up $20,000 for the contravention of section 55(1), $50,000 for the contravention of section 72 and $50,000 for the contravention of sections 75(a),(b) or (c) or $20,000 for the contravention of section 75(d).

Alternatively, under section 71(2)(a)(ii) of FRPA, I may refrain from levying a penalty with respect to any of the contraventions if I consider the contravention to be trifling and that it is not in the public interest to levy a penalty. I do not consider any of the contraventions to be trifling and, as such, will consider the following mandatory factors described in section 71(5) of FRPA:

(a) HARTWOOD's previous contraventions, if any, of a similar nature;

HARTWOOD has previous contraventions of a similar nature. In particular, HARTWOOD was issued compliance notices related to sections 72 and 55(1)(a) of the FPPR in August of 2012 and September of 2014 respectively. The compliance notice that was issued under section 72 related to holes in the deck of a bridge and for the placement of parts of the bridge into the stream channel. The compliance notice issued in September 2014 under section 55(1)(a) was in relation to bridge abutments on the stream channel on a bridge that was located off TSL A90604 -1Kaka 14230 sec 7 (1453).

I am concerned with the similarity of these previous contraventions and think that it warrants an increased penalty amount as a deterrent. I am not only concerned with the similar nature of the previous contraventions in that they also involved deficient bridge construction but also demonstrate a pattern of carelessness that HARTWOOD is demonstrating with respect to bridge crossings.

(b) The gravity and magnitude of the contraventions;

In my view, the gravity of the contraventions is significant and the magnitude of the contraventions is low.

Safety with bridge structures begins with proper planning and design, construction and the use of a qualified professional to oversee the installation to ensure that structures are built to a standard that makes them safe for industrial use and will protect the streams and banks below.

There are numerous reasons why I find that the gravity of the contraventions is significant. HARTWOOD chose to not follow the bridge designs provided by BCTS and instead used a design of his own that did not meet any recognized standard for a bridge crossing. It was not until the first SWO was issued that HARTWOOD brought in a qualified professional, but in doing so, this was after the crossings had been constructed. This did not allow FLETT to adequately see, measure and document the construction of the crossings as required to certify them as meeting the standard. The certification for the crossings was withdrawn. A second attempt was made by HARTWOOD to have the crossings certified by employing HUTCHISON a professional engineer. However those second set of design drawings were not signed and sealed by HUTCHISON. HUTCHISON stated that she could not certify the crossings since she was not present during construction. Certification was left to FLETT, but the certification was not accepted by OLMSTED since crossing in place did not match the new design drawings. In OLMSTED's professional opinion, the crossings were not safe for industrial use and should be closed to industrial traffic. HARTWOOD continued to use the crossings for industrial purposes despite being told not to.

The likelihood of consequences to life or property was significant since it was impossible to determine the structural integrity of the bridge crossings constructed by HARTWOOD and that they were safe for industrial use. The crossings did not meet any kind of standards, as laid out in the Ministry policy and procedures for the crossings in question. Based on evidence supplied by Ministry staff, the materials used in the construction were of the wrong species, smaller diameters than prescribed for the stringers, questionable stringer quality and depth of fill required on the bridge decks. Despite FLETT's submission of a certification statement for the crossings, even his weight rating for the crossings (60 tonnes) was 40

tonnes less than the prescribed requirements given to HARTWOOD with TSL A89966. These crossings were subject to heavy stresses as only 6 of 331 logging truck loads were less than the 60 tonne limit.

Despite numerous conversations between Ministry staff and GARNER and the deficiencies that were brought to his attention, HARTWOOD did not take adequate steps to construct and improve the crossings for industrial use.

HARTWOOD failed to take critical steps such as using geotextile cloth in the construction of the crossings to help mitigate dirt and debris falling into the stream channel.

GARNER stated at the OTBH that since no incidents occurred with the crossings, they were safe for use and with the winter hauling season coming to an end, HARTWOOD had to get the wood out. In my view, GARNER's argument is relevant to the magnitude of the contraventions but is not relevant to the gravity of the contraventions. The sections under which I found the contraventions do not require an incident to occur.

It follows that the magnitude of the contraventions was relatively low. In my view, it is with some luck that the streams or stream banks did not experience more significant environmental damage and that the crossings did not result in an industrial accident. By using GARNER's design, HARTWOOD failed to sufficiently protect the stream bank above and below the stream crossings. The installed structures were less than the 6 metre span prescribed and encroached on the stream channel and banks. No measures were taken to minimize dirt and debris entering the streams since no geotextile cloth was used in the construction of the crossings. Large gaps were also noted by Ministry staff in the bridge deck and the fill containment logs which again allowed dirt and debris to enter into the streams. Only minimal efforts were taken in the placement of hay bales in the ditch lines near the crossing to minimize dirt and debris from entering into the stream.

(c) Whether the contraventions were repeated or continuous;

I find that the contraventions were repeated and continuous. The contraventions were continuous because HARTWOOD continued to use the crossings after the Ministry expressed legitimate concerns with the crossings and issued SWOs. The contraventions were repeated in that HARTWOOD took some steps to improve the crossings but those steps were insufficient in each case.

GARNER received an SWO advising him that industrial use of the crossings was suspended until the crossings were certified by a qualified professional. On January 30, 2015, GARNER told Ministry staff that he would re-work the crossings and get them certified for industrial use. It took numerous requests from BCTS staff to receive the certification documents for the crossings, but even after receipt of those, they were withdrawn due to deficiencies in the documents. The Ministry continued to request certification documents from HARTWOOD, but it was apparent that industrial traffic (log hauling) had commenced using the crossings 16 days before the Ministry received the certifications. This is in direct contradiction to GARNER's statement to CULLEN, from BCTS, that industrial use of the crossings would not happen until the bridge certifications were resolved. It is clear to me that this did not happen.

On March 11, 2015, GARNER was advised that another SWO was to be issued to HARTWOOD due to the fact the crossings in question were not safe for industrial use. GARNER became upset at this action and did not make himself available to receive the SWO and continued operations which included industrial use of the crossings. From February 18 to March 19, 2015, approximately 325 logging truck loads traveled over the crossings.

(d) Whether the contraventions were deliberate;

I find that the contraventions were deliberate in that despite receiving the second SWO, HARTWOOD deliberately disregarded the need to stop using the crossings for industrial purposes and build the crossings as per the certified drawings of engineer HUTCHISON. HARTWOOD built the crossings according to GARNER's design and as such there was no way to reasonably determine if the crossings were built to a standard safe for industrial purposes.

(e) Any economic benefit HARTWOOD derived from the contraventions;

In my view, HARTWOOD received a $30,253.28 economic benefit from the contraventions. HARTWOOD should not benefit from its contraventions so I am including this amount in my assessment of the penalty. In particular, HARTWOOD likely realized a substantial cost savings by using GARNER's design for the crossings as opposed to the BCTS designs for 6 metre bridge crossings included in the TSL package for A89966 or something else similar. In coming to my conclusion about HARTWOOD's costs savings, I acknowledge that HARTWOOD did incur costs to construct the crossings and to obtain the services of a forest professional to certify the crossings and an engineer to supply certified log culvert drawings that more closely match what HARTWOOD had installed. My assessment of the economic benefit attempts to take HARTWOOD's expenses into account.

Ministry staff presented me with two scenarios to estimate HARTWOOD's cost savings with the first scenario resulting in a cost savings of $40,253.28 and the second scenario resulting in a cost savings of $90,200.00. The $40,253.28 estimate was based on the difference between the stumpage rate that C&E generated using the BCTS supplied crossing designs and the stumpage rate that would apply if the type of crossings that HARTWOOD put in had been accounted for in the original stumpage rate determination for TSL A86999. Scenario 1 multiplies the difference in stumpage rates by the volume of timber harvested. The $90,200 estimate is based on a simple calculation of the cost to HARTWOOD to purchase and have delivered the 6 metre bridge spans that were called for in the original BCTS TSL Safety and Highlights report. HARTWOOD submits that the Ministry's estimates are at least $20,000 too high.

Quantifying HARTWOOD's economic benefit with precision is difficult. HARTWOOD did not provide me with evidence of its expenses that relate to the crossings, including, for example, the cost of retaining FLETT and HUTCHISON to provide services in relation to the crossings. Even if HARTWOOD had provided me with that evidence, assessing the difference between what HARTWOOD actually spent and what it would have spent to build crossings according to the TSL Safety and Highlights report would still be based on an estimate of the cost to construct the crossings.

I prefer the concept of scenario 1 that C&E presented to me and my estimate of the $30,253.28 economic benefit is based on that scenario. HARTWOOD did not present

evidence about their actual costs for the crossings. However, I am not fully adopting C&E's assessment. I arrived at an economic benefit of $30,253.28 by taking C&E's estimated cost savings of $40,253.28 and reducing it by $10,000 to recognize the additional costs that HARTWOOD incurred to build its crossings and that HARTWOOD could have been in compliance by using a crossing design that was different than the design in the TSL Safety and Highlights report, which would have attracted a different stumpage rate.

(f) HARTWOOD's cooperativeness and efforts to correct the contravention;

HARTWOOD made some minor efforts to correct the contravention. During the January 30, 2015 meeting between GARNER and Ministry staff, when the first SWO was issued, GARNER indicated that he understood the issues and committed to rectifying the situation prior to industrial use of the crossings. GARNER engaged the services of a forest professional and engineer to bring the crossings up to an acceptable standard, but those efforts were insufficient in that no efforts were put into re-building or fixing the original crossings. In the end, HARTWOOD only took minimal action with the installation of wire rope lashing and the installation of delineators on the crossings. GARNER had committed to submitting certification documents after re-building the crossings.

HARTWOOD was not very cooperative with the Ministry in early 2015 with respect to the crossings. Ministry records show that logging trucks started hauling over the structures as of February 18, 2015 and continued until hauling operations were complete on March 19, 2015. Throughout this time, GARNER did not respond to inquiries in a timely fashion to ministry staff requests for certification documents, nor did he make himself available to receive the second SWO that was issued to HARTWOOD on March 11, 2015. In fact, it appears that GARNER intentionally avoided receiving the SWO. GARNER claimed at the OTBH that he did not receive the SWO, however Ministry officials left copies of the SWO at the offices of Hartwood Holdings Ltd and was finally able to serve a copy of the SWO on March 16, 2015 to a HARTWOOD employee. While GARNER's level of cooperativeness to correct the contraventions at the beginning of this incident was sufficient, it became lacking as the winter season wore on. It appears that it was more important to HARTWOOD that delivery of the timber be completed prior to the end of the winter season as opposed to ensuring the crossings were safe for industrial use.

(g) Any other considerations of any efforts that the Lieutenant Governor in Council may have prescribed.

There are no other prescribed considerations.

Having regard to the facts of this case and the factors described above, I levy a penalty in the amount of $35,753.28 for the contravention of sections 55(1), 72 and 75 of the FPPR. In my view, this penalty provides a sufficient deterrent to HARTWOOD and removes the economic benefit that HARTWOOD received as a result of the contravention.

While the magnitude of the contraventions is low, the gravity of the contraventions is significant in terms of how far that HARTWOOD has deviated from the standard of care that I expect with respect to the crossings in question.

While HARTWOOD made some efforts to get the crossings built to a better standard and be certified, HARTWOOD's efforts were either withdrawn or not accepted since the crossings that GARNER constructed did not match anything that was submitted by HARTWOOD's forest professional or engineer in the form of certified log culvert drawings.

It is apparent to me that HARTWOOD made no effort to re-construct the crossings, but only provided minimal upgrades with the addition of wire rope lashing and possibly drift pins. The crossings did not conform to any recognized standard, thus it became virtually impossible to determine if the structures were indeed safe for industrial use. Virtually all of the logging truck loads that passed over the structures were over the 60 tonne load limit that had HARTWOOD's professional proposed for the bridge.

GARNER, as HARTWOOD's representative, was made aware of the deficiencies in the crossings by Ministry staff on two occasions. Once when the first SWO was issued and again when GARNER was told that the Ministry would issue another SWO. However, it is apparent that HARTWOOD continued operations during this period of time. At the OTBH, GARNER stated that, in his opinion, the crossings were safe and since no incidents with any industrial traffic occurred while the crossings were in use, there should be no concerns. He also stated that "time" was an issue and that winter season was coming to a close. Thus, he had to get the logs to the mill prior to the end of the winter hauling season. I find this statement to be a huge concern as GARNER is not a trained professional in the design and installation of crossing structures and that we cannot be rest assured as to the safety of the crossings in question.

In my view, the circumstances warrant a penalty of this amount to deter HARTWOOD from making decisions like this in the future and to remove what I estimate as HARTWOOD's economic benefit of the contraventions. It is important to levy a penalty that will bring home to HARTWOOD, the importance of engaging professionals when designing and installing crossing structures to ensure that they are built to a standard that is safe for industrial use and in a manner that minimizes the impact and risk of impact on the streams being crossed.

Is it appropriate to issue a remediation order?

It is not necessary or appropriate to issue a remediation order in this case. The crossings have been removed and the road for Road Permit R19679 has been de-activated.

Determination does not forestall other actions that may be taken

This determination does not relieve HARTWOOD from any other actions or proceedings that the government is authorized to take with respect to the contraventions described above.

Opportunity for correcting this determination

For 15 days after making my contravention determination and penalty determination under section 71,
I am authorized under section 79 of FRPA 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) 614-7513 or Dave.Banham@gov.bc.ca within this 15 day period.

Opportunities for review and appeal

If you have new information that was not available at the time I made this determination, you may request a review of my determination on the basis of this new information. A request for review must be in writing, must be signed by you, or on your behalf, and must contain:

a. your name and address; and the name of the person, if any, making the request on your behalf;
b. the address for serving a document to you or the person acting on your behalf;
c. the new evidence that was not available at the time this determination was made; and
d. a statement of the relief requested.

This request should be directed to me, at Prince George Natural Resource District, 2000 South Ospika, Prince George, British Columbia, V2N 4W5 and I must receive it no later than three weeks after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 80 of FRPA and in the *Administrative Review and Appeal Procedure Regulation*. Please note the **3 week time limit** for requesting a review.

Alternatively, if you disagree with this determination, you may appeal directly to the Forest Appeals Commission.

The appeal request must be signed by you, or on your behalf, and must contain:

a. your name and address; and the name of the person, if any, making the request on your behalf;
b. the address for serving a document to you or the person acting on your behalf;
c. the grounds for appeal;
d. a statement of the relief requested; and
e. a copy of this determination.

The Forest Appeals Commission must receive the appeal ***no later than 30 days*** after the date this notice of determination is given or delivered to you.

The provisions governing appeals are set out in sections 82 through 84 of FRPA, and in the *Administrative Review and Appeal Procedure Regulation.* To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. A notice of appeal may be delivered to the following address:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9Vl

Please note the **30 day time limit** for delivering a notice of appeal.

Determination is stayed pending review or appeal.

Under section 78 of FRPA, my contravention determination and penalty determination under section 71, and remediation order under section 74, are stayed until you have no further right to have this determination reviewed or appealed, after which time they take immediate effect.

Performance Record

As you are the holder of an agreement under the *Forest Act*, my determinations under section 71 will become part of HARTWOOD's performance record, pursuant to section 85 (2) of FRPA, subject to decisions made on review or appeal.

Yours truly,

D.C. (Dave) Banham, RFT
Resource Manager
Prince George Natural Resource District

pc: Ian Brown, Regional Manager C&E-Omineca, Compliance and Enforcement Branch
Mike Kee, C&E supervisor Prince George Field Unit, Prince George Natural Resource District
Mark Haddock, Forest Practices Board, 3rd Floor 1675 Douglas St. P.O. Box 9905 Stn. Prov., Victoria, B.C. V8W 9R1

BRITISH COLUMBIA

File: 23060-20 - [DCK-34526]
00157892.00

January 25, 2019

Clint Ely
Interwest Forest Management Limited
PO Box 1985
Lillooet, British Columbia
V0K 1V0

Dear Clint Ely:

Re: Contravention determination and notice of penalty levied under section 71(2)(a) of the *Forest and Range Practices Act*

This is further to Interwest Forest Management Limited's (Interwest) opportunity to be heard respecting the alleged contravention of section 52(1) of the *Forest and Range Practices Act* (FRPA) for harvesting Crown timber without authorization.

I have now made my determination in this matter and conclude that Interwest, in support of the construction of a bridge, negligently harvested 61 m^3 of Crown timber without authorization. Interwest favoured operational efficiencies over legislative requirements and I am levying an administrative penalty of $7,200.

Authority

The Minister of Forests, Lands, Natural Resource Operations and Rural Development delegated to district manager Mike Peters, under section 120.1 of FRPA, the authority to make determinations with respect to administrative contraventions and penalties under section 71 of FRPA.

Ministry of Forests, Lands, Natural Resource Operations and Rural Development Chilliwack Natural Resource District
Mailing Address: 46360 Airport Road Chilliwack, BC, V2P 1A5
Tel: (604) 702-5700
Fax: (604) 702-5711

Pursuant to section 120.2 of FRPA, Mr. Peters sub-delegated the authority to make a determination under section 71 of FRPA in this matter to me.

Legislation

The Compliance and Enforcement branch (C&E) alleges that Interwest contravened section 52(1) of FRPA:

> 52(1) A person must not cut, damage or destroy Crown timber unless authorized to do so
>
> > (a) under this Act, the *Forest Act* or an agreement under the *Forest Act*…

Section 71(3) of FRPA is relevant to my determination:

> (3) Subject to section 72, if a person's contractor, employee or agent contravenes a provision of the Acts in the course of carrying out the contract, employment or agency, the person also contravenes the provision.

Issues

The following issues are relevant to this case:

1. Did Interwest contravene section 52(1) of FRPA?

2. If Interwest contravened section 52(1) of FRPA, do any of the defences of due diligence, mistake of fact or officially induced error apply?

3. If Interwest contravened and none of the defences apply, what amount of penalty, if any, is appropriate?

After considering the evidence presented to me and for the reasons below, I conclude that:

1. Interwest contravened section 52(1) of FRPA;

2. none of the defences apply; and

3. it is appropriate to levy a penalty in the amount of $7,200 pursuant to section 71(2)(a)(i) of FRPA, which, subject to the stay referred to below, must be paid by March 22, 2019.

The rationale for my contravention determination and the decision to levy a penalty is explained in the paragraphs and pages that follow.

Summary of the evidence and findings of fact

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

- Interwest held at all material times Timber Sales Licence A9 l 440 which permitted Interwest to harvest 25,714 m^3 of Crown timber from an area estimated at 51.3 ha. Timber Sales Licence A9 l 440 is located east of Hope and proximal to the distal end of Road Permit R19665 approximately 3.9 km beyond where the 21 trees at issue in this determination were cut.

- Interwest held at all material times and continues to hold Road Use Permit 8144-14-02 which permits Interwest to use the Eight Mile Forest Service Road (Eight Mile FSR). The Eight Mile FSR is located approximately 12.5 km east of Hope, along Eight Mile Creek.

- Interwest also held at all material times and continues to hold Road Permit R19665 which permits Interwest to construct road section EM2300. Road section EM2300 is north of Eight Mile Creek, beginning approximately 5.8 km up the Eight Mile FSR.

- On April 26, 2016, a faller working either as a contractor or as an agent on behalf of the Interwest was directed to source suitable trees to harvest and manufacture into crib logs for a bridge crossing over Eight Mile Creek. The faller cut down 21 trees on Crown land along the Eight Mile FSR. Interwest did not have any authority to cut these trees down.

- The volume of the 21 trees cut is 61 cubic metres over an area of 0.13 hectares.

- The bridge construction over Eight Mile Creek was part of the road construction under Road Permit R19665, Section EM2300.

Do the facts support a finding of contravention if no defences apply?

The facts set out above support a conclusion that Interwest contravened section 52(1) of FRPA, unless one of the defences described in section 72 of FRPA applies. With reference to section 71(3) of FRPA, Interwest acknowledges that it directed the felling of 21 trees along the Eight Mile FSR without authority and accepts responsibility for this unauthorized harvest of Crown timber.

Under section 52(1) of FRPA, a person may not cut, damage or destroy Crown timber unless authorized to do so. I am satisfied that Interwest is responsible for 21 trees being cut on Crown land without any authority.

The area in which Interwest harvested the trees was not approved under Road Permit Rl 9665, was not part of Timber Sales Licence A9 l 440 and there was no other authority for Interwest to cut this Crown timber.

Do any defences apply?

