

**In the matter of the alleged contravention by
Centre Stage Holdings Ltd. of Section 31 of the Private Managed Forest Land Council
Regulation (B.C. Reg. 71/2014, July 1, 2014)**

DETERMINATION

Introduction

1. The Private Managed Forest Land Council¹ (the Council) is an independent tribunal established under the *Private Managed Forest Land Act* (the Act). The Council has oversight responsibilities aimed largely at ensuring that owners of private managed forest land comply with the Act and any regulations made under it. Centre Stage Holdings Ltd. (the Owner) is the registered owner of Managed Forest 381 (MF 381). An investigation conducted by Council staff alleges the Owner contravened section 31 of the *Private Managed Forest Land Council Regulation* (the Regulation) by failing to restock MF 381 in accordance with that section. Section 31 of the Regulation is copied in Appendix A.

2. Consistent with sections 26 and 27 of the Act, in a letter dated March 27, 2018 the Council provided the Owner with an opportunity to be heard before making a determination about whether the Owner had contravened section 31 of the Regulation. Accordingly, the Owner provided a written response to Council on May 25, 2018, with further information provided by email on June 14, 2018. The Council proceeded by way of a panel considering the evidence before it on June 19, 2018.

Issues

3. Section 31 of the Regulation requires, among other things, that an owner of private managed forest land (or a contractor, employee or agent of the owner) restock an area disturbed by timber harvesting within 5 years, except where the timber harvesting occurred before the area became the owner's land in which case the area must be restocked within 10 years of the area becoming the owner's managed forest land. On the Coast restock means establishing a stand of 400 crop trees per hectare reasonably well distributed across the disturbed area. A crop tree means a tree that is of a commercial species that is consistent with the species of trees specified in the management commitment for use in reforestation.

4. The Council has published Reforestation Stocking Variability Field Practices Policy #FPO-03 which details Council's policy regarding stocking variability and crop tree selection within areas that are required to be restocked and successfully regenerated under section 31 of the Regulation. This policy document is publicly available on the Council's website.

5. The Council must determine whether the Owner contravened section 31 of the Regulation and, if so: (1) what, if any, administrative penalty should be levied; and (2) what, if any, remediation order should be made.

¹ The Private Managed Forest Land Council operates under an abbreviated title as the Managed Forest Council.

Evidence

6. The evidence before the Council consisted of the Investigation Report² prepared by Council staff, and the written submissions provided by Glenna Borsuk on behalf of the Owner^{3,4}.

7. The Owner did not dispute the factual findings as set out in the Investigation Report. Rather the Owner's submissions outlined events which influenced their failure to restock MF 381 as required by the Regulation.

8. The uncontradicted evidence before the Council can be summarized as follows:

- Centre Stage Holdings is the registered owner of Managed Forest 381 located on Gabriola Island, British Columbia.
- Managed Forest 381 initially consisted of two parcels PID 003-134-806 (Section 3) and PID 003-134-792 (Section 8) in 2006. The Section 8 parcel was subdivided in 2017 and now consists of four parcels PID 027-086-321, PID 027-086-330, PID 027-086-453, and PID 027-086-500.
- The owner of Managed Forest 381 submitted a Management Commitment to Council in 2005 in accordance with S. 17 of the Act and S. 9 of the Regulation, and the property was classified as Managed Forest by the BC Assessment Authority in 2006.
- The Management Commitment specified that the commercial species of tree that will be used for reforestation would be "fir" and "cedar". The Management Commitment further specified that "natural vegetation will be used to reforest where applicable unless planting is required to meet stocking requirements" [*emphasis added*].
- The Owner did not submit annual declarations to report timber harvesting activity in 2005, 2006, 2007, and 2009 as required by S. 20 of the Act and S. 12 of the Regulation. In 2014, the Owner did report this harvesting after twice being requested to do so in 2009 and again in 2013. A previous owner harvested timber on the property prior to the current owner's purchase of the property in 1998.
- An inspection conducted for the Council on January 19, 2009 by Steve Lackey, RPF found a 'large area portion of the north portion' of Section 8 was not restocked in accordance with S. 31 of the Regulation and would need to be restocked by 2016. The statement in Mr. Lackey's inspection report that the area needed to be restocked by 2016 was an error as the area had been harvested in 2006 and was therefore required to be restocked in 5 years or by 2011. The Council provided the Owner a copy of the inspection report on February 11, 2009, and further sent a letter to the Owner on May 25, 2009 outlining concerns about reforestation and requesting annual declarations be provided for harvesting activities in 2006 and 2007. There is no evidence the Owner complied with this request for annual declarations.
- An inspection conducted for the Council on October 15, 2013 by Nancy Pezel, RPF raised potential compliance issues regarding restocking requirements on both Section 3 and Section 8.
- On December 3, 2013, the Council sent a letter to the Owner requesting confirmation of harvesting activity for 2005 to 2013. The Owner responded on January 14, 2014 with information that outlined harvest areas since 2005.

² Investigation Report: IN 1703 – MF 381 Gabriola Island Restocking of Harvest Areas, March 12, 2018, prepared by Ann Donaldson, RPF.

³ Letter to the Council from Glenna Borsuk dated May 25, 2018.

⁴ Email sent to the Council from Glenna Borsuk dated June 14, 2018.