In an email message to Mike Peters, you indicated that the facts leading to this contravention arose from an assumption about Interwest's authority to harvest the trees in question:

> "My mistake was assuming the cutting authority we have with road permit R/W's also applied in Road Use Permit situations as well."

Although you did not specifically characterize the wrong assumption as a mistake of fact I will assess whether the facts establish a valid defence. To successfully rely on a mistake of fact defence, a person must have reasonably believed in the existence of facts that if true would establish that the person did not contravene the provision.

Interwest, did not provide an explanation for their assumption that the cutting authority issued under Road Permit R19665 was applicable in Road Use Permit (RUP) situations. An RUP is a different type of road tenure and despite having some similarities to a road permit, in terms of activities permitted, the authorizations are issued separately and remain unique and specific unto themselves.

Even if the cutting authority that Interwest has in Road Permit R19665, applied in RUP situations, Interwest did not meet the criteria described within the applicable RUP. Road Use Permit 8144-14-02 was issued for the industrial use of the Eight Mile FSR and although Interwest was designated as the Industrial user responsible for all maintenance activities related to the FSR between 4.4 km and 5.8 km, the RUP does not authorize the removal of trees to construct a bridge. Despite conditions set out in RUP 8144-14-02 specific to maintenance works within the FSR, such as bridge construction, Interwest's actions were not supported by the RUP because works are limited to roads specified on the schedule A or map attached to the RUP authorization and there is a requirement for the permit holder to provide notification to the District Manager 30 days in advance of the works should the District Manager need to specify conditions for the works. The Eight Mile Creek bridge construction site was not within the roads specified and pre-notification of works was not provided.

Despite being silent in terms of specifying that bridge construction is part of road construction or maintenance, Road Permit R19665 clearly stipulates that the clearing area from which timber necessary to construct or maintain a road may be utilized is identified on the Exhibit A map attached to the road permit authorization. The clearing area was delineated on the Exhibit A map in a unique manner distinct from the adjacent Eight Mile FSR. The trees were not harvested from within the clearing area.

I am not convinced that Interwest's assumption that it had authority to harvest the trees in question was reasonable, Interwest has ten years of expertise in timber harvesting on Crown land within British Columbia and as such, the distinction between the authorizations should have been obvious. Interwest should have taken additional steps to confirm their assumption prior to directing the felling of trees.

I am satisfied that the facts do not support any of the defences set out in section 72 of FRPA.

Is a penalty appropriate and if so how much?

Under section 71(2)(a)(i) of FRPA and section 13(2)(b) of the *Administrative Orders and Remedies Regulation*, I am authorized to levy a penalty of up a $100,000 per hectare of

unauthorized harvest. Based on an area of 0.13 hectares from which the trees were harvested, the maximum penalty that I could levy is $13,000.

Alternatively, under section 71(2)(a)(ii) of FRPA, I may refrain from levying a penalty if I consider the contravention to be trifling and that it is not in the public interest to levy a penalty.

If I do levy a penalty, I must consider the following factors described in section 71(5) of FRPA:

(a) Interwest's previous contraventions, if any, of a similar nature;

Interwest does not have any previous contraventions of section 52(1) of FRPA.

(b) the gravity and magnitude of the contravention;

The magnitude of the contravention is relatively low. Interwest harvested 21 trees without authorization along the Eight Mile FSR with a volume of 61 m^3 and representing an area of approximately 0.13 hectares.

In my view, the gravity of the contravention is also low based on the dispersion of the trees along the side of the Eight Mile FSR as opposed to a concentration of trees from a single area.

(c) whether the contravention was repeated or continuous;

I do not consider the contravention to be repeated or continuous. The unauthorized harvesting occurred over a short period of time and for the one-time construction of a bridge over Eight Mile Creek.

(d) whether the contravention was deliberate;

Based on your email to Mr. Peters, I don't believe that the contravention was deliberate. However, Interwest was at least negligent in the contravention of section 52(1) of FRPA. Interwest required logs to construct the Eight Mile Creek bridge crossing and instructed their road builder to find logs to build the bridge without taking appropriate steps to determine if it had the authority to do so.

(e) any economic benefit Interwest derived from the contravention;

Although Interwest did not realize a direct profit by selling the 61 m^3, they realized an economic benefit, having enjoyed the use of logs in excess of their authorizations.

As previously stated, I am not convinced that Interwest's assumption that it had authority to harvest the trees in question was reasonable. Noting that the faller was given discretion to source suitable trees and recognizing that the location of the trees felled was outside of the area authorized, it is more likely that suitable trees did not exist within the clearing width authorized under Road Permit R19665.

Based on the notion that suitable trees did not exist within the clearing width of Road Permit R19665, Interwest had the option of applying for the timber or purchasing the logs on the open market. However, because it is impossible to know after the fact whether Interwest would have obtained the necessary authorization for the logs they selected, it is my opinion that the cost of purchasing the logs on the open market inclusive of any stumpage, harvesting or other costs incurred by a seller is more closely aligned with the economic benefit realized by Interwest.

I have assessed the value of the logs using the cruise compilation for Timber Sales Licence A9 l 440 and the stumpage advisory notice at the time of the contravention:

Douglas-fir	56 m^3	$4,600
Cedar	2 m^3	$382
Hemlock	3 m^3	$174
Total	61 m^3	$5,156

As described at the end of this determination, Interwest will have to pay the stumpage on the timber in question through another process and I am therefore not including the stumpage in my assessment of Interwest's economic benefit.

(f) Interwest's cooperativeness and efforts to correct the contravention; and

Interwest has been cooperative with the Ministry's investigation and signed a comprehensive Agreed Statement of Facts with C&E within which Interwest accepted responsibility for the unauthorized timber harvesting along the Eight Mile FSR.

In terms of efforts to correct the contravention, attempting to return the site to a pre-contravention condition was not practicable over the short term, given that standard reforestation techniques utilize seedlings and not mature trees. Furthermore, if the area were to be reforested, it is unlikely that the replacement trees would reach economic potential prior to the area becoming available for harvest.

(g) any other considerations that the Lieutenant Governor in Council may have prescribed.

The Lieutenant Governor in Council has not prescribed any other considerations.

In my view, the contravention is not trifling, and I am levying a penalty in the amount of $7,200.

The area and volume of unauthorized harvest are both small, but the Crown should still be compensated for the loss of Crown timber. The contravention was a result of negligence, and

I am concerned that Interwest favoured operational efficiencies over legislative requirements. The circumstances warrant a meaningful deterrent penalty.

Interwest is a logging company with ten years of expertise in timber harvesting on Crown land within British Columbia and as such, likely had explicit knowledge and understanding of the legislative requirements for operations on Crown land. Interwest should have taken more care throughout the planning, supervision and monitoring phases of work to ensure that it did not have to resort to harvesting Crown timber without an authorization.

I anticipate that a $7,200 penalty will deter Interwest from considering harvesting timber without authorization, in support of the construction of a bridge or otherwise, in the future. I also anticipate that this penalty amount will reinforce the Ministry's expectations about meeting legislative requirements to the broader community of industry participants.

Mitigating factors in Interwest's favour are that the gravity and magnitude of the contravention was low, the contravention was not repeated or continuous, Interwest has no previous similar contraventions and Interwest was cooperative during the Ministry's investigation.

Taking into account the above factors I consider that a penalty in the amount of $7,200 is appropriate in the circumstances. This amount includes the removal of Interwest's economic benefit, which I estimate to be $5,156. This penalty must be paid by March 26, 2019 subject to the stay under section 78 of the FRPA described below.

Determination does not forestall other actions that may be taken

Please note that this determination does not relieve Interwest 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 and penalty determination under section 71, I am authorized under section 79 of FRPA 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 604-702-5721 within this 15 day period.

Opportunities for review and appeal

If you have evidence that was not available at the time that I made this determination, you or another Interwest representative may request a review of my determination on the basis of this new evidence. A request for review must be in writing, must be signed by someone on Interwest's behalf and must contain:

- Interwest's name and address; and the name of the person, if any, making the request on your behalf;

- the address for serving a document to Interwest;
- the new evidence that was not available at the time this determination was made; and
- a statement of the relief requested.

This request should be directed to me, at 46360 Airport Road Chilliwack B.C., V2P 1A5 and I must receive it **no later than three weeks** after the date this notice of determination is given or delivered to Interwest.

The provisions governing reviews are set out in section 80 of FRPA and in the *Administrative Review and Appeal Procedure Regulation*. Please note the **3 week time limit** for requesting a review.

Interwest may appeal the determination or a decision made after completion of a review of the determination to the Forest Appeals Commission.

The appeal request must be signed by an authorized representative of Interwest and must contain:

- Interwest's name and address; and the name of the person making the request on its behalf;
- the address for serving a document to Interwest or the person acting on its behalf;
- the grounds for appeal;
- a statement of the relief requested; and
- a copy of this determination.

The Forest Appeals Commission must receive the appeal within **30 days** of this determination.

The provisions governing appeals are set out in sections 82 through 84 of FRPA, the *Administrative Review and Appeal Procedure Regulation* and the *Administrative Tribunals Act*. To initiate an appeal, you must file a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. A notice of appeal may be delivered to the following address:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **30 day time limit** for delivering a notice of appeal.

Determination is stayed pending review or appeal

Under section 78 of FRPA, my contravention 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.

Performance Record

As you are the holder of an agreement under the *Forest Act*, my determination under section 71 will become part of Interwest's performance record, pursuant to section 85(2) of FRPA, subject to decisions made on review or appeal.

Payment of Stumpage

Under section 103(3) of the *Forest Act*, a person who cuts, damages, destroys or removes Crown timber without authorization must pay stumpage. The amount of stumpage is based on:

- a determination under section 103(3) of the *Forest Act* of the volume or quantity of timber that has been cut, damaged, destroyed or removed; and
- a stumpage rate determination under section 105(1) of the *Forest Act*.

As the Minister's designate, I am authorized to make a determination of volume or quantity under section 103(3) of the *Forest Act*. I determine that Interwest cut 61 m^3 of Crown timber without authorization. Please note that the *Forest Act* does not provide for review or appeal of my determination under section 103(3), however, you may wish to consult with a lawyer in respect of other options that may be available to you, such as judicial review.

I am going to forward this matter to the appropriate Ministry representative in the SOUTH COAST REGION / FLNRORD to determine a stumpage rate under section 105(1) of the *Forest Act*. Please note that the determination of a stumpage rate is subject to appeal under the *Forest Act*.

Yours truly,

Randall Dayton RFT
Resource Manager Authorizations
Chilliwack Natural Resource District / South Coast Region

pc: Compliance and Enforcement Branch (CEHQAdmin@gov.bc.ca)
Forest Practices Board (Mark.Haddock@bcfpb.ca)

BRITISH COLUMBIA

File: 23060-20 – DJA-33940
Client ID: 00169844

January 22, 2018

Ben Hoy
K&D Logging Ltd
Bag 19
Fort St. James, BC
V0J 1P0

Dear Mr. Hoy

Re: Contravention Determination under Section 71 (2) (a) of the *Forest and Range Practices Act*

This is further to my letter dated June 12, 2017 and K&D Logging Ltd.'s (KDL) opportunity to be heard (OTBH) respecting the alleged contraventions of sections 105.1 (3) and 105 (5.2) of the *Forest Act* held on September 12, 2017. I have now made my determination in this matter and conclude that KDL contravened sections 105.1(3) and 105(5.2) and levy a penalty in the amount of $3,000.

Authority

The Minister of Forests, Lands, Natural Resource Operations and Rural Development has delegated to me, under section 120.1 of the *Forest and Range Practices Act* (FRPA), the authority to make determinations with respect to administrative contraventions and penalties under section 71 of FRPA.

Legislation

The Compliance and Enforcement (C&E) branch alleges that KDL contravened sections 105.1(3) and 105(5.2) of the *Forest Act*:

Forest Act

Complete and accurate information

105.1 (1) In this section:
"agreement" means an agreement in the form of a licence, permit or agreement referred to in section 12;
"applicant" means a person who applies for an agreement.

105.1 (2) An applicant who is required under this Act to submit information to the government must ensure that, at the time the information is submitted, the information is complete and accurate

105.1 (3) The holder of an agreement who is required under the agreement or this Act to submit information to the government
(a) for use in determining, re-determining or varying a stumpage rate, or
(b) for any other purpose under this Act,
must ensure that, at the time the information is submitted, the information is complete and accurate.

Stumpage rate determined

105(1) Subject to the regulation made under subsection (6) and orders under subsection (7), if stumpage is payable to the government under an agreement entered into under this Act or under section 103 (3), the rates of stumpage must be determined, redetermined and varied
(a) by an employee of the ministry, identified in the policies and procedures referred to in paragraph (c),
(b) at the times specified by the minister, and
(c) in accordance with the policies and procedures approved by the minister…

105(5.1) The policies and procedures referred to in subsection (1) (c) may require the holder of an agreement to submit information to the government as necessary or desirable for the determination, redetermination or variation of a stumpage rate.

105(5.2) The holder of an agreement who is required, under the policies and procedures referred to in subsection (1)(c), to submit information referred to in subsection (5.1) must comply with the requirement.

The Interior Appraisal Manual (IAM) includes policies and procedures to be used in the determination, redetermination and variance of stumpage rates in the Interior Area, as referenced in section 105(1)(c) of the *Forest Act*. The IAM describes circumstances under which a person is required to submit information to the government. The IAM also describes the procedure that applies when a changed circumstance exists:

2.2.1 Changed Circumstances

2. This subsection applies to cutting authorities issued on or after July 2, 2014. For those cutting authorities issued prior to July 2, 2014 use section 2.2.1(1) as it was prior to July 1, 2014.

In this manual a changed circumstance means a circumstance where:

b. The licensee or a contractor working on the licensee's behalf carries out or will carry out development on the cutting authority area such that there will be a difference of at least 10% between:

i. the total appraised development cost estimate if it is recalculated under chapter 4 on the basis of the development actually carried out, to the extent this development is in accordance with chapter 4, and

ii. the total appraised development cost estimate used in the most recent appraisal or reappraisal, where this difference results from circumstances other than a change

2.2.1.1 Changed Circumstances Reappraisal Procedure

1. Where the cutting authority was issued prior to August 1, 2005, the licensee must submit an appraisal data submission to the district manager immediately if a changed circumstance has occurred.

2. a. Except for a changed circumstance under section 2.2.1 (2) (e), the licensee must submit an appraisal data submission to the district manager within:

i. 60 days of completion of log transportation activities or no later than 30 days prior to the expiry of the cutting permit whichever comes first; or

if the cutting authority must be reappraised because of a changed circumstance under section 2.2.1.

Forest and Range Practices Act

Administrative Penalties

71(1) The minister, after giving a person who is alleged to have contravened a provision of the Acts an opportunity to be heard, may determine whether the person has contravened the provision.

For the purposes of section 71(1), the Acts is defined as:

Definition for Part 6

58.1 In this Part, **"the Acts"** means one or more of this Act, the regulations or the standards or the *Forest Act*, the *Range Act* or a regulation made under the *Forest Act* or the *Range Act*.

Issues

The following issues are relevant to this determination:

1. Did KDL contravene sections 105.1 (3) and 105 (5.2) of the *Forest Act?*
2. Do any of the defences of due diligence, mistake of fact or officially induced error apply?
3. If KDL contravened and none of the defences apply, what amount of penalty, if any, is appropriate?

After considering the evidence presented to me, and for the reasons presented below, it is my determination that:

1. KDL contravened sections 105.1 (3) and 105 (5.2) of the *Forest Act*;
2. none of the defences apply; and
3. it is appropriate to levy a penalty in the amount of $3,000 under section 71(2)(a)(i) of FRPA, which, subject to the stay referred to below, must be paid by February 28, 2018. A separate invoice will be sent to KDL once all review and appeal periods have passed.

Summary of the evidence and findings of fact

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

- Non Replaceable Forest License (NRFL) A84161 was awarded to Northern Interior Forest Products under section 13 of the *Forest Act* on August 1, 2008 with a five year term ending on August 1, 2013.
- Effective December 31, 2013, Northern Interior Forest Products and KDL amalgamated operations, which at that time KDL assumed control of NRFL A84161. This NRFL is an agreement under the *Forest Act*. It is with this license that KDL applied for Cutting Permit (CP) M.
- A license expiry date extension was granted by the Omineca Natural Resource Region Regional Executive Director on April 23, 2013, whereby providing a new license expiration date of July 31, 2015.
- On July 31, 2014, John den Engelsen, a representative of KDL, submitted an Electronic Commerce Appraisal System (ECAS) data submission for CP M.

- The ECAS submission for CP M included sixteen road segments that would be built for CP M. Nine long-term roads and seven-short term road segments.
- The original appraisal cost estimate to build the sixteen road segments was $155,728.54.
- Tony Wipfli, the Regional Timber Pricing Officer, made a stumpage rate determination, which became effective on August 6, 2014.
- CP M was issued for NRFL A84161 on August 6, 2014.
- CP M was a five block cutting permit. Log transportation activities in relation to CP M commenced on September 30, 2014. Log transportation activities were completed on January 21, 2015.
- On February 22, 2015, KDL submitted a request for a second extension to the license expiry date. The Omineca Natural Resource Region Regional Executive Director granted a 60 day extension to the expiry date, which provided for a new expiration date of September 30, 2015.
- The expiry date for CP M was July 31, 2015.
- On October 6, 2015, John Paul Wenger, Forestry Superintendent for KDL, submitted an interior appraisal data submission for NRFL A84161 CP M into ECAS, which was intended to contain accurate information on the timber to be harvested, site conditions, harvesting, development, silviculture plans and other information, all prepared according to the IAM. The interior appraisal data submission also included a certification statement, whereby the information provided within the appraisal document would meet the standards expected of a member of the Association of British Columbia Forest Professionals.
- On January 29, 2016, KDL's interior appraisal data submission was sent to Geoff Chambers, who is the Omineca Region Timber Pricing Officer, after a cursory review was completed by Stuart Nechako Natural Resource District Authorization Technician Sue Forshner.
- On February 15, 2016, Mr. Chambers commented on the receipt of KDL's interior appraisal data submission:

  The appraisal data submission does not appear to be consistent with gravelling works carried out on site. Please ensure a complete assessment of the cutting authority area is conducted and the appraisal data submission is consistent with development works carried out. Also, the effective date should be the day after the original appraisal not the minister's directed reappraisal."
- On March 1, 2016, Mr. Wenger requested that a joint field visit with the Ministry be completed on CP M.
- On May 30, 2016, Mr. Wenger and C&E Natural Resource Officer (NRO) Kelly Shook and NRO Supervisor Jeff Jones met and completed a joint field visit on CP M block HAT 405. The group, during this field visit, agreed that no gravel had been applied to the roads in question.
- On May 31, 2016, after the field visit, Mr. Wenger submitted another interior appraisal data submission on behalf of KDL in relation to the absence of gravel on HAT 405.

- On May 31, 2016, Mr. Chambers commented on the receipt of the KDL interior appraisal data submission:

  "JP, could you also please change the effective date to the day after the original effective date, not the day after the Minister's directed reappraisal (ref sec 2.2.1.2(4)). So it should be Aug 7, 2014 instead of July 2/15."

- On June 14, 2016, Mr. Chambers made a stumpage rate determination. The determination had an effective date of August 7, 2014 and included a total road development cost of $110,962.56.

While not necessarily under dispute, Ministry staff presented the following evidence:

- On September 16, 2015, NROs Shook and Maley conducted a field inspection on CP M. The inspection results revealed that 10 of the 16 roads constructed for the permit were built to short-term standards in contrast to the long term standards that KDL indicated in the appraisal.

- On September 17, 2015, NRO Shook and Tenures Forester Andrew Tait completed appraisal development cost comparisons. After changing the appraised long-term standard roads to short-term standard roads, the overall development costs, within the appraisal, were reduced from $155,728.54 to $109,411.52, a difference in $46,317.02, which amounts to a cost differential of approximately 29%.

- On October 20, 2015, NROs Shook and Maley accompanied Darius Low, the Omineca Region Timber Pricing Coordinator, on a field visit of CP M. The group found during the field visit that the information in KDL's October 6, 2015 appraisal was not in accordance with the IAM; specifically it was found that no gravel had been applied on HAT 405 Road permit - 0.3 km or HAT 405 Spur C – 0.4 km.

Similarly, while not necessarily under dispute, KDL presented the following evidence:

- On October 1, 2015, Mr. Wenger sent an email to NRO Shook:

  "I was under the impression that we did not have to complete a reappraisal or certification statement until 2 months after the expiry of the CP, and this CP expired July 31, 2015"

- In another email from October 1, 2015, Mr. Wenger wrote:

  "*…I don't completely agree with all the inspections, some of the roads were graveled as well as some are long term, two sides were ditched and the road was built up to a long term standard. I will be submitting the change circumstance to what I think is correct*."

- During the OTBH on September 12, 2017, KDL did not deny that it missed the 60 day reporting period in which to submit a change of circumstance re-appraisal.

- During the OTBH, Mr. Wenger provided five separate invoices which described gravel truck, crawler tractor and loader services. The services were for transporting, off loading and spreading of gravel along the Hat Lake Road from September 30 to October 2, 2014. The invoices included hand written post-invoice job numbers. Mr. Wenger identified gravelling works for CP M, as job 1315. The combined value of the invoices for job 1315 is $16,361.73.

- KDL acknowledged that during the period of time in which CP M was being harvested, it did not have a system in place to track changed circumstances. Similarly, KDL did not have a system in place that tracked operational costs in a timely manner.

- Mr. Wenger occasionally conducted field visits to verify whether the harvest operations being conducted would match the development costs that were identified within the submitted appraisal for the applicable cutting permit. Because these visits only occurred once in a while, Mr. Wenger generally relied on information from the Logging Supervisor.

- The Logging Supervisor provided maps to KDL which identified road sections that had gravel surfacing applied. The maps that were provided to the Forestry Superintendent included hand written notes describing the road sections that had gravel surfacing applied.

- In some cases the Logging Supervisor would provide information to the Forestry Superintendent that could not be confirmed in the field. Some cut block roads were identified as being graveled, that actually weren't graveled. Also some long term roads were identified as being ditched, but in fact were not ditched. As well, some blocks were identified as not having gravel surfacing applied, but once inspected, the road showed that gravelling had been applied.

- KDL recently purchased and instituted a new forestry management system that is intended to track their forest operations.

Issue 1: Did KDL contravene sections 105.1(3) and 105(5.2) of the *Forest Act?*

I find that KDL contravened sections 105.1(3) and 105(5.2) of the *Forest Act* and my reasons are as follows:

Section 105.1(3)

The information that KDL provided to the Ministry on October 6, 2015 in its interior appraisal submission was not accurate.

Section 105.1(3) describes the requirement for licensees to submit complete and accurate information:

> *(3) The holder of an agreement who is required under the agreement or this Act to submit information to the government*
>
> *(a) for use in determining, redetermining or varying a stumpage rate, or*
> *(b) for any other purpose under this Act,*
> *must ensure that, at the time the information is submitted, the information is complete and accurate.*

KDL was required to submit information to the government under section 105(5.2) of the *Forest Act*, in accordance with the IAM, for use in determining the stumpage rate because of a Changed Circumstance. Section 2.2.1 of the IAM indicates why KDL was required to submit a Changed Circumstance re-appraisal. Paragraph 2(b) states:

> *1) The licensee or a contractor working on the licensee's behalf carries out or will carry out development on the cutting authority area such that there will be a difference of at least 10% between:*
>
> *i. the total appraised development cost estimate if it is recalculated under chapter 4 on the basis of the development actually carried out, to the extent this development is in accordance with chapter 4, and*
>
> *ii. the total appraised development cost estimate used in the most recent appraisal or reappraisal, where this difference results from circumstances other than a change in the manual or a change as a result of a stumpage adjustment.*

The percent difference between KDL's appraised value and the actual development costs of CP M was more than 10% and up to 29%, triggering the requirement for KDL to submit a reappraisal. KDL's requirement to submit a re-appraisal due to Changed Circumstances under section 2.2.1 of the IAM is consistent with the criteria described in section 105.1(3)(a) of the *Forest Act* since reappraisals are used to determine a stumpage rate. A Changed Circumstance reappraisal must reflect the actual development that has been completed and a reappraisal submission that does not reflect the actual development completed is considered inaccurate.

KDL's original engineering cost estimate for CP M identified 16 road segments made up of nine long-term roads and seven short-term roads. KDL's cost estimate had an appraised value of $155,728.54.

The harvest inspection that C&E conducted on September 16, 2015 identified that 10 of KDL's 16 roads constructed for CP M were built to short-term standards instead of seven short-term roads as indicated in the initial appraisal. Short-term roads typically cost less to build than long-term roads and as a result, KDL's development costs were lower than initially expected.

Based on the September 16, 2015 inspection, the Ministry calculated that KDL's actual development costs were $109,411.52. The percent difference between the appraised value of $155,728.54 and the actual development costs of $109,411.52 is approximately 29%, which again triggered KDL's requirement to submit a reappraisal.

Mr. Wenger provided five invoices to me during the OTBH, which identified gravelling works on the Hat Lake FSR. In my view, those invoices did not sufficiently detail which cut blocks had gravel surfacing applied. Based on those invoices it is clear that gravel was applied somewhere along the Hat Lake Road between September 30 and October 2, 2014. However, on a balance of probabilities, it is unclear whether gravel was applied on the sections of road that were identified to have gravel surfacing within CP M and if so, to what extent.

Ultimately, based on KDL's evidence, I am not satisfied that the amount of money KDL spent on spreading gravel on Hat Lake Rd. within CP M reduced the difference between the initial appraisal and actual costs to below 10%. As such, there was a changed circumstance requiring KDL to submit information for a re-appraisal and KDL's initial submission was not accurate.

Mr. Wenger, on behalf of KDL, indicated at the OTBH that he was not interested in pursuing or focusing on the issue of the gravel invoices when he said:

> "*But at this point, to me, it's not the question. This is already a couple of years old. I'm not going to go back and I'm not going for a few thousand dollars. I'm not going to re-run and try to get everything reversed, get everything done.*"

Section 105(5.2)

KDL failed to submit its appraisal data submission to the Ministry within 60 days of completion of log transportation activities. In doing so, KDL contravened section 105(5.2), which requires licensees to submit information for the determination, redetermination or variation of a stumpage rate in accordance with policies and procedures, the IAM in particular.

Section 2.2.1.1 of the IAM describes the date by which a licensee must submit a Changed Circumstance Appraisal. Paragraph 2(a) of that section states that:

> *"… the licensee must submit an appraisal data submission to the district manager within sixty days of completion of log transportation activities or no later than thirty days prior to the expiry of the cutting permit whichever comes first… if the cutting authority must be reappraised because of a changed circumstance under section 2.2.1."*

The date on which KDL's log transportation activities were complete on CP M was January 21, 2015.

A development cost difference of greater than 10% triggered the requirement for KDL to submit a Changed Circumstance Reappraisal within 60 days of the completion of log transportation activities. In the case of CP M, KDL was required to submit a Changed Circumstance Reappraisal by March 22, 2015.

KDL submitted its changed circumstance re-appraisal for CP M on October 6, 2015, which was 258 days after the completion of log transportation activities or 198 days past the March 22, 2015 deadline. At the OTBH, KDL agreed that it missed the deadline to submit a Changed Circumstance Re-appraisal.

It appears that Mr. Wenger misinterpreted the language within the IAM. The IAM includes two specific requirements. Section 2.2.1 (1)(b)(i) describes the time in which a forest professional must submit a Changed Circumstance Certification, which is; "*i. No later than 60 sixty days after the cutting authority expiry date"*. Section 2.2.1.1(2)(a)(i) describes the Changed Circumstance Reappraisal Procedure, which is; "*i. 60 sixty days of the completion of log transportation activities or no later than 30 days prior to the expiry of the cutting permit whichever comes first;"*.

Mr. Wenger acknowledged that he erred in thinking that the Changed Circumstances Certification deadline was the timeframe in which to submit a Changed Circumstance Reappraisal.

Issue 2: Do any of the defences of due diligence, mistake of fact or officially induced error apply?

KDL did not raise any defences and I am satisfied that the facts do not support any of the defences set out in section 72 of FRPA.

KDL took some steps to track potential changed circumstances, but in my view, these steps were insufficient to support a defence of due diligence. KDL acknowledged that it did not have an adequate system in place to track changed circumstances.

Mr. Wenger indicated in his October 1, 2015 email to NRO Shook, "…..*I will be submitting the change circumstance to what I think is correct.*" Mr. Wenger indicated during the OTBH that *"we do get onto the blocks once and while and most of the time we take the information from our logging supervisors."* Mr. Wenger also indicated that most of the information provided by the Logging Supervisor was accurate, but occasionally some of the information provided by the Logging Supervisor and invoices submitted by KDL's contractors would be inaccurate.

Mr. Wenger placed a significant amount of trust in the Logging Supervisor to provide Changed Circumstance development cost details and in this case the details provided were not completely accurate. By trusting the Logging Supervisor to provide accurate information, those inaccuracies filtered into the Changed Circumstance Reappraisal completed by Mr. Wenger. With inaccurate information incorporated into the reappraisal, this negates the opportunity to have an accurate submission.

As a Registered Professional Forester, Mr. Wenger has a responsibility to inspire confidence in the profession and to the public by maintaining high standards in conduct and daily work. In this case, without a robust system in place to confirm development costs and ensure the accuracy of the information received by the Logging Supervisor, as a Forest Professional, Mr. Wenger should have personally completed prompt on-site field visits during road building activities to confirm that the application of the gravel on CP M was completed as appraised. During the OTBH, Mr. Wenger indicated "….*I should have done my due diligence better of being on site, [sic] and understanding of what's going on."*

In 2014, KDL did not have a robust quality assurance system in place in which to track changes that occur during harvest operations. Mr. Wenger indicated during the OTBH that in 2014, KDL did not have a robust system in place to track Changed Circumstances *"I know there is a very much tighter way of collecting information now, we're in that post appraisal reconciliation model with pictures that are georeferenced and everything else right, and so stuff like this won't happen in the future, shouldn't happen in the future. This one here, back in 2014, was a little bit looser ….."*

KDL has since upgraded their forestry as well as their accounting systems to better manage the various facets and functions in which the company operates.

Issue 3: Is a penalty appropriate and if so how much?

Under section 71(2)(a)(i) of FRPA and section 8 of the *Administrative Orders and Remedies Regulation*, I am authorized to levy a penalty for the contravention of section 105(5.2) up to $500,000 and for section 105.1(3) up to $100,000.

Alternatively, under section 71(2)(a)(ii) of FRPA, I may refrain from levying a penalty if I consider that the contravention is trifling and that it is not in the public interest to do so. If I do levy a penalty, I must consider the following factors in section 71(5)(a)(ii) of FRPA:

(a) KDL's previous contraventions, if any, of a similar nature

- I am not aware of any previous KDL contraventions of a similar nature.

(b) The gravity and magnitude of the contravention

- I regard the gravity and magnitude of the contraventions to be quite low. The contraventions did not result in any loss to Crown revenue or resources. Nevertheless, it is important that licensees submit changed circumstances reappraisals as required by the *Forest Act* and the applicable policy as set out in the IAM.

(c) Whether the contravention was repeated or continuous

- The contraventions were not repeated or continuous.

(d) Whether the contravention was deliberate

- There is no evidence to suggest that KDL contravened the *Forest Act* deliberately.

(e) Any economic benefit KDL derived from the contravention

- There is no evidence to suggest or indicate that KDL derived any economic benefit from these contraventions.

(f) KDL's cooperativeness and efforts to correct the contravention

- KDL has been fully cooperative and has implemented new procedures to their system to reduce the risk that similar issues arise in the future.

(g) Any other considerations that the Lieutenant Governor in Council may have prescribed

- There are none.

Having regard to the facts of this case, I have decided that the contraventions are not trifling and that it is therefore appropriate to levy a penalty in the amount of $3,000. My reasons are as follows:

All of the factors described above weigh in KDL's favour. KDL did, however, commit two contraventions and I consider that a penalty of $3,000 will provide an adequate deterrent to KDL, by prompting KDL to continually review its systems and procedures to reduce the possibility that these or similar kinds of contraventions will occur in the future. The allegations alone have been an effective deterrent in that it has resulted in changes to KDL's system for tracking. The penalty is also intended to send a message to other forest licensees and the public that high levels of diligence must be demonstrated when operating on Crown land. I am confident that the investigation and OTBH processes in themselves, and the resulting impact on KDL's performance record, will provide an additional message of deterrence against future contraventions of this nature.

Determination does not forestall other actions that may be taken

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

Opportunity for correcting this determination

For 15 days after making this contravention determination and penalty determination under section 71, I am authorized under section 79 of FRPA 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.

Opportunities for review and appeal

If you have new information that was not available at the time I made this determination, you may request a review of my determination on the basis of this new information. A request for review must be in writing, must be signed by you, or on your behalf, and must contain:

a. your name and address; and the name of the person, if any, making the request on your behalf;
b. the address for serving a document to you or the person acting on your behalf;
c. the new evidence that was not available at the time this determination was made; and
d. a statement of the relief requested.

This request should be directed to me, at P.O. Box 190, Vanderhoof, BC V0J 3A0 and I must receive it ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 80 of FRPA and in the *Administrative Review and Appeal Procedure Regulation*. Please note the **3 week time limit** for requesting a review.

Alternatively, if you disagree with this determination, you may appeal directly to the Forest Appeals Commission.
The notice of appeal request must be signed by you, or on your behalf, and must contain:

a. your name and address; and the name of the person, if any, making the request on your behalf;
b. the address for serving a document to you or the person acting on your behalf;
c. the grounds for appeal;
d. a statement of the relief requested; and
e. a copy of this determination.

The Forest Appeals Commission must receive the appeal ***within 30 days*** after the date this notice of determination is given or delivered to you.

The provisions governing appeals are set out in sections 82 through 84 of FRPA and in the *Administrative Review and Appeal Procedure Regulation*. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. A notice of appeal may be delivered to the following address:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **30 day time limit** for filing a notice of appeal.

Determination is stayed pending review or appeal

Under section 78 of FRPA, 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.

Performance Record

As you are the holder of an agreement under the *Forest Act* my determinations under section 71 will become part of your performance record, pursuant to section 85(2) of FRPA, subject to decisions made on review or appeal.

Yours truly,

David Van Dolah, RFT
District Manager
Stuart Nechako
Natural Resource District

pc: Ian Brown, RPF, Regional Compliance Leader, Omineca Region
Compliance and Enforcement Branch
Forest Practices Board

BRITISH COLUMBIA | Ministry of Forests, Lands, Natural Resource Operations and Rural Development

File: 23060-40 – K50619 (2015)

December 18, 2018

Notice of determination that there are no grounds for an order under section 25 of the *Wildfire Act*

s.22

Dear s.22 :

This is further to my letter dated January 15, 2018 respecting the allegation that you may have caused wildfire K50619 on August 14, 2015. In that letter, you were offered an opportunity to be heard ("OTBH"). You initially requested an oral hearing but then decided to send a written submission.

I have now made a determination based on all of the available evidence and conclude, pursuant to section 25(3) of the *Wildfire Act*, that you did not cause or contribute to the spread of the wildfire. Accordingly, there is no basis for me to issue a cost-recovery or damages order under section 25(1). On August 9, 2018 I called to inform you of the outcome, and this letter represents my reasons for the decision.

Authority

The Minister of Forests, Lands, Natural Resource Operations and Rural Development has delegated to me, under section 58(1) of the *Wildfire Act*, the authority to make determinations under section 25 of that *Act* with respect to the government's costs of fire control and the value of government property damaged or destroyed as a result of the fire.

Legislation

In making my determination, I have considered section 25 of the *Wildfire Act*:

Ministry of Forests, Lands, Natural Resource Operations and Rural Development | BC Wildfire Service Northwest Fire Centre | 3359 Victoria Drive Smithers, BC V0J 2N0 | Tel: (250) 847-6612 Fax: (250) 847-7470

Wildfire Act

Recovery of fire control costs and related amounts

25 (1) After the government has carried out, for a fire on Crown land or private land, fire control authorized under section 9, the minister may:

(a) determine the amount of the government's costs of doing so, calculated in the prescribed manner;

(b) determine the amount that is equal to the dollar value of any:

(i) Crown timber;

(ii) other forest land resources;

(iii) grass land resources; and

(iv) other property

of the government damaged or destroyed as a direct or indirect result, of the fire, calculated in the prescribed manner; and

(c) determine the costs

(i) that have been or will be incurred by the government in re-establishing a free growing stand as a direct or indirect result of the fire; and

ii) that have been incurred by the government for silviculture treatments that were rendered ineffective as a direct or indirect result of the fire.

(2) Subject to subsection (3), the minister, except in prescribed circumstances, by order may require a person to pay to the government the amounts determined under subsection (1) (a) and (b) and the costs determined under subsection (1) (c), subject to any prescribed limits, if the person

(a) is a holder of a leasehold interest, under a lease in a prescribed category of leases from the government, of the Crown land on which a fire referred to in subsection (1) originated;

(b) is an occupier of Crown land that is subject to a lease referred to in paragraph (a) who occupies the Crown land with the permission of the holder of the lease; or

(c) is an owner of the private land on which a fire referred to in subsection (1) originated or is a holder of a leasehold interest in that private land, or is an occupier of that private land with the permission of the owner or holder.

(3) The minister must not make an order under subsection (2) unless the minister, after giving the holder, occupier or owner an opportunity to be

heard or after one month has elapsed after the date on which the person was given the opportunity to be heard, determines that the holder, occupier or owner caused or contributed to the fire or the spread of the fire.

(4) The minister must give written notice of an order made under subsection (2) to the person who is the subject of the order, accompanied by a copy of the order and informing the person of:

(a) the amounts payable by the person to the government under the order and the person's liability under section 130 of the *Forest Act* to pay that amount;

(b) the reasons for the order; and

(c) the person's right to a review under section 37 or to an appeal under section 39, including an address to which a request for a review or appeal may be delivered.

Background

On August 14, 2015, a wildfire started northwest of Oliver, BC. The wildfire was assigned the incident number K50619.

Air tankers, helicopters, and BC Wildfire Service (BCWS) fire suppression crews and personnel were dispatched by the Kamloops Fire Centre to suppress and control wildfire K50619.

The Regional District of Okanagan-Similkameen put an evacuation order in place on August 14, 2015 for the town of Oliver due to the close proximity of the wildfire. The evacuation order was downgraded to an evacuation alert on August 15, 2015, which was then rescinded on August 23, 2015.

Ministry investigators were deployed to wildfire K50619 on August 15, 2015 to determine its origin and cause.

The investigators prepared a report indicating that wildfire K50619 was caused by non-conforming wiring at an outdoor work area on your property. The BC Safety Authority corroborated that non-conforming wiring was evident in several areas after conducting its own investigation. Reports indicated that the likely cause of the fire was a circuit breaker panel box which was connected to a residential electrical extension cord. Ignition was possibly caused by electrical malfunction creating sparks and/or burning debris, igniting light forest fuels of grass and ponderosa pine needles.

BCWS fire suppression efforts continued until August 24, 2015 and the last patrol of the wildfire occurred on August 29, 2015. Wildfire K50619 was officially declared out on December 16, 2015 with a final size of 317 hectares.

Determination

After considering the evidence and submissions in this case, I determine under section 25(3) of the *Wildfire Act* that you did not cause wildfire K50619. Therefore, there is no basis and I do not have the authority, to order you to pay to the government the government's fire control costs or the value of government property damaged or destroyed as a result of the wildfire.

In the sections that follow, I will outline the evidence in the case and explain the reasons for my determination.

Summary of the evidence

I provided a copy of the Ministry's case binder to you with my letter inviting you to an OTBH. The Ministry's case binder included:

- an incident summary;
- investigative findings and reports;
- fire origin and cause analysis;
- BC Safety Authority report;
- Provincial Office of the Fire Commissioner report; and
- a comprehensive description of the firefighting costs incurred by the Province

Ministry representatives presented the following relevant evidence and submissions in its case binder:

- The investigation report indicated that the origin of the wildfire was an electrical panel box hanging from a tree in an open workshop area on your property. Investigators analyzed and excluded other possible causes, including lightning, campfire, open burning, arson, juvenile fire setter, fire use, equipment use, railroads, and discarded match or smoking substance. Possible causes included for further analysis were electrical transmission line, secondary consumer electrical and residential installed wiring.

- The BC Safety Authority reported that the electrical panel box had numerous non-conforming electrical wiring elements; there was no evidence of any protection from weather elements, it was connected to conductors unsuitable for a free air hanging application, electrical feed was from underground, and the panel box itself showed evidence of high heat and fire damage.

- The Office of the Fire Commissioner was unable to determine the cause of the wildfire.

Eileen E. Vanderburgh, of Alexander Holburn Beaudin + Lang LLP, submitted evidence and written submissions to me on your behalf consisting of:

- affidavit and statement of s.22
- statement of s.22 , attending fire fighter from the Oliver Fire Department;
- statement of s.22 , attending fire fighter from the Oliver Fire Department;
- statement of s.22 , captain with the Oliver Fire Deparment;
- statement of s.22 , powerline technician from South Okanagan Line Construction; and
- photographs and video that s.22 recorded of the wildfire and the open workshop area, including the electrical panel in question

Ms. Vanderburgh presented the following evidence and submissions that I base my determination on:

- The video that s.22 recorded at 18:18 (6:18 pm) of the wildfire shows the fire on the hillside behind the open workshop area with the electrical panel still intact at that time. The land and road between the workshop area and the wildfire was unburnt at this time.

- The photographs that s.22 took at 18:22 (6:22 pm) show the area around the open workshop prior to the wildfire reaching that point, with the wildfire fully engaged in the background. The land and road between the workshop and the wildfire was unburnt at this time. Estimating an average road width and average height of the trees shown, the fire appears to be approximately 12 – 15 meters from the workshop area at this time.*

Analysis of the evidence

I conclude that the facts do not support a finding that you caused wildfire K50619. My reasons for this conclusion follow in the bullet points below:

- On a balance of probabilities, it is unlikely that your electrical panel caused wildfire K50619. My decision on the issue of cause is primarily based on the video and photographic evidence that s.22 offered. His evidence is direct and gives me confidence that the electric panel did not cause the wildfire.

- The video that s.22 recorded clearly shows the wildfire fully engaged on the hillside across the dirt road behind the open workshop area of your property and the hanging electrical panel still intact and unburnt at that time. The ground behind the outdoor work area at the time of the video was

unburnt all the way up to the road. Accordingly, I find that the electrical panel did not cause or contribute to the spread of wildfire K50619.

- s.22 photographs are consistent with his video, showing that the wildfire was fully engaged in the area behind the open workshop before spreading and burning the open workshop area.

- The video and photographic evidence is sufficiently strong and persuasive to rebut the Ministry's evidence that non-confirming wiring on the electric panel caused the wildfire. While I accept the Ministry's evidence that the wiring on the panel was non-conforming, that, on its own and in light of the other evidence, is not sufficient to establish that the wiring or panel caused the wildfire.

Based on my findings and analysis, I have no power to consider making an order under section 25 of the *Wildfire Act* regarding the payment of the government's fire control costs or the value of government property damaged or destroyed as a result of the wildfire.

Determination does not forestall other actions that may be taken

Please note that these determinations and under section 25 of the *Wildfire Act* do not relieve you from any other actions or proceedings that the government is authorized to take with respect to the above-noted wildfire.

Opportunity for correcting this determination

For 15 days after making this determination, I am authorized under section 35(1) of the *Wildfire Act* to correct typographical, arithmetical, or 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) 847-6612 within this 15 day period.

Opportunities for review and appeal

The *Wildfire Act* provides you with an opportunity to request a review if you have new information that was not available at the time that I made this determination. Since the outcome of this determination is in your favour, I am not providing details about how to request a review. Should you choose to request a review, please refer to section 37 of the *Wildfire Act* and the *Administrative Review and Appeal Procedure Regulation*. A request for review should be made in writing and directed to:

Kathleen Werstiuk
Manager, Wildfire Risk
BC Wildfire Service

2nd Floor, 2957 Jutland Road
Victoria, BC V8T 5J9

The request must be received ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The *Wildfire Act* also provides you with a right to appeal to the Forest Appeals Commission should you disagree with this determination. Since the outcome of this determination is in your favour, I am not providing details about how to file an appeal. Should you choose to file an appeal, please refer to sections 39 through 41 of the *Wildfire Act* and sections 140.1 through 140.7 of the *Forest and Range Practices Act*.

The appeal request must be in writing and must be signed by you, or on your behalf. The Forest Appeals Commission must receive it ***within thirty days*** of this determination. The address for the Forest Appeals Commission is:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **thirty day time limit** for delivering a notice of appeal.

Yours truly,

DMackay

Diane Mackay
Fire Centre Manager
Northwest Fire Centre

cc: Laurence Bowdige, Superintendent Wildfire Recovery, BC Wildfire Service
Kathleen Werstiuk, Manager, Wildfire Risk, BC Wildfire Service
Jennifer Young, SWO-Prevention, BC Wildfire Service
Nathan Murray, Manager Litigation and SDM Support, FLNRO
Mark Haddock, General Counsel, Forest Practices Board
Robert Schweitzer, a/Director, Wildfire Operations, BC Wildfire Service

BRITISH COLUMBIA

File: 23060-20 - 33854
00014942

May 31, 2018

s.22

Dear s.22 :

Re: Contravention determination and notice of penalty levied under section 71(2)(a) of the *Forest and Range Practices Act*

This is further to my letter dated December 14, 2017 and your opportunity to be heard (OTBH) respecting the alleged contravention of section 52(1) of the *Forest and Range Practices Act* (FRPA). I have now made my determination in this matter and have concluded that you did contravene section 52(1) when your contractor cut and damaged 149.2 m^3 of Crown timber without authorization and I am levying a penalty of $250.

Authority

The Minister of Forests, Range, Natural Resource Operations and Rural Development has delegated to me, under section 120.1 of FRPA, the authority to make determinations with respect to administrative contraventions and penalties under section 71 of FRPA.

Legislation

The Compliance and Enforcement branch (C&E) alleges that you contravened section 52(1) of FRPA:

> ***Unauthorized timber harvesting***
>
> **52** (1) A person must not cut, damage or destroy Crown timber unless authorized to do so
>
> (a) under this Act, the *Forest Act* or an agreement under the *Forest Act*,

Ministry of Forests Lands and Natural Resource Operations and Rural Development
Selkirk Forest District
1907 Ridgewood Road
1907 Ridgewood Road
Tel: 250-825-1100
Fax: 250-825-9657

(b) by the minister, for silviculture, stand tending, forest health, abating a fire hazard related to wildfires or another purpose,

(b.1) under the *Wildfire Act*,

(c) under a grant of Crown land made under the *Land Act*,

(d) under the *Park Act*, or

(e) under the regulations, in the course of carrying out activities

(i) under an authorization referred in section 51 or 57, or

(ii) that are incidental to or required to carry out activities authorized or approved under this Act, the *Forest Act*, the *Range Act* or another prescribed enactment.

Sections 52(4) and 71(3) of FRPA are relevant to my determination since your contractor is the person alleged to have physically harvested the Crown timber without authorization:

Unauthorized timber harvesting

52(4) If a person, at the direction of or on behalf of another person,

(a) cuts, damages or destroys Crown timber contrary to subsection (1), or

(b) removes Crown timber contrary to subsection (3),

that other person also contravenes subsection (1) or (3).

Administrative Penalties

71...(3) Subject to section 72, if a person's contractor, employee or agent contravenes a provision of the Acts in the course of carrying out the contract, employment or agency, the person also contravenes the provision.

Sections 48(1)(e), 49(1) and 49(2)(c) of the *Forest Act* are relevant to my analysis of the statutory defences:

Free use permit

48 (1) A free use permit must be entered into only with... (e) an owner of a Crown grant of a mineral claim, authorizing the use of Crown timber on land described in the grant in a mining operation conducted on that land,

Issuance and content of free use permit

49 (1) The minister may enter into a free use permit with a person or treaty first nation qualified under section 48.

(2) A free use permit (a) must be for a term not exceeding… (c) subject to subsection (2.1), must be limited to a volume not exceeding 50 m^3,

Issues

The following issues are relevant to this case:

1. Did s.22 contravene section 52(1) of FRPA?
2. If s.22 contravened section 52(1) of FRPA, do any of the defences of due diligence, mistake of fact or officially induced error apply?
3. If s.22 contravened and none of the defences apply, what amount of penalty, if any, is appropriate?

After considering the evidence presented to me and for the reasons presented below, I conclude that:

1. you contravened section 52(1) of FRPA;
2. none of the defences apply; and
3. it is appropriate to levy a penalty in the amount of $250 pursuant to section 71(2)(a)(i) of FRPA, which, subject to the stay referred to below, must be paid by July 31, 2018.

The rationale for my contravention determination and the decision to levy a penalty is explained in the paragraphs and pages that follow.

Background

s.22 holds a mining claim in Quartz Creek near Golden, BC. s.22 uses this claim for mineral exploration using a gold pan, and accesses the claim using an All-Terrain Vehicle (ATV). C&E discovered trails on his claim on September 5, 2015.

On or about July 2014, s.22 is alleged to have retained a contractor to construct ATV trails on his mining claim. To construct these trails, s.22 contractor removed trees on Crown land. C&E alleges that s.22 did not have the necessary authorization to cut, damage and destroy this Crown timber.

On January 8, 2018 s.22 contacted Sheila Crombie, C&E Supervisor, to inform her that he would not be making a verbal or written presentation on his own behalf. On February 8, 2018 the Selkirk Resource District received a letter from s.22 with

regards to the alleged contravention, contending that only two trees were cut and the others were danger trees that were pushed over. In the letter s.22
s.22

I phoned s.22 on February 26, 2018 to ensure that he had an opportunity to speak to the allegation. s.22 did not attend a formal OTBH with respect to the alleged contravention.

Summary of the evidence and findings of fact

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

- s.22 hired a contractor to construct All-Terrain Vehicle (ATV) trails on his mineral claim (943589) in July of 2014.
- s.22 contractor cut, damaged and destroyed trees while constructing the ATV trails.
- The trees that s.22 contractor cut, damaged and destroyed were located on Crown Land.
- s.22 did not have authorization to cut, damage or destroy the Crown timber that his contractor cut, damaged and destroyed.

With respect to the facts that are in dispute, C&E presented the following:

- s.22 cut, damaged and destroyed 149.2 m^3 of Crown timber on the mineral claim.
- The area of ATV trails that contained the Crown timber that was cut, damaged and destroyed is 0.72 hectares.
- On October 23, 2013, s.22 applied for a Notice of Work indicating that he intended to build approximately one kilometre of trail and cut a maximum of 10 m^3 of merchantable volume.
- On October 25, 2013, s.22 received a letter from the Ministry of Energy and Mines, which acknowledged his Notice of Work application and informed him that a *Mines Act* permit was not required. The letter also informed s.22 of the need to submit revised plans if more extensive work than described in the Notice of Work was anticipated.

In turn, you presented the following evidence:

- The contractor did not cut the trees during the construction of the ATV trails. The trees which are subject to this determination were pushed over by your contractor.
- The ATV trails that you constructed were located entirely within your mineral claim.

- Without providing additional information, the construction of the ATV trails s.22 s.22

- You relied on the knowledge of the contractor that you hired to build the ATV trails, as he was a local and has built many bike trails.

Having regard to the evidence before me, I have made the following findings with respect to the facts in dispute:

- s.22 contractor cut and damaged the 149.2 m^3 of Crown timber in question.
- s.22 hired the contractor to build the ATV trails on his claim, which included the cutting and damaging of Crown timber.
- s.22 did not have authorization to cut, damage or destroy the Crown timber in question.

My reasons for making these findings are as follows:

s.22 does not refute the fact that his contractor pushed over the trees in question during the construction of the ATV trails on his mineral claim. s.22 submitted that he thought he had authority to construct trails on his claim and that he did not cut the trees down. However, the legislation is clear that authorization is required to cut *or damage* Crown timber. This includes Crown timber on s.22 mineral claim. To the extent that s.22 may have been mistaken about his authority to cut and damage Crown timber, I will address this below in the section on defences.

s.22

s.22 I find that I do not have sufficient information in this regard, and as such, I find that s.22 was required to comply with section 52(1) of FRPA.

Issue 1: Do the facts support a finding of contravention if no defences apply?

I conclude that the facts set out above support a conclusion that you contravened section 52(1) of FRPA, unless one of the defences described in section 72 of FRPA applies.

Although you did not physically harvest the Crown timber in question, you own the mineral claim and were responsible for obtaining the appropriate authorization before cutting or damaging Crown timber. In addition, you directed your contractor to perform the ATV trail building and this work was completed on your behalf. In accordance with section 52(4) of FRPA, you contravened section 52(1) by directing your contractor. In addition, in accordance with section 71(3) of FRPA, you contravened section 52(1) when your contractor cut and damaged Crown timber without authorization in the course of carrying out a contract.

Issue 2: Do any defences apply?

I have determined that the facts do not support any of the defences described in section 72 of FRPA for the reasons described in the paragraphs below.

Due diligence

To successfully rely on the defence of due diligence, you must prove, on a balance of probabilities, that you took all reasonable care to avoid the contravention. This does not require doing everything that could possibly be done to prevent a contravention, but it does require you to show that you took all measures that would reasonably be expected in the circumstances to avoid contraventions. I find that you did not take appropriate steps to ensure that the appropriate authorization was in place, and therefore the defence of due diligence does not apply.

You failed to take reasonable steps to inform yourself of your obligations. You stated that you trusted your contractor to construct trails in accordance with the law. He was a local contractor, has constructed numerous bike trails and you believed him to be knowledgeable with respect to trail building requirements. However, other than this, you did not contact any qualified forest professionals or the Ministry to help you understand your obligations under forestry legislation.

You also had specific notice from the Ministry that approvals or permits may be required in certain circumstances. The Notice of Work that you provided to the Ministry of Energy and Mines was not reflective of the actual work that you conducted on your claim. The letter that you received from the Ministry of Energy and Mines specifically stated that another Notice of Work would be required for a change in work plans, and that other approvals or permits pertinent to other legislation might be required. It is incumbent on you as a tenure holder to understand your responsibility and adhere to all applicable legislation.

Mistake of Fact

A successful mistake of fact defence requires proving that the person reasonably believed in the existence of facts that if true would establish that the person did not contravene the provision. The fact or facts about which the person is mistaken must be integral to the commission of the contravention. In other words, but for that mistaken belief, the contravention would not have occurred.

You believed that you did not need to apply for harvesting authority on your mineral claim, however, you applied for harvesting authority outside of your mineral claim in March 2014 and were therefor familiar with the requirement to obtain harvesting authority and the process to do so. In addition, you submitted your Notice of Work and received notification from Ministry of Energy and Mines that further approvals or permits might be required. In my view, a prudent person in these circumstances, having received such a letter, would have made enquiries to confirm any belief that he had authorization and to determine if and what approvals or permits were required before cutting or damaging Crown timber.

Officially Induced Error

To successfully raise a defence of officially induced error, you must show that you reasonably relied on erroneous advice from a government official.

Although you have not raised the defence of an officially induced error, I have considered the role of the Ministry of Energy and Mines in this matter and whether its response to your Notice of Works, including not issuing a Free Use Permit, could form the basis of a successful defence. I conclude that the Ministry of Energy and Mines' response did not induce you to contravene FRPA. As such, the defence of officially induced error does not apply.

The Notice of Work application that you submitted to the Ministry of Energy and Mines stated that roughly 1.0 km of new road would be constructed, requiring the harvest of 10 m^3 of merchantable timber.

The Ministry of Energy and Mines' Notice of Work application included a system generated comment that a Free Use Permit would be required to cut up to 50 m^3 of merchantable timber and that it would be automatically applied for as part of the Notice of Work. Pursuant to section 49 of the *Forest Act*, the Ministry of Energy and Mines is authorized to issue a Free Use Permit for harvesting up to 50 m^3 in relation to a mineral claim. No evidence was provided that indicates a Free Use Permit was issued.

The Ministry of Energy and Mines acknowledged your Notice of Work application. Due to the nature of the proposed works on the claim, a *Mines Act* permit was not required or issued. Normally when a Ministry of Energy and Mines issues a *Mines Act* permit the Free Use Permit is attached. In this instance no *Mines Act* permit was issued and therefor no Free Use Permit was issued. The letter that the Ministry of Energy and Mines sent you did state that other authorizations may be required, and that an amended notice of work would be required if his plans changed.

The work that you completed on the ground exceeded the work anticipated in your Notice of Work. The volume cut or destroyed in relation to the Notice of Work was almost 15 times the expected volume in the Notice of Work, and three trails were constructed instead of one. Even if the Ministry of Energy and Mines had issued a Free Use Permit, the volume that you cut and damaged to construct the ATV trails would have significantly exceeded the volume that can be authorized in a Free Use Permit. For these reasons I find that the Ministry of Energy and Mines letter and non-issuance of a Free Use Permit did not induce you to commit this contravention, and the defense of officially induced error does not apply.

Issue 3: Is a penalty appropriate and if so how much?

Under section 71(2)(a)(i) of FRPA and section 13 of the *Administrative Orders and Remedies Regulation*, I am authorized to impose a penalty of up to $72,000 for the contravention, which is the product of the area of cut and damaged Crown timber (0.72 ha) and $100,000.

Alternatively, under section 71(2)(a)(ii) of FRPA, I may refrain from levying a penalty if I consider that the contravention is trifling and that it is not in the public interest to do so.

If I do levy a penalty, I must consider the following factors described in section 71(5) of FRPA:

(a) your previous contraventions, if any, of a similar nature;

s.22 does not have any previous contraventions.

(b) the gravity and magnitude of the contravention;

The gravity and magnitude of this contravention is limited, but not trifling. Although a third of the timber that was cut or damaged is Douglas Fir, which is an important species for habitat and biodiversity, the harvested area is in narrow corridors and the fallen timber remains on site and therefore continues to contribute to general biodiversity.

(c) whether the contravention was repeated or continuous;

The contravention was not repeated or continuous.

(d) whether the contravention was deliberate;

I do not believe this contravention was deliberate.

(e) any economic benefit you derived from the contravention;

s.22 did not derive any economic benefit from the contravention as no timber was removed from the site.

(f) s.22 cooperativeness and efforts to correct the contravention; and

s.22 has been helpful throughout and installed water bars on the ATV trails when asked to do so.

(g) any other considerations that the Lieutenant Governor in Council may have prescribed.

The Lieutenant Governor in Council has not prescribed any other considerations.

In my view, the contravention is not trifling and I am levying a penalty in the amount of $250.

Having considered all of the foregoing factors, I find that a low deterrent penalty is appropriate in this matter. The magnitude of the contravention is limited, this is your only contravention and you did not derive an economic benefit.

My decision on the penalty amount for this contravention takes into consideration, the stumpage bill that the Ministry will issue for the volume of harvested timber to ensure the Crown is made whole in this matter.

Determination does not forestall other actions that may be taken

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 and penalty determination under section 71, I am authorized under section 79 of FRPA 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 250-825-1101 within this 15 day period.

Opportunities for review and appeal

If you have evidence that was not available at the time that I made this determination, you may request a review of my determination on the basis of this new evidence. A request for review must be in writing, must be signed by you or someone on your behalf and must contain:

- your name and address; and the name of the person, if any, making the request on your behalf;

- the address for serving a document to you or the person acting on your behalf;
- the new evidence that was not available at the time this determination was made; and
- a statement of the relief requested.

This request should be directed to me, at 1907 Ridgewood Road, Nelson, BC, V1L 6K1, and I must receive it **no later than three weeks** after the date this notice of determination is given or delivered to you.

The provisions governing reviews are set out in section 80 of FRPA and in the *Administrative Review and Appeal Procedure Regulation*. Please note the **3 week time limit** for requesting a review.

A person who is the subject of this determination may appeal the determination or a decision made after completion of a review of the determination to the Forest Appeals Commission.

The appeal request must be signed by you, or on your behalf, and must contain:

- your name and address; and the name of the person, if any, making the request on your behalf;
- the address for serving a document to you or the person acting on your behalf;
- the grounds for appeal;
- a statement of the relief requested; and
- a copy of this determination.

The Forest Appeals Commission must receive the appeal within **30 days** of this determination.

The provisions governing appeals are set out in sections 82 through 84 of FRPA, the *Administrative Review and Appeal Procedure Regulation* and the *Administrative Tribunals Act*. To initiate an appeal, you must file a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. A notice of appeal may be delivered to the following address:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **30 day time limit** for delivering a notice of appeal.

Determination is stayed pending review or appeal

Under section 78 of FRPA, 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.

Stumpage owing

Under section 103(3) of the *Forest Act*, a person who cuts, damages, destroys or removes Crown timber without authorization must pay stumpage. The amount of stumpage is based on:

- a determination under section 103 (3) of the *Forest Act* of the volume or quantity of timber that has been cut, damaged, destroyed or removed; and
- a stumpage rate determination under section 105 (1) of the *Forest Act*.

As the Minister's designate, I am authorized to make a determination of volume or quantity under section 103(3) of the *Forest Act*. I determine that you have cut and damaged 149.2 m^3 without authorization. Please note that the *Forest Act* does not provide for review or appeal of my determination under section 103(3), however, you may wish to consult your legal counsel with respect to other options that may be available to you, such as judicial review.

I will now forward this file to the appropriate Ministry employee in the South Area Tenures office to determine a stumpage rate under section 105(1) of the *Forest Act*. Please note that the determination of a stumpage rate could be subject to an appeal under the *Forest Act*.

Yours truly,

Tara DeCourcy, RPF
District Manager
Selkirk Forest District

pc: Gerald Hills, Compliance Leader, Kootenay Boundary Region
Compliance and Enforcement Branch
John Pennington, Forest Practices Board

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Withheld pursuant to/removed as

s.16

BRITISH COLUMBIA

File: 23060-20 – DND 33672
00142662

June 19, 2018

Tan Calhoun
West Fraser Mills Ltd.
6626 Hwy 16 East
Fraser Lake, British Columbia
V0J 1S0

Dear Tan Calhoun:

Re: Contravention Determination and Notice of Penalty Levied under Section 71 (2) (a) of the *Forest and Range Practices Act*

This is further to my letter dated December 6, 2016 and your opportunity to be heard respecting the alleged contravention of section 21(1) of the *Forest and Range Practices Act* (FRPA). I have now made my determination in this matter and conclude that West Fraser contravened section 21(1) of FRPA. As such, I am levying an administrative penalty in the amount of $5,000.

Authority

The Minister of Forests, Lands, Natural Resource Operations and Rural Development has delegated to me, under section 120.1 of FRPA, the authority to make determinations with respect to administrative contraventions and penalties under section 71 of FRPA.

Legislation

Specifically, section 21(1) states:

> The holder of a forest stewardship plan or a woodlot license plan must ensure that the intended results specified in the plan are achieved and the strategies described in the plan are carried out.

Ministry of Forests, Lands, Natural Resource Operations and Rural Development

Nadina Natural Resource District

Location:
183 Highway 16 West,
Burns Lake, B.C.

Mailing Address:
Box 999
Burns Lake, B.C., V0J 1E0

Tel: 250 692-2200
Fax: 250 692-7461

Issues

The following issues are relevant to this case:

1. Did West Fraser Mills Ltd. (West Fraser) contravene Section 21(1) of FRPA?
2. If West Fraser contravened FRPA, do any of the defences of due diligence, mistake of fact or officially induced error apply?
3. If West Fraser contravened and none of the defences apply, what amount of penalty, if any, is appropriate?

After considering the evidence presented to me, and for the reasons presented below, it my determination that:

1. West Fraser did contravene section 21(1) of FRPA;
2. None of the defences apply; and
3. it is appropriate to levy a penalty in the amount of $5,000 under section 71(2)(a)(i) of FRPA, which, subject to the stay referred to below, must be paid by September 15, 2018.

Issue 1: Did West Fraser contravene Section 21(1) of FRPA?

Summary of the evidence and findings of fact

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

- West Fraser, Fraser Lake Sawmills (FLSM) is the holder of Forest License A16826 within the Lakes Timber Supply Area (TSA) where Taltapin Lake is located.
- The Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNRO) issued West Fraser Cutting Permit (CP) 710 in June 2012, which authorized the company to harvest timber from Crown land near Taltapin Lake in accordance with governing forestry legislation.
- In its Forest Stewardship Plan (FSP), initially approved in July 2007 and extended in July 2012, FLSM included a result that committed it to meeting the Visual Quality Objective (VQO) for the area. Specifically, section 5.12 of the FLSM FSP Amendment 4 states;

"the **FSP holder** will, in all **FDUs**, will design its cutblocks and roads that are located in ***scenic areas*** as identified on map 5 and having a **visual quality objective** so that when assessed from a significant public viewpoint, the altered forest landscape is consistent with the following characteristics in respect of that **visual quality objective**, or in respect of a **visual quality objective** above it, in Table 4:" [emphasis in original]

Table 4 of the FLSM FSP Amendment 4 further identifies the characteristics of alteration for Partial Retention to be;

i. easy to see;

ii. small to medium in scale; and

iii. natural and not rectilinear or geometric in shape

- The term 'significant public viewpoint' is not defined in the FLSM FSP, it is defined in the ministry's evidence as;

  "*a place or location on the land or water that is accessible to the public, provides a viewing opportunity and has relevance to the landform being assessed"*

  This definition was not disputed by FLSM and was adopted in the FLSM written submission.

- CP 710 block 1is located within the Taltapin Lake Scenic Area (Visual Landscape Inventory Polygon 279) as identified on the FLSM FSP map 5 for which the established VQO objective is Partial Retention. CP 710 was harvested by FLSM between June 15 and September 30, 2014.

- The term 'landform' which is relevant to assessing visual quality objectives, is defined in the ministry's evidence as;

  "an identifiable visual unit of distinct topographical feature that is three dimensional in form and is generally defined by ridges, drainage channels, valleys, shorelines, and skylines"

  This definition was not disputed by FLSM and was adopted in the FLSM written submission.

  A field inspection of CP 710 by ministry staff occurred on June 23, 2015 after which an investigation into the compliance of this harvesting with the FLSM FSP was initiated.

With respect to the facts that **are** in dispute, Ministry staff presented the following evidence and submissions:

- CP 710 block 1 was assessed following harvest completion by two ministry visual specialists, Jacques Marc, Visual Resource Management Officer, and Luc Roberge, Visual Resource Specialist, who concluded that the Partial Retention VQO with respect to CP 710 block 1 was 'clearly not met'. More specifically, their conclusions were that the harvesting did not meet the partial retention characteristics as it was very easy to see, large in scale, had isolated rectilinear boundaries, **and** that percent alteration calculations exceeded the expected range for partial retention.

- As components of these assessments, both of these ministry specialists independently identified the applicable landforms and conducted percent alteration calculations. Both specialists identified two landforms within the CP 710 block1 area, for which the percent alteration results are identified in table 1 below. A combined category is included for the purposes of discussion in my findings later in this determination.

	Landform A	**Landform B**	**Combined**
Jacques Marc assessment	13.9	19.0	12.1
Luc Roberge assessment	10.3	17.0	13.5

Table 1: Percent alteration calculations for CP 710 block 1 visual assessments

- While the FSP commitment and the Forest Planning and Practices Regulation (FPPR) section 1.1VQO definitions do not define percent alteration criteria, they are a standard component of visual assessment, and are useful to consider in evaluating the achievement of a VQO.

- The Forest and Range Evaluation Program (FREP) publication: *Protocol for Visual Quality Effectiveness Evaluation*[i] provides guidelines for comparing percent alteration to norms identified through visual quality studies completed in British Columbia that are shown in table 2 below:

Visual Quality Class	Alteration % of landform in perspective view (clearcut)
P – Preservation	0
R – Retention	0 – 1.5
PR – Partial Retention	1.6 – 7
M – Modification	7.1 – 18
MM – Maximum Modification	18.1 – 30

Table 2: FREP Percent alteration ranges for Visual Quality Classes

- The term 'clearly not met' is defined through the FREP protocol and indicates that the basic VQO definition is not achieved and that the numerical assessment (percent alteration) is in excess of the VQO range

In turn, FLSM presented the following evidence and submissions:

- From the FLSM written submission discussed at the March 29, 2017 Opportunity to be heard (OTBH);

  "The state of visual resources and the visual impacts of alterations and the ability to identify or delineate landforms are different for a visual impact assessment done prior to logging compared to an assessment done following the completion of logging"

- The viewpoints used by FLSM meet the previously described definition of *significant public viewpoint*. FLSM took photographs from these locations and used them to assist in the assessment of visual impacts and whether the VQO was achieved.

- The post-harvest condition assessed by FLNRO staff and presented in the ministry's evidence revealed different features such as ridges, drainage channels, valleys, ridgelines, and other terrain or geographic features not visible in the pre-harvest landscape condition, resulting in different landforms being identified. Further, the photographs taken from the FLSM viewpoints clearly illustrate that the landform used meets the definition of landform for the purpose of visual impact assessment.

- While scenic areas for the Lakes TSA are identified, significant public viewpoints are not similarly identified. It is FLSMs assertion that this was deliberate, providing licensee's with the discretion to identify such viewpoints.

- Based upon the particular light conditions on the day of the FLSM pre-harvest visual assessment the only distinct or identifiable features for delineation of landform are the skyline and shoreline used by the FLSM definition of landform.

- Forsite, a consultant firm under contract to FLSM,completed Integrated Visual Design for the Morice and Lakes IFPA that identified a Visual Design Unit that is consistent with the FLSM landform

- The FLSM landform is consistent with the FLNRO identified Visual Landscape Polygon #279.

- Additional information submitted February 28, 2017 describing the visual impact assessment addressed some of the deficiencies identified by the FLNRO specialists Mr. Marc and Mr. Roberge.

- FLSM staff who completed the visual impact assessment work for CP 710 block 1 attended training in February of 2013 for the assessment and management of visuals. This trainer for this session was Mr. Marc along with other supporting ministry staff.

- The pre-harvest FLSM visual impact assessment indicated that the VQO would be achieved for CP 710 block 1 based on the amount of alteration and the landform used and that accordingly the alleged contravention was not foreseeable. FLSM percent alteration calculations were calculated from three separate viewpoints as summarized below:

Viewpoint	Pre-harvest percent alteration	Post-harvest percent alteration
B	1.01	3.02
C	1.7	4.5
H	0.3	6.1

Table 3: FLSM percent alteration calculations for viewpoints B, C and H

- Earlier versions of the CP 710 block 1 harvest area were modified to reduce visual impacts and qualified staff assessed the potential impacts to meet partial retention parameters.

- The FLSM FSP amendment 5, which proposed an increased acceptable visual impact when harvesting Mountain Pine Beetle associated stands, should not have been rejected.

Having regard to the foregoing evidence, I have made the following findings with respect to the facts in dispute:

- The applicable FLSM FSP result commits FLSM to *designing* cutblocks and roads to achieve consistency with VQO characteristics. It does not clearly commit to the post-harvest condition being consistent with the prescribed VQO characteristics.

- I find that it is implicit under this result that FLSM commits to *implement* the design referenced. Any alternative to this finding would negate the purpose of prescribing the result in the first place and I cannot conclude that this was the intended outcome of either FLSM in prescribing this or the District Manager in approving the FSP.

- FLSM's intent as to the applicability of this result is further clarified within the professionally signed site plan for CP 710 which states under 'Visual Resources';

> "This cut block is within an area referred to in the FSP. When assessed from a significant public viewpoint, the altered forest landscape **will** [emphasis added] be consistent with the characteristics in respect of the ***visual quality objective*** [emphasis in original], as described in Table 4 of the FSP A visual impact assessment has been completed"

The future tense of the commitment and the past tense reference to the design lead me to conclude that FLSM's intent in the instance of the FSP result as it relates to CP 710, is that the pre-harvest design **will** be implemented and the post-harvest result **will** similarly be consistent with the Table 4 characteristics.

- Accordingly, I view the information provided by FLSM with regard to the pre-harvest visual impact assessment for CP 710 to be comparable with the ministry's post-harvest assessment for the purposes of this determination.

- The difference between the viewpoints used in the FLSM analysis and those used by the ministry does not in my assessment significantly affect the assessment of the altered forest landscape. The same perspectives of CP 710 and the surrounding forest landscape are visible from both sets of viewpoints. Further I consider both sets of viewpoints used by FLSM and the Ministry to meet the definition of 'Significant Public Viewpoint'.

- The principle point of disagreement therefore between the conclusions made by FLSM and those made by the Ministry with regard to the achievement of the prescribed result and the VQO relates to the division of the landscape into units or landforms.

- I find the landform utilized by FLSM in their visual assessment to be improperly identified. It is significantly larger in scale than the combined landforms identified by the ministry and does not accurately represent the view of this area to an observer.

- I find that the ministry's identification of landform to more closely represent the view of this area to an observer from any of the viewpoints used.

- I do not find that observation of the post-harvest condition was critical to correctly identifying the landform.

- I consider the visual design unit utilized by Forsite in their Integrated Visual Design for the Morice and Lakes IFPA to have been identified for a different purpose (modelling timber supply) and to be incorrect for the purposes of FLSMs visual assessment of CP 710 block 1. I similarly find that the ministry's visual landscape polygon #279 to have been identified for different purposes (identification of VQOs) and incorrect for the purposes of FLSMs visual assessment of CP 710 block 1.

- I find the CP 710 block 1 altered forest landscape to be natural in appearance without angular or rectilinear features however, I find it to be very easy to see and large in scale.

- Accordingly, I find that the designed altered forest landscape for CP 710 block 1 (as well as the post-harvest result) to be inconsistent with the FLSM table 4 characteristics committed to under the FLSM FSP.

My reasons for making these findings are as follows:

- The establishment of VQOs and their applicability to forestry operations has been done to manage to the public's expectations for visual aesthetics. VQOs define the parameters and extent of acceptable alterations to natural viewscapes for the purposes of resource development. The management of visual values through VQOs requires a trade-off between access to timber resources, the value of those timber resources, and the aesthetic qualities of viewscapes to the public eye.

- In review of the evidence, I have found it useful to consider how the public views a scene and reacts to it. The closer one is to the scene being viewed, more detail is visible and the narrower the field of view. The farther one is from the scene, less detail is visible and the wider the field of view.

- In the case of the FLSM modelling, the public is presented with an extensive view of the Northeast shore of Taltapin Lake. This is a panoramic view which from all viewpoints assessed shows alteration on the left hand side of the identified landform, and a non-altered forest to the extent of the right hand side of the landform.

- After carefully considering the photographs and visual design collected from each of the FLSM viewpoints along with those provided through the ministrys evidence, and after observing the landscape visible from the South shoreline of Taltapin Lake myself, I have concluded that the entire landform depicted in the FLSM design cannot be taken in and viewed as a single panorama without turning one's head. I find this conclusion to be material to the delineation of an appropriate landform by which the visual quality characteristics defined in the FLSM Table 4 (and for which percent alteration calculations are used to inform conclusions) are assessed.

- The public in their observation from a particular viewpoint, will take in and draw conclusions with regard to the aesthetics of a particular view that is available to them by relating any alterations to the surrounding landscape. The extent of a particular view should be used to define an appropriate landform rather than a more extensive panorama.

- In the case of the Northeast shore of Taltapin Lake, I do not find it probable that the public would withhold making any conclusions about visual aesthetics until after they turn and consider a wider panoramic perspective of the entire Northeast shoreline, and then turn back and balance this wider perspective against the view that is in front of them and the alterations that it contains. The FLSM identified landform is not visible in its entirety from any of the chosen viewpoints without turning in such a manner.

- Accordingly I have concluded that the FLSM landform is too expansive and an incorrect basis on which to assess the consistency of the designed and harvested cutblock with the FLSM FSP table 4 characteristics of alteration. As percent alteration calculations are determined by the size of the landform as the denominator, the FLSM visual assessment percent alteration calculations are similarly erroneous.

- In consideration of the ministry's evidence, I acknowledge the FLSM assertion that the ridge used to divide the two landforms assessed is barely visible in the photographs and is not prominent enough to clearly delineate a separate landform. Consequently, I have considered both units (Landform A and B in Table 1) to constitute a single landform and that this landform provides a correct basis from which to evaluate the consistency of the designed and harvested cutblock with the FLSM FSP table 4 characteristics of alteration.

- By considering the CP 710 block 1 altered forest landscape in the context of the above mentioned landform, I find it to be:

    - Very easy to see;

    - Natural and not rectilinear or geometric in shape, and;

    - Large in scale.

- Accordingly, the CP 710 block 1 development is not consistent with the FLSM Table 4 characteristics, and the VQO and the FSP were not achieved.

Do the facts support a finding of contravention if no defences apply?

I conclude that the facts set out above support a finding of contravention of section 21(1) of FRPA, provided the defences set out in section 72 of FRPA do not apply.

Issue 2: If West Fraser contravened FRPA, do any of the defences of due diligence, mistake of fact or officially induced error apply?

FLSM raised several points during its opportunity to be heard and within its written submission that relate to statutory defences, which I have considered in making this determination. Relating to the defense of due diligence, you identified that CP 710 was modified pre-harvest to manage for VQOs and that FLSM staff had attended training on visual resource management. You also identified that because a visual assessment was completed by FLSM and the assessment concluded that the VQO would be met, that a contravention was not reasonably foreseeable. You further identified that FLNRO staff did not make it known to FLSM that the VQO would not be met.

While modifying CP 710 prior to harvest to manage for VQOs and training staff in visual resource management are both positive steps to assist FLSM in managing for visual resources, I do not find them sufficient to conclude that a defence of due diligence applies. I also do not consider the completion of an assessment, which in this case I have found to have key flaws and incorrect conclusions, to satisfy such a defense. Under the FRPA results based model, the responsibility to ensure diligence rests firmly with FLSM and the ministry neither has the information nor the responsibility to 'make known' a concern relating to site level management prescribed by a licensee.

Relating to the defence of mistake of fact, FLSM provided its perspective that FSP amendment number 5, which proposed a modification to FLSM's FSP and to the management of VQOs, should have been approved. You identified this perspective within your written submission as a potential officially induced error defence although as amendment 5 was clearly not approved, I have not found it reasonable to consider it as such. FLSM raised this defense due to its awareness that another licensee (Babine Forest Products), which holds a different license, proposed a different amendment to a different FSP challenging the rejection of that FSP amendment by the District Manager at the Forest Appeals Commission (2011-FOR-006a). In this determination by the Commission, the District Managers determination relative to Babine Forest Products FSP amendment was varied to provide for changes to the prescribed management of visual resources by that licensee under that FSP in areas impacted by Mountain Pine Beetle. FLSM relates that the variance provided by the Commission provides for higher percent alteration targets in such areas of which CP 710 block 1 is.

As your FSP amendment 5 was not approved, and the Commission's decision related to a different licensee, license, and FSP, I do not find that this could reasonable be considered a mistake of fact. The Commission did not change legislation and it did not vary the VQO. Even in the event that the Commission did vary the VQO, and you had amended your FSP to reflect such a change, the percent alteration calculations provided by the ministry identify that you would have still exceeded the Commission's alteration targets.

No other defences were raised and I have concluded based on the facts set out above that none of the defences provided for in section 72 of FRPA apply.

Issue 3: If West Fraser contravened and none of the defences apply, what amount of penalty, if any, is appropriate?

Under section 71(2)(a)(i) of FRPA and section 12(c) of the *Administrative Orders and Remedies Regulation*, I am authorized to levy an administrative penalty of up to $50,000 for the contravention of s. 21(1) of FRPA.

Alternatively, under section 71 (2) (a) (ii) of FRPA, I may refrain from levying a penalty if I consider that the contravention is trifling and that it is not in the public interest to do so.

If I do levy a penalty, I must consider the following factors in section 71 (5) (a) (ii) of FRPA:

(a) your previous contraventions, if any, of a similar nature;

(b) the gravity and magnitude of the contravention;

(c) whether the contravention was repeated or continuous;

(d) whether the contravention was deliberate;

(e) any economic benefit you derived from the contravention;

(f) your cooperativeness and efforts to correct the contravention; and

(g) any other considerations that the Lieutenant Governor in Council may have prescribed.

Having regard to the facts of this case, I have decided the contravention is not trifling and that it is therefore appropriate to levy a penalty in the amount of $5,000. My reasons are as follows:

- FLSM has had no previous contraventions of a similar nature.

- Taltapin Lake has an established recreational site that sees significant use during summer months and is popular with boaters. CP 710 block 1 is as described, very easy to see from the lake but is not visible from the recreational site. The altered forest landscape created through CP 710 block 1 will be visible for a significant period of time. That being recognized, I must acknowledge that the great majority of users who will be observing the altered forest landscape will be residents of the area, who are used to and involved in the forest sector and who are more accepting of forestry related alterations to natural viewscapes. Further, users of the lake and area will have travelled over approximately 30 kilometres of forestry developed roads that have very evident forest resource development and harvesting by the time that they arrive at Taltapin Lake. This area of the Lakes TSA has had significant Mountain Pine Beetle infestation, has had significant salvage related harvesting, of which the public, in its majority, is supportive of. Accordingly, I have found the gravity and magnitude of the contravention while not trifling (FLSM could have done better) to be on the lower end of the spectrum.

- The contravention was not repeated or continuous.

- The contravention was not deliberate. I believe that FLSM was good heartedly attempting to fulfill its FSP commitment however did not exercise appropriate diligence or care in doing so.

- FLSM received an economic benefit from the contravention however this is not easy to quantify and I do not believe that it was a motivator for FLSM's actions. By harvesting a larger opening, FLSM was able to access more timber than was available if the VQO was followed. That timber however, was to a large degree dead pine that had been killed by the Mountain Pine Beetle and was being salvaged. If this timber was not removed, it would have been lost, and the public would have received no economic benefit through timber stumpage payments by FLSM, employment, and tax collections. My consideration of economic benefit therefore is of a trade-off between the public value in aesthetic qualities against the public value forestry related revenue. On this basis, I am unable to draw any conclusions as to the relative value of these two elements that I have weighed into my consideration of an appropriate penalty. I have however considered that FLSM's lack of diligence in its management of the VQO and achieving its prescribed result to be worthy in itself of a penalty.

- FLSM was amicable and cooperative in bringing its information forward for me to reach this determination. However there was no action taken to correct the contravention and I am not made aware of any procedural or policy based changes made by FLSM to avoid any similar future issues from occurring.

- There are no other considerations prescribed by the Lieutenant Governor in Council.

Accordingly, I have determined that it is appropriate to apply what I consider to be an appropriate deterrent of $5,000, to inspire FLSM to apply appropriate attention to their future management of VQOs.

Determination does not forestall other actions that may be taken

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 and penalty determination under section 71, I am authorized under section 79 of FRPA 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 250-847-6305 within this 15 day period.

Opportunities for review and appeal

If you have new information that was not available at the time I made this determination, you may request a review of my determination on the basis of this new information. A request for review must be in writing, must be signed by you, or on your behalf, and must contain:

a. your name and address; and the name of the person, if any, making the request on your behalf;
b. the address for serving a document to you or the person acting on your behalf;
c. the new evidence that was not available at the time this determination was made; and
d. a statement of the relief requested.

This request should be directed to me, at 3333 Tatlow Road, Bag 6000, Smithers BC, V0J 2N0 and I must receive it ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 80 of the *Forest and Range Practices Act* and in the *Administrative Review and Appeal Procedure Regulation*. Please note the **three week time limit** for requesting a review.

Alternatively, if you disagree with this determination, you may appeal directly to the Forest Appeals Commission.

The appeal request must be signed by you, or on your behalf, and must contain:

a. your name and address; and the name of the person, if any, making the request on your behalf;
b. the address for serving a document to you or the person acting on your behalf;
c. the grounds for appeal;
d. a statement of the relief requested; and
e. a copy of this determination.

The Forest Appeals Commission must receive the appeal ***within 30 days*** of the date that I made this determination.

The provisions governing appeals are set out in sections 82 through 84 of FRPA and in the *Administrative Review and Appeal Procedure Regulation*. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. A notice of appeal may be delivered to the following address:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **30 day time limit** for delivering a notice of appeal.

Determination is stayed pending review or appeal

Under section 78 of FRPA, 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.

Performance Record

As FLSM is the holder of an agreement under the *Forest Act*, my determination under section 71 will become part of your performance record, pursuant to section 85 (2) of FRPA, subject to decisions made on review or appeal.

Yours truly,

Jevan Hanchard, RPF
District Manager
Ministry of Forests Lands and Natural Resource Operations and Rural Development
pc: Rebecca Misener, Regional Compliance Leader, Skeena Region, Integrated Resource Operations Division

Mark Haddock, Forest Practices Board

BRITISH COLUMBIA

File: 23060-40 / DCK–32943

February 9th, 2018

Don Banasky
Wood King Contracting Ltd.
s.22

Dear Mr. Banasky:

Re: Contravention Determination and Notice of Penalty Levied under Section 71 of the *Forest and Range Practices Act*

This is further to my letter dated April 23, 2017 and the opportunity to be heard ("OTBH") given to Wood King Contracting Ltd. ("Wood King") by way of written submissions dated May 26, 2017. I have also considered your July 13, 2017 response to the June 13, 2017 written submissions of a Compliance & Enforcement (C&E) Natural Resource Officer ("NRO") respecting the alleged contravention of sections 37 and 79(6) of the *Forest Planning and Practices Regulation* ("FPPR") and section 46(1) of the *Forest and Range Practices Act* ("FRPA").

I have concluded that Wood King contravened sections 37 and 79(6) of the FPPR and section 46(1) of FRPA and levy a penalty of $13,000.

Authority

The Minister of Forests, Lands, Natural Resource Operations and Rural Development has delegated to me, under section 120.1(1) of FRPA, the authority to make determinations with respect to contraventions and administrative penalties under section 71 of FRPA.

Legislation

Ministry of Forests, Lands, Natural Resource Operations and Rural Development
Chilliwack Natural Resource District
Mailing Address: 46360 Airport Road Chilliwack, BC, V2P 1A5
Tel: (604) 702-5700
Fax: (604) 702-5711

In this section, I am reproducing the sections of FRPA and the FPPR that are relevant to my determination. In particular, I am reproducing section 46(1) of FRPA and sections 37 and 79(6) of the FPPR, which are the sections that Wood King is alleged to have contravened. I am also reproducing section 149(1) of FRPA and the definitions of an 'authorized person' and 'primary forest activity' in section 1 of the FPPR, all of which relate to the alleged contravention of section 37, and the parts of sections 3 and 81 of the FPPR that are relevant to the alleged contraventions of section 46 and 79(6), respectively.

Forest and Range Practices Act

Protection of the environment

46 (1) A person must not carry out a forest practice, a range practice or another activity that results in damage to the environment, unless in doing so

(a) the person
  (i) is acting in accordance with a plan, authorization or permit under this Act,
  (ii) is not required to hold a plan or permit because of an exemption under this Act and is acting in accordance with this Act, the regulations and the standards, or
  (iii) *Repealed.* [2007-18-80 (B.C. Reg. 266/2007)]
  (iv) is acting in accordance with another enactment, and

(b) the person does not know and cannot reasonably be expected to know that, because of weather conditions or site factors, the carrying out of the forest practice, range practice or other activity may result, directly or indirectly, in damage specified by regulation.

Objectives set by government

149 (1) The Lieutenant Governor in Council may make regulations prescribing objectives in relation to one or more of the following subjects:

(a) soils;
(b) visual quality;
(c) timber;
(d) forage and associated plant communities;
(e) water;
(f) fish;
(g) wildlife;
(h) biodiversity;
(i) recreation resources;
(j) resource features;
(k) cultural heritage resources.

Forest Planning and Practices Regulation

Definitions

1 (1) In this regulation:

"authorized person" means a person who is an agreement holder or a person who is described in paragraphs (a), (a.1) or (c) in the definition of "authorized in respect of a road";

"primary forest activity" means one or more of the following:

(a) timber harvesting;
(b) silviculture treatments;
(c) road construction, maintenance and deactivation;

Damage to the environment

3 (1) For the purpose of section 46 (1) and (1.1) *[protection of the environment]* of the Act, "damage" means any of the following that adversely alters an ecosystem:

(a) a landslide;
(b) a gully process on the Coast;
(c) a fan destabilization on the Coast;
(d) soil disturbance;
(e) the deposit into a stream, wetland or lake of
  (i) a petroleum product,
  (ii) fluid used to service industrial equipment, or
  (iii)any other similar harmful substance;
(f) a debris torrent that enters a fish stream;
(g) changes to soil.

Landslides

37 An authorized person who carries out a primary forest activity must ensure that the primary forest activity does not cause a landslide that has a material adverse effect in relation to one or more of the subjects listed in section 149(1) of the Act.

Road Maintenance

79 (6) A person required to maintain a road must ensure all of the following:

(a) the structural integrity of the road prism and clearing width are protected;
(b) the drainage systems of the road are functional;
(c) the road can be used safely by industrial users.

Wilderness Roads

81 Despite section 22.2 *[non-industrial use of a road]* of the Act and section 79 *[road maintenance]*, if a forest service road, or a road authorized under a road permit, a cutting

permit, a timber sale licence that does not provide for cutting permits, a special use permit or a woodlot licence is not being used by industrial users,

(a) section 79(6)(a) and (b) apply to that road only to the extent necessary to ensure there is no material adverse effect on a forest resource, and

(b) section 79(6)(c) does not apply to that road.

Issues

The following issues are relevant to this case:

1. Did Wood King contravene section 37 or 79(6) of the FPPR or section 46(1) of FRPA?

2. If Wood King contravened the FPPR or FRPA, do any of the defences of due diligence, mistake of fact or officially induced error apply?

3. If Wood King contravened the FPPR or FRPA and none of the defences apply, what amount of penalty, if any, is appropriate?

After considering the evidence presented to me it is my determination that:

1. Wood King contravened sections 37 and 79(6) of the FPPR and section 46(1) of FRPA.

2. The defences of due diligence, mistake of fact, and officially induced error fail or do not apply.

3. It is appropriate to levy a penalty of $13,000 under section 71(2)(a)(i) of FRPA.

Subject to the stay referred to below, Wood King must pay the penalty amount by March 31, 2018. An invoice will be sent after all review and appeal periods have passed.

The rationale for my determination and decision to levy a penalty is set out below.

Background

This case involves a landslide that initiated off of the Kookipi Three Forest Service Road ("FSR") in the Chilliwack Natural Resource District in or about February 2015.

Wood King held Road Use Permit ("RUP") 6996-12-01 on the Kookipi Three FSR at all relevant times and was the RUP holder responsible to maintain the Kookipi Three FSR at all relevant times. Wood King used the Kookipi Three FSR for timber harvesting purposes from June 2014 to late October 2014 when it completed harvesting operations in the area.

C&E's investigation found that no seasonal maintenance (ie: water bars or cross ditches) was

conducted on the Kookipi Three FSR after Wood King completed harvesting in the area. C&E suspects that in February 2015, a portion of the ditchline filled with debris from the Kookipi Three FSR cutbank during a rain event, causing water to travel down the road's surface, instead of the ditchline.

C&E suspects further that water left Kookipi Three FSR at the landslide location, causing a landslide that travelled from the road fillslope to Kookipi Creek. The landslide size was 0.18 hectares. The volume of the landslide debris is estimated to be 1,900 cubic metres.

On March 12, 2015, C&E sent a notice of suspected contravention and initiation of investigation letter to Wood King.

Summary of the evidence and findings of fact

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

- Wood King holds RUP 6996-12-01 on the Kookipi Three FSR.
- RUP 6996-12-01 indicates that Wood King is the RUP holder required by the District Manager to maintain the Kookipi Three FSR.
- A landslide occurred off of the Kookipi Three FSR in the winter of 2015.
- Wood King was the licensee for Timber Sales Licence A90631. This timber sale was located in the area of Kookipi Three FSR.

C&E's Evidence and Submissions

C&E alleges that Wood King was the RUP holder responsible for maintaining the Kookipi Three FSR at all relevant times including at the time of the landslide. Wood King is alleged to have failed to maintain the Kookipi Three FSR after completing harvesting operations in the area in October 2014. C&E believes that this lack of road maintenance on the Kookipi Three FSR also caused damage to the environment by the landslide that initiated from the Kookipi Three FSR. C&E also believes that this landslide caused a material adverse effect on the soil resource in the area of the landslide.

C&E included the following chronology in the case binder:

June 2014	Harvesting operations begins in Timber Sales Licence A90631 for the 2014 calendar year.
Late August 2014	Harvesting operations ended in Timber Sales Licence A90631 for the 2014 calendar year. Wood King provided evidence that some forest activities were carried out well into October 2014.
February 7, 2015	Estimated time when the landslide that initiated from the Kookipi Three FSR occurred.

February, 2015	British Columbia Timber Sales ("BCTS") representative notified NRO Schroeder that there was a landslide in the Kookipi Creek drainage. BCTS representative was on a helicopter flight in the area when the landslides were noticed.
February 25, 2015	NRO Schroeder and NRO Kosloski inspected the landslide on the Kookipi Creek Forest Service Road. NRO Schroeder inspected the landslide on the Kookipi Three FSR.
March 11, 2015	Inspection Report for the Kookipi Three FSR landslide emailed to Wood King.
March 12, 2015	Notice of Investigation letter sent to Wood King.
April 8, 2015	NRO Schroeder sent an e mail to Wood King with a list of questions regarding the landslide investigation.
April 21, 2015	Meeting with Wood King representatives s.22
August 20, 2015	FLNRO Shelley Higman, M.Sc., P. Eng./P. Geo, Senior Geological Engineer, visits the Kookipi Three FSR landslide with BCTS representatives.
September 4, 2015	NRO Schroeder received the draft copy of Ms. Higman's Technical Memo on Kookipi Three FSR.
October 2, 2015	NRO Schroeder received the final copy of Ms. Higman's Technical Memo on Kookipi Three FSR.
October 6, 2015	NRO Schroeder visited the landslide site with FLNRO Geomorphologist Tom Millard.
November 9, 2015	Meeting with NRO Schroeder, Ms. Higman and s.22 Discussion regarding Ms. Higman's Technical Memo of the Kookipi Three FSR landslide.
December 3, 2015	C&E received answers to FLNRO questions in an email from Wood King representative s.22
June 16, 2016	C&E sent a draft Agreed Statement of Facts by email to Wood King for its review.
September 2, 2016	C&E received an email response to draft Agreed Statement of Facts from Wood King representative s.22
November 4, 2016	NRO Schroeder visited Kookipi Three FSR landslide site with Marty

	Kranabetter, who is a Research Soil Scientist with FLNRO West Coast Region, to assess the landslide for any potential material adverse effect.
November 9, 2016	NRO Schroeder received Mr. Kranabetter's report on Kookipi Three FSR landslide indicating the landslide caused a material adverse effect.
February 28, 2017	C&E sent a revised draft Agreed Statement of Facts sent to Wood King by email.
March 21, 2017	Agreed Statement of Facts was signed by NRO Schroeder and s.22 s.22

C&E provided me with additional evidence and submissions to support the particulars pertaining to the alleged contraventions under sections 37 (landslide) and 79(6) (road maintenance), of FPPR and section 46(1) of FRPA (protection of the environment) are as follows.

Wood King holds RUP 6996-12-01 on the Kookipi Three FSR. Schedule A for RUP 6996-12-01 indicates Wood King as the RUP holder required by the District Manager to maintain the Kookipi Three FSR.

Ms. Higman noted in the Technical Memo that a landslide initiated from the Kookipi Three FSR near road station 0+790. The landslide occurred in February 2015.

Ms. Higman's Technical Memo notes:

> "The Kookipi Creek Three FSR landslide event reportedly occurred on February 7, 2015 during a precipitation event that caused several other road- related landslides in the area.", and
>
> "The Kookipi Creek Three FSR landslide initiated in a partial fill at approximate Station 0+790."

Ms Higman indicates in the Technical Memo that the landslide was 0.18 hectares is size, measuring about 17 metres wide, 110 metres long and 1 metre deep. The estimated volume of the landslide is 1,900 cubic metres of material.

Ms. Higman was asked to assess the landslide. The following point is from Ms. Higman's Technical Memo and indicates her opinion on the cause of the landslide:

> "Debris has been removed from the road below the landslide (i.e. from Kookipi Creek FSR), but no work has been done to remediate the Kookipi Creek Three FSR. Viewing a landslide so many months after it occurred generally makes it difficult to determine causal mechanisms; however, at the landslide at Station 0+790 on Kookipi Creek Three FSR, clear evidence of water flow along the road surface is still evident. It is my opinion that the landslide at Station 0+790 was caused by water diverted along the road due to severe cut slope ravelling which plugged the ditchline. This water could not leave the road surface due to the presence of a continuous grader berm that concentrated the water along

the 10% adverse road grade to a point where it could leave the road. Field evidence shows the water clearly flowed to the point of the initiation of the landslide. The discontinuous grader berm beyond the landslide suggests there was a point at the location of landslide where the water discharged onto the sliver fill slope, saturated the soil and initiated the landslide."

Ms. Higman's Technical Memo notes:

"Water was able to concentrate due to:

- infilling of the ditchline from ravelling of the cut slopes;
- the presence of a grader berm; and
- lack of seasonal deactivation measures to manage surface water over the winter (such as back-up waterbars for the culverts and cross-ditches)"

Ms. Higman makes the following comment in the Technical Memo regarding another possible cause of the landslide:

"That said, it is possible that a regressive cut slope failure from the lower Kookipi Creek FSR could have initiated the landslide. However, the extent of the cut slope ravelling was not as severe on the lower Kookipi Creek FSR as it was on the upper Kookipi Creek Three FSR. Even with the severity of the cut slope ravelling along the first 800 m of the Kookipi Creek Three FSR, we did not see any evidence of regressive cut slope failures. Therefore, it is believed that road drainage was the cause of landslide, triggered by a relatively intense rainfall event."

The February 25, 2015 Inspection Report by NRO Schroeder indicates that there was no road deactivation on the Kookipi Three FSR. This observation is also included in the Ms. Higman's, Technical Memo:

"No temporary or seasonal deactivation measures were observed during our site review along the Kookipi Creek Three FSR."

NRO Schroeder's inspection photos indicate the filled ditchline with cut slope debris and signs of water travelling down the Kookipi Three FSR to the initiation point of the landslide.

From the information collected by NRO Schroeder's inspection report, Ms. Higman's Technical Memo, and the answers to the questions asked of Wood King, C&E alleges that there was a lack of road maintenance on the Kookipi Three FSR after the completion of harvesting activities in the area in August 2014. The lack of road maintenance permitted water to run down the road surface during a rain event in February, 2015. The water saturated the soil where the water left the road surface and initiated the landslide. Wood King did not conduct any road maintenance inspections after 2014 harvesting activities were completed in the area, to monitor the road, culverts and stream crossings in the area. Wood King did not conduct any seasonal road maintenance

activities (such as cross ditches and waterbars) to ensure that water would not accumulate and cause road erosion.

The size of the landslide is 0.18 hectares. The Land Management Handbook 56, which is a 2004 Province of BC, Ministry of Forest handbook titled Landslide Risk Case Studies in Forest Development Planning and Operations, indicates that landslides 0.05 hectares to 0.5 hectares are considered medium in size. The volume of material in the landslide is estimated at 1,900 cubic metres of material. The Land Management Handbook 56 indicates that landslides consisting of a volume of 500 to 5,000 cubic metres are considered medium in size.

In relation to the alleged contravention of section 79(6) of the FPPR, C&E submitted that Wood King's industrial use of the Kookipi Three FSR for the 2014 calendar year ended in late August 2014. There was no industrial use of the Kookipi Three FSR when the landslide occurred. The Kookipi Three FSR was in wilderness road status when the landslide occurred and so section 81 of the FPPR applies to this alleged contravention.

C&E submitted that lack of road maintenance causing the landslide and the material adverse effect on the soils resource in the area of the landslide is a contravention of section 79(6) of the FPPR.

With respect to the alleged contraventions of sections 37 of the FPPR and 46(1) of FRPA, C&E submitted that road maintenance is a primary forest activity and the requirement for road maintenance continues as a primary forest activity regardless of whether road maintenance activities are active or inactive. Section 79 of the FPPR indicates that the road maintenance obligation continues until the person is relieved of the road maintenance obligation.

In relation to section 37 of the FPPR, C&E submitted that section 37 of the FPPR required Wood King to ensure that its road maintenance activities would not cause a landslide that has a material adverse effect on the soil resource. The landslide caused a material adverse effect on the soils resource in the area of the landslide and therefore there was a contravention of section 37 of the FPPR.

In Mr. Kranabetter's report, he defines an ecosystem "as the term used for the sum total of vegetation, animals, and physical environment in whatever size segment of the world is chosen for study". The term ecosystem is used in section 3 of the FPPR and relevant to whether or not Wood King caused damage to the environment.

Mr. Kranabetter also defined what an adverse alteration to an ecosystem would look like, which is another term used in section 3 of the FPPR and relevant to whether Wood King caused damage to the environment. Mr. Kranabetter wrote "from an ecosystem perspective adverse alteration could mean disturbances that take the ecosystem in a direction it would not normally go or disturbance that is outside the normal range or type that the natural ecosystem would experience".

Mr. Kranabetter reported on the size of the landslide and the adverse effects to the physical environment in the area of the landslide. Mr. Kranabetter described that the "loss of topsoil from the landslide has profoundly reduced the productive capacity of the exposed area. Critical rooting and nutrients necessary for tree growth such as nitrogen, which are found primarily in the upper 30 cm of soil, have been removed." Mr Kranabetter also commented on the adverse effects to the

plant community including the loss of forest cover and exposed area being opportunities for invasive plants and continued ravelling of sediment.

C&E referred me to Mr. Kranabetter's opinion about whether the landslide caused a material adverse effect, within the meaning of section 37 of the FPPR:

> "It is also my opinion that the size of the landslide and permanent damage it has done to the productive capacity of this site, along with the possible off-site effects on the riparian management area, has resulted in a material adverse effect to the soils resource and on the ecosystem."

C&E also referred me to Mr. Kranabetter's opinion to support its position that the landslide meets the definition of damage within the meaning of section 3(1) of the FPPR:

> "Therefore, in my expert opinion, the landslide surface meets the criteria under Forest Planning and Practices Regulation Section 3 definition for damage to the environment through adverse alterations to an ecosystem via landslides and changes to soil.

C&E also provided a detailed email report from a Mr. Tschaplinski, a section head with Ministry of Environment in Victoria, BC. Mr. Tschaplinski is a highly qualified Ph. D in aquatic ecology. Mr. Tschaplinski provided detailed information on the species of fish that are present in Kookipi Creek and the potential effect that mass sediment can have on fish and their habitat.

Wood King's Evidence

In turn, Wood King presented written evidence and submissions on May 26, 2017 to the three alleged contraventions. My summary of Wood King's evidence and submissions is as follows:

> Wood King contends that this alleged contravention is centered around "not carrying out a required primary forest activity" i.e. road maintenance. Wood King submits that evidence used to support a contravention for inadequate road maintenance should not be used to support any other alleged contravention that requires carrying out a primary forest activity as Wood King feels that these are dissimilar matters and are in conflict each other. If a person fails to do something, they should not also be found to be 'carrying out' that same thing.
>
> Wood King also felt that a more in-depth investigation should have been undertaken in this matter to determine the cause of the landslide. Wood King also stated that no sub-surface investigation was conducted by the Ministry.
>
> Wood King also expressed concern over the magnitude of the administrative remedies provided by legislation and the length of time between the landslide event and corresponding assessment by Ministry staff.
>
> Wood King disputes C&E's submission that harvesting ended in late August 2014. Wood King states that there was harvesting in September 2014 and yarding and hauling continued into October of 2014.

Wood King's representative s.22 a Registered Forest Technologist, described the first 0.8 km of the Kookipi Three FSR in detail in a report. s.22 described a site visit that he performed on April 21, 2015. During his site visit, s.22 made several observations about the conditions of the FSR maintenance and water flow patterns on the road and within cut bank areas. s.22 took several photographs which he felt showed inconsistencies with observations made by the investigating NRO and Engineering staff. s.22 opines that the photographs of flow patterns on the surface of Kookipi Three FSR between .5 and .8 km demonstrate compliance with BCTS Environmental Management System field procedure Environmental Field Procedure 04 which includes "avoid directing water onto unstable slopes or erodible soils".

Wood King provided me with a theory that the landslide resulted from a retrogressive failure of the Kookipi Creek FSR cut-slope and provided Google Earth images from July 15, 2013 which shows a small cutslope/fill-slope failure on the Kookipi Creek FSR directly below the landslide which occurred in February 2015 on the Kookipi Creek Three FSR. s.22 wrote:

> "the event could have been retrogressive-type landslide originating at the headwall of the previously-existing Kookipi Creek FSR cut-slope failure"

Wood King submitted:

> "The photographs referenced in 3 and 4 suggest the event could have been a retrogressive-type landslide originating at the headwall of the previously-existing Koopiki Creek FSR cut-slope failure, evidence in satellite imagery pre-dating the event which occurred on or about February 7, of 2015"

Wood King submits that C&E failed to show that Wood King was carrying out a primary forest activity that resulted in a landslide or damage to the environment. Wood King provided written comments that section 46(1) and 37 contraventions have an element of 'carrying out' a primary forest activity or forest activity. Wood King submits that this requires actively doing something, which they should not have done that resulted in the landslide or damage to the environment. Wood King defines the term 'carrying out' as bringing about, executing, implementing or performing an activity. Wood King contends that a requirement to perform road maintenance is not sufficient to constitute 'carrying out' that road maintenance.

Wood King also spoke to the appropriateness of communication between NROs and BCTS Chinook Area staff during the investigation of this file including that it gave rise to a breach of confidentiality. Wood King referred to a government policy against disclosing confidential information with anyone other than people who are authorized to receive the information.

Wood King argued that neither the RUP nor Timber Sale document conveyed all of the known hazards on the roads under permit in the area of the landslide.

Wood King argued that Ms. Higman modified her technical report at the request of C&E. Wood King sent a letter dated July 13, 2017, in which Wood King submits that Ms. Higman's Technical Memo was reworded at the request of the NRO Officers and that C&E's request to Ms. Higman should have been provided as evidence for the OTBH.

Wood King also called into question the disclaimer statement that Ms. Higman included in her Technical Memo and whether or not this statement should preclude the memo from being relied on. The disclaimer statement reads:

> "I do not accept any responsibility for the accuracy of any of the data, the analysis, or the recommendation contained or referenced in the memo when the memo is used or relied upon by any Party other than the BCTS Chinook Business Area or for any Project other than the assessment carried out at the subject site."

Wood King's submissions also generally expressed concern regarding the OTBH process, Ms. Higman's Technical Memo and the assessments that Ministry witnesses made. Wood King noted that observations made by Ministry witnesses were portrayed as fact in the NRO investigation file. Wood King also expressed concern about the preliminary nature of the technical assessment performed and argued that the assessment did not look into certain items such as the length of road section that was allegedly contributing to water concentration and fill-slope saturation.

Wood King also notes that seepage was noted in the landslide track mid-way between Kookipi Creek FSR and Kookipi Three FSR from a helicopter. Wood King points out that a subsurface investigation was not undertaken. Wood King goes on to further speak to technical assessment of the landslide and other possible causal mechanisms.

Finally, Wood King argues that C&E should have been required to make a written request to me before responding to Wood King's evidence and submissions.

Did Wood King contravene the FPPR and FRPA?

After considering the evidence provided to me, I conclude that Wood King contravened sections 37 and 79(6) of the FPPR and section 46(1) of FRPA.

Section 79(6) of the FPPR: Road Maintenance

Wood King contravened section 79(6) of the FPPR by failing to adequately maintain Kookipi Three FSR.

Wood King was responsible for maintaining Kookipi Three FSR by way of the RUP. One of the conditions contained in the permit states "the Permittee is hereby required to carry out all maintenance activities for roads identified". Kookipi Three FSR was identified on Wood King's RUP #6996-12-01. Once an applicant takes on an RUP, it is responsible for the road maintenance until the permit is terminated and the applicant is relieved of the obligation under the RUP.

To find Wood King in contravention of section 79(6), I must find that the road was not being properly maintained. Section 79(6) itself describes the level of road maintenance that a person is typically required to perform:

> **Road maintenance**
>
> 79 (6) A person required to maintain a road must ensure all of the following:

(a) the structural integrity of the road prism and clearing width are protected;

(b) the drainage systems of the road are functional;

(c) the road can be used safely by industrial users.

Section 81 of the FPPR modifies the level of road maintenance that Wood King was required to perform because Kookipi Three FSR was a wilderness road at the time of the landslide:

Wilderness roads

81 Despite section 22.2 [non-industrial use of a road] of the Act and section 79 [road maintenance], if a forest service road, or a road authorized under a road permit, a cutting permit, a timber sale licence that does not provide for cutting permits, a special use permit or a woodlot licence is not being used by industrial users,

(a) section 79(6)(a) and (b) apply to that road only to the extent necessary to ensure there is no material adverse effect on a forest resource, and

(b) section 79(6)(c) does not apply to that road.

I believe that road maintenance should be viewed as a state of being maintained. A road may require varying degrees of maintenance to keep it in a state of being maintained. It is of course up to permittees to assess and perform maintenance activities to meet the requisite standards. In this case, Kookipi Three FSR was not being used by industrial users in early 2015. As such, Wood King was required, in accordance with section 81, to protect the structural integrity of the road prism and clearing width and ensure that all drainage systems were functional to the extent necessary to ensure that there would be no material adverse effect on a forest resource.

In my view, Wood King did not adequately maintain the Kookipi Three FSR to the required standard of care described under section 81. Failing to adequately maintain the Kookipi Three FSR had an adverse effect on a forest resource in that it caused a medium size landslide that had adverse effects to soils, plant communities and the productive capacity of the area. In coming to this conclusion, I am persuaded by Mr. Kranabetter's opinion on the environmental impact that the landslide had. The photographs that Wood King and C&E provided to me show evidence of a road that requires maintenance. Gravel filled ditch lines and grader berms that prevent proper water flow are evident. There was no evidence before me to show that the road had been seasonally deactivated with any measures taken. In addition, Wood King did not provide any evidence to establish that the road was being inspected or maintained after harvesting activities ended in October 2014. I recognize that the area around Kookipi Three FSR appears to have current and past terrain related issues, however, in my view, this should have made Wood King more alert to the need for additional maintenance activities.

BCTS asked Ms. Higman to prepare a technical memo of the site based on her August 20, 2015 site visit. Ms. Higman's purpose for the site visit was to determine options for reconstruction of the road, and to provide comments on any apparent causal mechanisms for the occurrence of the landslide. Ms. Higman is a highly qualified Senior Geological Engineer with extensive knowledge and experience and I believe that she is qualified to provide an opinion on the causes of landslides.

In her report, Ms. Higman pointed out deficiencies in the road and road maintenance. For example, Ms. Higman referred to water concentrating on the road due to infilling of the ditchline from raveling of the cut slopes, the presence of a grader berm and the lack of seasonal deactivation measures to manage surface water over the winter, such as back-up water bars for culverts and cross-ditches.

In Ms. Higman's opinion, "road drainage was the cause of the landslide triggered by a rainfall event". She also set out examples where ditchlines were filled with gravel and that water was travelling down the road surface. I believe that these are indications of a road not being properly maintained to the requisite standard. This area of the Kookipi Three FSR required extra care in planning, operations and maintenance of forest activities. Ms. Higman also noted that she observed no temporary or seasonal deactivation measures during her site visit.

Wood King submitted that Ms. Higman's report should not be considered because of the disclaimer. In my view, there are no issues with me relying on Ms. Higman's report. It is relevant to my determination and the only question is how much weight that I should give to it in light of the fact that it was prepared for a reason other than supporting an alleged contravention. In my view, the disclaimer does not make Ms. Higman's findings any more or less accurate than if the opinion was relied on for a different purpose. I am satisfied that Ms. Higman was qualified to make the comments that she made in the Technical Memo and I give her comments significant weight. In addition, BCTS is part of the larger FLNRO ministry and I see no issues with this report being sent to other Ministry program staff. On May 31, 2017, Ms. Higman prepared a second memo to clarify her statement of limitations on the Technical Memo and in particular that her memo "can be more broadly relied upon by the BC Ministry of Forests Land and Natural Resource Operations".

Wood King also submitted in its letter dated July 13, 2017, that there was a confidentiality breach between the FLNRO investigator and BCTS. Wood King argued that C&E shared information about the investigation with BCTS. This is not a relevant factor for me to consider when determining if Wood King committed the alleged contraventions. If Wood King is concerned about the privacy of its information and how it was treated, there are other complaint procedures available to it to address privacy concerns.

Section 37 of the FPPR: Landslide

Wood King contravened section 37 of the FPPR by causing a landslide on Kookipi Three FSR.

Wood King primarily argues that it did not carry out a primary forest activity that caused the landslide. Section 37 includes that a person "…who carries out a primary forest activity must ensure that the primary forest activity does not cause a landslide…" A 'primary forest activity' is defined in section 1 of the FPPR as:

> **Primary forest activity** means one or more of the following:
>
> (a) timber harvesting;
>
> (b) silviculture treatments;
>
> (c) road construction, maintenance and deactivation;

I understand Wood King's position is that a contravention under section 37 can only occur if a landslide happens while someone is in the process of actively carrying out a primary forest activity. Wood King submits that 'carrying out' means to bring about, effect, execute, implement or perform an activity. As such, Wood King argues that it was not in contravention of section 37 since it was not doing any primary forest activities at the time of the landslide. Wood King argues further that a mere requirement to perform road maintenance does not constitute carrying out a primary forest activity.

In my view, it is not relevant if Wood King was actively performing a primary forest activity at the time of the landslide. The issue is whether carrying out a primary forest activity caused the landslide regardless of whether that primary forest activity was occurring at the time of the landslide or occurred many months before. In addition, I interpret the meaning of carrying out a primary forest activity to include the failure to sufficiently perform a required primary forest activity such as road maintenance.

Here, Wood King did carry out a primary forest activity. It was the holder of an RUP that required a level of road maintenance to ensure that the structural integrity of the road prism and clearing width are protected and that the drainage systems of the road are functional. Wood King's failure to perform road maintenance properly, or at all, was the main factor and cause of the landslide. In my view, Wood King's failure constitutes carrying out a primary forest activity which caused a landslide. Any road maintenance that Wood King carried out was inadequate and led to the landslide. Similarly, Wood King's failure to carry out ongoing road maintenance also led to the landslide. As such, carrying out the primary forest activity of maintenance is ongoing and involves periods of activity and inactivity, whether or not the person responsible for the maintenance is active or not at the time of the event. In my view, carrying out road maintenance also includes any inspections or decisions that Wood King made to not actively maintain the road.

Wood King failed to recognize the terrain related issues that existed on this road network. Wood King should have deactivated the road and conducted road inspections to ensure that the road drainage features were functional and up to proper standards heading into the winter months. I am guided by Forest Appeals Commission case Riverside Forest Products Ltd. [1998-FOR-07] where the Commission concluded that a slide event was caused by inadequate measures to maintain natural drainage in the aftermath of the appellant's logging activity. Although this decision is not recent, it is relevant and confirms that environmental damage, including from a landslide, resulting

from a forest practice does not have to be contemporaneous with the practice. In addition, the Commission found that a person can carry out a forest practice by omitting to take appropriate steps.

To determine that Wood King contravened section 37, I also must be satisfied that the landslide had a material adverse effect in relation to one of the subjects listed section 149(1) of FRPA. It is clear to me that the landslide on Kookipi Three FSR caused a material adverse effect on soils. Photographic evidence submitted by both parties shows that the landslide had an adverse effect to soils, which is one of the subjects identified in section 149(1) of FRPA. The landslide was approximately 0.18 of a hectare and involved approximately 1,900 cubic metres of material. Mr. Kranabetter, a Research Soil Scientist for the Ministry, conducted a site visit on November 4, 2016 and opined in his report and I accept that the loss of topsoil from the landslide has profoundly reduced the productive capacity of the exposed area.

Section 46(1) of FRPA: Damage to the Environment

Wood King contravened section 46(1) of FRPA by causing the type of damage to the environment that is contemplated in section 46(1).

Under section 46(1), a person must not carry out a forest practice that results in damage to the environment, unless one of the exceptions to the contravention applies. Section 3(1) of the FPPR indicates that for the purposes of section 46(1), "damage" means, among other things, a landslide, soil disturbance, changes to the soil and a debris torrent that enters a fish bearing stream, if any of those things adversely alters an ecosystem. The meaning of forest practice is described in section 1.2(1) of the FPPR and includes road maintenance.

Wood King was the RUP holder for Kookipi Three FSR and was involved in the forest practice of road maintenance. For the same reasons described in the analysis of the contravention of section 37 of the FPPR, I conclude that Wood King carried out a forest practice on the Kookipi Three FSR which caused a medium sized landslide.

Mr. Kranabetter's report provides an overview of the landslide and his expert opinion on defining an ecosystem and the adverse alteration to the physical environment in the area of the landslide. Mr. Kranabetter opined that the landslide meets the definition of damage to the environment, as it is defined in section 3(1) of the FPPR. He concluded in his report:

> "Therefore, in my expert opinion, the landslide surface meets the criteria under Forest Planning and Practices Regulation Section 3 definition for damage to the environment through adverse alterations to an ecosystem via landslides and changes to soil. It is also my opinion that the size of the of the landslide and permanent damage it has done to the productive capacity of this site, along with possible off-site effects on the riparian management area, has resulted in a material adverse effect for the soils resource and on the ecosystem".

The landslide was calculated to be approximately 1,900 cubic metres of material, which is considered a medium sized landslide. Wood King provided photographic evidence of a pre-existing small cutslope directly below the landslide area. I do not find that the pre-existing cutslope on the Kookipi Creek FSR would have significantly reduced the estimated size of the landslide that occurred off of Kookipi Three FSR. It is clear to me from Mr. Kranabetter's evidence that a landslide of this size has had a material adverse effect on soils. In this situation, this has occurred within the area directly affected by the landslide with a loss of soil disturbance and soil productivity. It is clear that in viewing the photographs and reading the Ministry witness statements, a large amount of soil has been relocated and that this will have a lasting effect and alteration on the area within the slide for many years to come.

The evidence in Ms. Higman's report suggests that "road drainage was the cause of the landslide triggered by a relatively intense rainfall event". Although Ms. Higman visited the site many months after the slide event and acknowledged the challenges of observing a site in the circumstances, she was still able to see evidence of water flow along the FSR. In her opinion, the landslide was created by water diverted along the road due to severe cut slope raveling which plugged the ditch line. This water was unable to leave the road surface due to the presence of a grader berm to the point of the initiation of the landslide. I accept Ms. Higman's evidence and conclude that Wood King contravened section 46(1) of FRPA in failing to protect the environment. A lack of maintenance on the Kookipi Three FSR caused damage to the environment as a result of a medium sized landslide of approximately 0.18 hectares and 1,900 cubic metres of material.

The term ecosystem is not defined in the FPPR. Mr Kranabetter provided a definition of ecosystem which included "the sum of total vegetation, animals, and physical environment in whatever size and segment of the world is chosen for the study". I conclude that that area in question meets this definition of ecosystem and therefore it is clear to me that damage to the environment, as it is defined in section 3 of the FPPR, occurred in this case. Wood King's activities resulted in a landslide and changes to soil, both of which I find adversely altered the surrounding ecosystems.

Other defences to the alleged contraventions

Wood King raised several other arguments in support of its defence for all three alleged contraventions. After considering Wood King's arguments, I maintain my determination that Wood King contravened both FRPA and the FPPR.

Wood King argued that C&E's investigation lacked depth including the timing of the assessment of landslide, the preliminary nature of Ms. Higman's report, that no sub-surface investigation was conducted and that Ms. Higman's analysis does not indicate the length of road section that contributed to water concentrations and fill-slope saturation.

As a general response to Wood King's arguments, my findings of fact and determination are based on a balance of probabilities. In doing so, I have assessed the evidence on a standard of what is more probable based on the evidence that was before me.

While Ms. Higman's opinion is not conclusive and her site visit was not conducted immediately after the landslide, I find her analysis to be sufficiently compelling and persuasive for me to conclude, on a balance of probabilities, that the cause of the landslide was Wood King's failure to properly maintain Kookipi Three FSR. Wood King had an opportunity to present evidence in support of its theory on the cause of the landslide and to dispute Ms. Higman's opinion. Wood King provided me with s.22 alternate theory for the landslide. Howevers.22 himself seems to acknowledge that his theory is speculative by suggesting that "it could have been a retrogressive type landslide". To accept this or some other cause of the landslide that is different than the one that Ms. Higman provided in her memo, I would have required more convincing evidence.

Wood King also raised a concern that Ms. Higman modified her report at the request of C&E representatives. In my view, Wood King's concern is not a basis for me to lower the weight that I give to Ms. Higman's opinion. Whether or not C&E asked Ms. Higman to clarify the purpose for which her memo was prepared and the use that it was intended for, that has nothing to do with the substance of Ms. Higman's opinion. I am satisfied that Ms. Higman's professional opinion is her own without undue influence from anyone else.

Lastly, Wood King argues that C&E should have been required to request an opportunity to reply to Wood King's evidence and submissions. In response, I am satisfied that Wood King has had every opportunity to respond to the allegations made against it. In my view, C&E did not have an automatic right to respond to Wood King's evidence and submissions and if I determined that it was inappropriate, I could have given its response less weight or no weight. However, I do not think that C&E was required to make a formal request to respond. C&E's response was relevant and responsive to the issues that Wood King raised. I am primarily concerned with respecting Wood King's rights to a procedurally fair process and I am satisfied that Wood King's rights have been respected here. Wood King has had every opportunity to fully respond to the allegations made against it and the evidence offered in support.

Do any defences apply?

Wood King raised the defence of mistake of fact, which is one of the defences provided for in section 72 of FRPA. I understand Wood King's mistake of fact defence to be that it believed that Kookipi Three FSR was in sufficient condition to prevent a landslide from occurring. Wood King also noted that the facts did not support the acknowledgment of a higher risk of potential landslides associated with the Kookipi Three FSR and specifically argues that the Ministry did not provide known hazard information to Wood King in the RUP or Timber Sale document. I conclude that the facts set out above do **not** support this defence for the reasons in the paragraphs that follow. Any mistake of fact that led to the contravention was not one that was reasonably held.

It is the responsibility of the holder of an RUP to maintain the road. I understand that Wood King feels that they were not provided all available information with the RUP and the Timber Sale document. However, it is up to the RUP holder to maintain the road to the required state. In any event, BCTS did provide Wood King with all known field safety hazards for their RUP along with copies of the Terrain Hazard Assessment report from Madrone Environmental Services Ltd ("Madrone"). This terrain hazard report did not speak to the Kookipi Three FSR but did mention

an issue on the road that was identified where the road crosses a creek labelled "J" and recommend a cross ditch be installed during deactivation to prevent road washout.

Where a person relies on a mistake of fact, there needs to be evidence that the person had an honest and reasonable belief in a mistaken fact, or set of facts, that resulted in the contravention. As I have concluded in this case, the contraventions arose as a result of a lack of road maintenance and not as a result of any reliance on terrain assessment reports or other information that did not speak in any detail to the road in the area of the landslide.

I do not believe that any information was provided to Wood King on the state of the road or potential hazards for Kookipi Three FSR in the area of the landslide. There was an onus on Wood King to recognize that this portion of road was not covered by the Madrone Terrain Hazard Assessment report commissioned by BCTS and to recognize a need for a professional review of this section of road, especially in light of potential road washout near creek "J".

Wood King provided a written statement to me that "Wood King Contracting Ltd. does not have the expertise in assessing terrain hazards or in analyzing historical weather records and snow surveys for landslide potential nor should be expected to have such expertise".

I can appreciate that Wood King does not have the in-house expertise for this type of assessment. In these circumstances, it would have been prudent for Wood King to retain the services of an appropriate consultant instead of moving forward with its planned forest activities.

Is a penalty appropriate and if so how much?

Under section 71(2)(a)(i) of FRPA, I am authorized to levy a penalty for a contravention of section 79(6) up to a maximum of $20,000, for a contravention of section 37 up to a maximum of $100,000 and for a contravention of section 46 (1) up to a maximum of $100,000. These maximum penalty amounts are set out in the *Administrative Orders and Remedies Regulation.* Alternatively, under section 71(2)(a)(ii) of FRPA, I may refrain from levying a penalty if I consider that the contravention is trifling and that it is not in the public interest to do so. If I do levy a penalty, I must consider the following factors in section 71(5)(a)(ii) of FRPA:

(a) Wood King's previous contraventions, if any, of a similar nature;

There are no past contraventions reported for Wood King.

(b) the gravity and magnitude of the contravention;

In my view, the gravity of the contraventions is significant as Wood King's activities have substantially impacted forest resources. Wood King fell far below the standard that I expect from licensees in terms of road maintenance and protecting against damage to the environment.

Kookipi Creek was affected by the landslide as portions of the stream bed were encroached upon by the landslide material. While we do not know the volume of slide material that entered the stream, if any, the material certainly entered the riparian management zone. Kookipi Creek is a class 2 stream system in which rainbow trout are reported to be located. Peter Tschaplinski, Phd, P Ag, Ministry of Environment, reported high fish values in Kookipi Creek downstream of the slide. Although we do not know what impacts this landslide had directly on fish stocks in the area, it had a high potential to impact fish and their habitat.

The magnitude of the contraventions is also significant as Wood King's activities resulted in a medium sized landslide that resulted in damage to the environment and a loss of productive area at the location of the landslide. This landslide is now a permanent feature on Crown Land. There was approximately 50 m^3 of timber lost in the landslide, however, due to the location of this timber, it may not have been available for harvest.

(c) whether the contravention was repeated or continuous;

The landslide was not a repeated or continuous event; however the lack of road maintenance by Wood King was a continuous event that resulted in the landslide.

(d) whether the contravention was deliberate;

The contravention was not deliberate. There was no evidence that Wood King deliberately took actions or failed to take actions that would result in a landslide and corresponding damage to the environment.

(e) any economic benefit that Wood King derived from the contravention;

The only economic benefits to Wood King may have been from avoiding the expenses of conducting inspections or road maintenance/deactivation activities prior to the slide event. In my estimation, Wood King received an economic benefit in the range of $1,000 to $5,000.

(f) Wood King's cooperativeness and efforts to correct the contravention; and

I do not consider there to be any significant uncooperativeness on behalf of Wood King in this matter. Although there were a number of months between information requests from C&E and Wood King's response, Wood King provided a reasonable explanation to explain those delays.

I am not aware of any actions that Wood King took to correct the contraventions and in this case there may not have been much that could have been done. There was no evidence that Wood King has turned its mind to how best to avoid future contraventions of a similar nature by implementing new procedures and practices.

(g) any other considerations that the Lieutenant Governor in Council may have prescribed.

There are none.

In reviewing the evidence, it is clear to me that Wood King's failure to adequately maintain Kookipi Three FSR was the main factor that caused the landslide. The neglect of the road resulted in a medium sized landslide that resulted in damage to the environment and possible damage to fish and fish habitat. This is a serious matter; there is now a permanent landslide feature on the landscape. What appears to have been lacking, on the part of Wood King's primary forest activities, was proper inspection and maintenance of the road. Wood King did not provide information about inspections that it performed on the road and no information about seasonal deactivation measures being taken after harvesting activities ended in the area. There were options for Wood King that may have prevented this landslide event from occurring. Wood King could have seasonally deactivated the road if it still required the RUP. Wood King also could have taken the necessary steps and requested their permit be deleted and applied for another permit prior to commencing activities in the area once again.

In light of my findings in this case, there is a need to provide a meaningful deterrent against future contraventions of a similar nature by Wood King. Although this determination is focused on three separate contraventions they all stem from precisely the same set of circumstances and the penalty amount should be reflective of that fact. The overall penalty is appropriate to the events that occurred in this case.

The total penalty amount is applied as follows:

Section 79(6) FPPR	$3,000
Section 37 FPPR	$5,000
Section 46(1) FRPA	$5,000

I am confident that these penalty amounts will provide an appropriate deterrent against future contraventions and convey a message to others regarding the critical importance of complying with terms and condition of RUPs and the applicable legislation. I also think that this penalty sends a strong message to others that have been given access to the natural resources of British Columbia. The penalty amount highlights the need to protect the environment and that a failure to do so will come at a high cost.

Determination does not forestall other actions that may be taken

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 contraventions described above.

Opportunity for correcting this determination

For 15 days after making my contravention determination and penalty determination under section 71, I am authorized under section 79 of FRPA 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 within this 15 day period at 604-702-5700.

Opportunities for review and appeal

If you have new information that was not available at the time I made this determination, you may request a review of my determination on the basis of this new information. A request for review must be in writing, must be signed by you, or on your behalf, and must contain:

(a) your name and address; and the name of the person, if any, making the request on your behalf;
(b) the address for serving a document to you or the person acting on your behalf;
(c) the new evidence that was not available at the time this determination was made; and
(d) a statement of the relief requested.

This request should be directed to me, at 46360 Airport Road, Chilliwack, BC., V2P 1A5 and I must receive it ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 80 of FRPA and in the *Administrative Review and Appeal Procedure Regulation*. Please note the **three week time limit** for requesting a review.

Alternatively, if you disagree with this determination, you may appeal directly to the Forest Appeals Commission.

The appeal request must be signed by you, or on your behalf, and must contain:

(a) your name and address; and the name of the person, if any, making the request on your behalf;
(b) the address for serving a document to you or the person acting on your behalf;
(c) the grounds for appeal;
(d) a statement of the relief requested; and
(e) a copy of this determination.

The Forest Appeals Commission must receive the appeal ***no later than 30 days*** after the date this notice of determination is given or delivered to you.

The provisions governing appeals are set out in sections 82 through 84 of FRPA and in the *Administrative Review and Appeal Procedure Regulation*. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. A notice of appeal may be delivered to the following address:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **30 day time limit** for filing a notice of appeal.

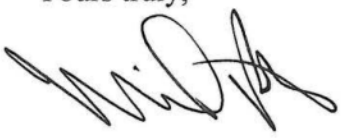
Determination is stayed pending review or appeal

Under section 78 of FRPA, 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.

Performance Record

As Wood King is the holder of an agreement under the *Forest Act*, my determinations under section 71 will become part of your performance record, pursuant to section 85(2) of FRPA, subject to decisions made on review or appeal.

Yours truly,



Mike Peters
District Manager
Chilliwack Natural resource District
Ministry of Forests, Lands, Natural Resource Operations
and Rural Development

pc: Compliance and Enforcement Branch (by email John.Harkema@gov.bc.ca)

Allan Johnsrude, Regional Executive Director, South Coast Region
(by email allanjohnsurde@gov.bc.ca)

Paul Bastarache, Regional Manager, South Coast Compliance and Enforcement Branch
(by email Paul.bastarache@gov.bc.ca)

Forest Practices Board (by email mark.haddock@bcfpb.ca)

BRITISH COLUMBIA

File: 19620-25/A89241; 19130-20/GUDEIT, LEONARD DALE

May 14, 2018

REGISTERED MAIL

LEONARD DALE GUDEIT
s.22

Dear Leonard Gudeit,

This letter is to advise you of my final determination regarding the status of Timber Sale License (TSL) A89241.

Authority for Timber Sales Managers Determination

In the event of a failure by a licensee to carry out licence or legislated obligations, a Timber Sales Manager (TSM) is authorized as follows:

> Under Section 21 of the BC Timber Sales Regulation (BCTSR) the TSM must realize a deposit in respect of a BC Timber Sales Agreement if the TSM is satisfied that the holder of an agreement did not comply with the agreement, the *Forest Act*, *Forest Practices and Range Act*, or the *Wildfire Act* and their regulations and standards.

In making a determination under the above legislation, I must consider the current policy and the rules governing the application of administrative law. In addition, in order to make an informed and fair decision you were provided an opportunity to be heard (OTBH) to communicate any extraordinary circumstances you believe contributed to your failure to complete the obligations described below. It is noted that Gudeit confirmed availability to attend an OTBH on January 9, 2018, and January 24, 2018. In both cases Gudeit became unavailable as the date approached. After the January 24, 2018, OTBH cancellation, the Licensee confirmed that an OTBH would not be necessary but did convey some verbal information to me on the phone. That information is considered in this determination and is documented below.

The undisputed facts related to this file are:

- TSL A89241 was issued to Leonard Dale Gudeit on January 15, 2015, with a term of 20 months.

Ministry of Forests, Lands and Natural Resource Operations and Rural Development
BC Timber Sales
Kootenay Business Area
Mailing Address:
1907 Ridgewood Road
Nelson, BC V1L 6K1
Tel: (250) 825-1100
Fax: (250) 825-3411
Website: www.for.gov.bc.ca/bcts

- At the time of TSL issuance, Gudeit submitted a performance security deposit of $99,799.69.
- A Pre Work was completed on May 4, 2015, between Ross Pavan (BCTS) and Len Gudeit and s.22 (Logging Foreman). The pre-work checklist was signed and received by s.22 and also signed by Teichroeb as 'Additional Persons signing'. It is noted on the pre-work checklist ITEM# 1208: "Waste Determination Completion per Manual" is checked as "Y" = discussed. An e-mail sent to s.22 (Office Administrator for Gudeit) by Darren Henshaw, (BCTS) with copy of pre-work and copy of fire hazard assessment form.
- On June 16, 2015, a letter from Val Golley, District Scaling Officer, authorizing the scaling and manufacturing of Special Forest Products (SFP) was sent to the Licensee. The letter indicates that a residue and waste assessment must be completed and submitted with waste data prior to the scaling and processing of SFP. The letter notified Gudeit to contact District waste and residue staff for direction on submitting waste data.
- The District Scaler did not receive the residue and waste assessment prior to scaling and manufacturing of SFP as specified in the June 16, 2015, letter.
- On October 15, 2015, a final Inspection indicated outstanding obligations including fire hazard assessment and abatement (pile burning) and waste assessment/survey. This inspection indicated that rehab, ditch cleaning activities were completed and were well done.
- Partial deposit release of $65,849.77 was processed October 22, 2015. Outstanding obligations were: residue and waste assessment and pile burning. At the time of this release $29,949.92 was held back. This amount included potential costs for these outstanding obligations as well as an additional 25%.
- October 10, 2017, BCTS staff confirmed that pile burning was completed.
- October 10, 2017, BCTS staff confirmed with the district scaling supervisor that residue and waste assessment results had not been submitted for TSL A89241.

BC Timber Sales Evidence

A summary of the key information is as follows:

- A Pre-work was held May 4, 2015, between Ross Pavan (BCTS) and Len Gudeit and s.22 (Logging Foreman). The pre-work checklist was signed and received by Gudeit and also signed by s.22 as 'Additional Persons signing'. It is noted on the pre-work checklist ITEM# 1208: "Waste Determination Completion per Manual" is checked as "Y" = discussed.
- Logging start dates:
    - Cut block 1 July 20, 2015.
    - Cut block 2 June 29, 2015.
    - Cut block 3 September 1, 2015.
- Primary logging complete dates:
    - Cut block 1 August 21, 2015.
    - Cut block 2 August 21, 2015.
    - Cut block 3 October 15, 2015.
- TSL expired September 26, 2016.

- Final inspection completed on October 15, 2015, by BCTS staff noted that pile burning and residual and waste assessment was still required for all three cut blocks.
- A letter sent by BCTS on September 6, 2016, to Gudeit identified that residue and waste assessment and pile burning were still outstanding obligations for TSL A89241. Partial deposit of $65,849.77 was released on October 10, 2015. The remaining deposit retained was 31.3%, or $29,949.92.
- Through October and November 2016, BCTS staff attempted two times to contact the Licensee regarding status of residue and waste assessments and pile burning. The Licensees representative s.22 informed BCTS that the pile burning had been completed.
- January 19, 2017, BCTS staff confirms that a residue and waste assessment had not been completed.
- Total volume scaled against this mark was 33,978 m^3 with a total cruised merchantable volume estimated at 37,606 m^3 which represents 90% utilization.
- As of the date of this determination a waste assessment is still not complete for this TSL.

Leonard Dale Gudeit Evidence

A summary of the key information presented by Gudeit is as follows:

- Gudeit freely admits that the pile burning was completed prior to the Waste and Residue assessment being completed.
- Gudeit asserts that an internal lack of communication resulted in the piles being burnt prematurely.
- Gudeit alleges utilization was good on this site with 4,374 m^3 of Special Forest Products utilized from this TSL.
- Gudeit's primary concern was the disparity between BCTS and the rest of the Forest Industry with regards to penalties related to burning of waste prior to completing a waste assessment. Gudeit asserts that the same situation with a Major Licensee would be not be punished to this extent, rather the Ministry would only estimate the waste amounts and bill the licensee to that amount.

DISCUSSION

The evidence clearly indicates that the debris piles in A89241 were burned prior to the completion of the waste and residue assessment. In addition, Gudeit did not complete a waste and residue assessment for the area(s) not covered by the debris piles. Gudeit agrees to this fact. Throughout this process Gudeit has been open and forthcoming in all regards; any information regarding the non-conformance was volunteered by the licensee.

DETERMINTION

Based on a detailed review of all the evidence made available to me I have determined that:

- Gudeit failed to assess waste and residue in accordance with the Part 6.00 of the TSL agreement, and pursuant to section 103.1(1) of the *Forest Act*.

- Gudeit did not determine the volume and quality of waste in accordance with the *Provincial Logging Residue and Waste Measurement Procedures Manual*, per section 6.02 of the Timber Sale License.
- Counter to paragraph 6.06 of the License document, Gudeit did dispose of the waste prior to the volume and quantity being conclusively determined by the District Manager.

DISPOSTION OF DEPOSIT

The remaining deposit being held under TSL A89241, in the amount of $29,949.92, is disposed of as follows:

- Pursuant to Section 21 (3) (a) of the *BC Timber Sales Regulation*, I find that $2,000 will be realized for the purposes of completing a residue and waste assessment on behalf of Gudeit.
- Pursuant to Section 21 (3) (b)(i) of the *BC Timber Sales Regulation*, I find that $23,949.92 must be realized.
- Pursuant to Section 21 (3) (b)(ii) *of the BC Timber Sales Regulation*, the balance of $4,000 will be returned to Gudeit.

Summary

Deposit held by BCTS	Penalty as per Section 21 (3) (a)	Penalty as per Section 21 (3) (b)	Balanced returned to Gudeit.
$29,949.92	$2,000	$23,949.92	$4,000

REQUSTING RELIEF OF DEPOSIT REALIZATION

Pursuant to Section 21 (5) of the *BC Timber Sales Regulation* the minister or a person authorized by the minister's delegate may relieve a person from the realization of a deposit if satisfied that the noncompliance was the result of an event that

- Is not related to financial circumstances of the licensee,
- Is beyond the control of the license, and
- Prevents the licensee obligations from being carried out.

A request for relief from deposit realization must be submitted c/o Shawn Hedges, Director, Sustainability & Forestry, PO Box 9507, Stn Prov Govt, Victoria, British Columbia V8W 9C2 no later than 30 days after the date this notice of determination is given or delivered to

you. The request for deposit realization must be signed by, or on behalf of, the requesting person and must contain all of the following information.

1. The name and address of the requesting person;
2. The address for service of the requesting person; and
3. The reasons for the request.

Should you have any questions regarding the determination made in the matter please contact me at 250-825-1103.

Yours truly,

Russell Laroche
Timber Sales Manager
Kootenay Business Area

BRITISH COLUMBIA

File: 19620-25/A89241; 19130-20/GUDEIT, LEONARD DALE

May 14, 2018

REGISTERED MAIL

LEONARD DALE GUDEIT
s.22

Dear Leonard Gudeit,

This letter is to advise you of my final determination regarding the status Leonard Dale Gudeit (Gudeit) as a BC Timber Sales enterprise.

Authority for Timber Sales Managers Determination

In the event of a failure by a licensee to carry out licence or legislated obligations, a Timber Sales Manager (TSM) is authorized as follows:

> Section 78 (2) (b) of the *Forest Act*, authorizes a TSM to, among other things, disqualify the person from making an application under Part 3 for a BC timber sales agreement, either in person or through an agent, for a period not exceeding 2 years beginning on the date of the notice.

In making a determination under the above legislation, I must consider the current policy and the rules governing the application of administrative law. In addition, in order to make an informed and fair decision you were provided an opportunity to be heard (OTBH) to communicate any extraordinary circumstances you believe contributed to your failure to complete the obligations described below. It is noted that Gudeit confirmed availability to attend an OTBH on January 9, 2018 and January 24, 2018. In both cases Gudeit became unavailable as the date approached. After the January 24, 2018, OTBH cancellation the Licensee confirmed that an OTBH would not be necessary but did convey some verbal information to me on the phone. That information is considered in this determination and is documented below.

The undisputed facts related to this file are:

- TSL A89241 was issued to Leonard Dale Gudeit on January 15, 2015, with a term of 20 months.

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BC Timber Sales
Kootenay Business Area
Mailing Address:
1907 Ridgewood Road
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Tel: (250) 825-1100
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BC Timber Sales Evidence

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DISCUSSION

The evidence clearly indicates that the debris piles in A89241 were burned prior to the completion of the waste and residue assessment. In addition, Gudeit did not complete a waste and residue assessment for the area(s) not covered by the debris piles. Gudeit agrees to this fact. Throughout this process Gudeit has been open and forthcoming in all regards; any information regarding the non-conformance was volunteered by the licensee.

DETERMINTION

Disqualification

I have considered the facts presented on this case. As a result I see no reason to take action under Section 78 (2) (b) of the Forest Act with regards to this matter.

Leonard Dale Gudeit

Should you have any questions regarding the determination made in the matter please contact me at 250-825-1103.

Yours truly,

Russell Laroche
Timber Sales Manager
Kootenay Business Area