- On January 20, 2014, the Council sent a letter to the Owner outlining these ongoing restocking issues on Managed Forest 381 and reminding the Owner of their restocking obligations and clarifying this must be completed by 2016.
- An inspection conducted for Council on May 2, 2017 by David Barker, RPF found four harvest units were not restocked in accordance with the Regulation.
- Council notified the Owner on June 6, 2017 that a detailed silvicultural survey would be conducted to investigate non-compliance with the restocking requirements under S. 31 of the Regulation.
- Kathi Davis, RPF conducted a silvicultural survey of four harvest units on Managed Forest 381 on September 9, 2017. This survey found insufficient restocking on each of the harvest units in accordance with the following table:

Harvest Unit	Acceptable Species Stems per Hectare	All Trees Species Stems per Hectare	Remediation Necessary
A	200	367	Reforestation by planting
B	240	280	Reforestation by planting
C	250	367	Major brush treatment and reforestation by planting
D	44	178	Some brush treatment and reforestation by planting

The harvest unit locations are documented in Appendix 11 of the Investigation Report. Acceptable crop species considered in this survey are as outlined in the Management Commitment for Managed Forest 381 and included Douglas-fir and western redcedar. The stocking standards are documented in the Managed Forest Council Field Practices Policy FPO-03. All tree species considered in the survey also considered grand fir, arbutus, maple, hemlock, and bitter cherry.

No evidence was found of efforts to address low stocking issues identified in 2009 or 2013 inspection reports.

9. Issues addressed by the Owner in their written submissions include:

- The Owner does not disagree with the facts submitted in the Council’s Inspection Reports or the Investigation Report.
- The Owner admits they did not understand their obligations to reforest their property in compliance with the Regulation and the commitments they made in their Management Commitment.
- The Owner believed that tree species not included in their Management Commitment would satisfy the conditions of the Regulation.
- The Owner believed that natural regeneration would satisfy the restocking requirements under the Regulation.
- There were extenuating circumstances causing financial difficulties preventing having funds available to address the restocking issues raised by Council in their inspections conducted in 2009 and 2013.
- There was some confusion about the timeframe for regeneration of the different parcels.

- The Owner expressed concerns about having to remove the arbutus trees necessary to reduce competition with Douglas-fir regeneration because of their concern about their medicinal value.
- The Owner believes that species not included in their management commitment including arbutus, hemlock, grand fir, maple, alder, and Garry oak should be included in the tree species to be considered for the restocking requirement despite these not being included in their Management Commitment.
- The Owner has engaged the services of a professional forester to develop and implement a restocking plan.

Analysis

10. Harvest Units A, B and C were each harvested after the Owner purchased the property. Although S. 31 of the Regulation would have required these areas to be restocked 5 years after they were harvested, in 2009 Council staff erroneously informed the Owner they had 10 years to restock the area harvested or cleared in 2006. In recognition of this error, Council sent a letter to the Owner in January 2014 extending the restocking requirement to 10 years which meant restocking was required by 2016. Harvest Unit D was harvested before the property was purchased by the Owner.

11. The stocking survey conducted for Council found Harvest Units A, B, C, and D each failed to meet the restocking standards requiring 400 crop trees per hectare. The Regulation clearly specifies the requirement to restock with a commercial species that is consistent with the species of trees specified in the Management Commitment for use in reforestation.

12. Inclusion of tree species other than those that meet the definition of crop trees is irrelevant to meeting the requirement of the Regulation. Although the Owner states they believed that tree species not included in their Management Commitment would satisfy the conditions of the Regulation, the Owner was clearly informed by Council in both 2009 and 2013 this was not the case.

13. The Owner's reliance on natural regeneration has failed to produce the required restocking levels and replanting with crop trees is required to meet these requirements.

14. Section 29 of the Act sets out the defenses which are available to the owner of private managed forest land where a contravention has been established. Section 29 provides:

29 For the purposes of a determination of the council under sections 26 and 27, a person must not be found to have contravened a provision of this Act or the regulations if the person establishes that:

- (a) the person exercised all due diligence to prevent the contravention,
- (b) the person reasonably and honestly believed in the existence of fact that if true would establish that the person did not contravene the provision, or
- (c) the person's actions relevant to the provision were the result of officially induced error.

There was no evidence before the Council to suggest that the Owner exercised all due diligence to prevent the contravention, that the Owner was mistaken in fact, or that the contravention was a result of officially induced error.

Conclusions:

15. The Council finds that the Owner has contravened S. 31(3) of the Regulation by failing to restock 400 trees per hectare reasonably well distributed crop trees on the areas harvested on each of Harvest Units A, B, and C within the extended 10-year deadline of 2016. Council finds there is insufficient evidence the Owner has contravened the Regulation on Harvest Unit D.

16. Having found that the Owner contravened the Regulation, the Council must consider whether or not to levy an administrative penalty under section 26(2) of the Act. Section 26(2) provides that the Council may either levy an administrative penalty in an amount not exceeding \$25,000 or refrain from levying such a penalty if satisfied the contravention is trifling. When making its assessment, the Council is directed by section 26(5) to consider the following factors:

- Any previous contraventions of a similar nature
- The gravity and magnitude of the contravention
- Whether the contravention was repeated or continuous
- Whether the contravention was deliberate
- Any economic benefit derived by the person from the contravention
- The person's efforts to remedy the contravention
- The person's efforts to prevent to contravention
- Whether relevant forest management objectives specified in Division 1 of Part 3 of the Act are being achieved despite the contravention.

The Owner has not had previous contraventions, has fully cooperated with the Council staff in the investigation, and has recently engaged professional advice on meeting the requirements of the Regulation. However, meeting reforestation objectives on private managed forest land is a key objective under the Act, and Council does not consider the contravention to be trifling. Council notes that the Owner was informed of their reforestation obligations in 2009 and again in 2014, and they failed to submit annual declarations reporting harvesting activity as required. Taking all of these factors into account the Council has decided to levy an administrative penalty in the amount of \$1,000 for each of Harvest Units A, B, and C, for a total penalty of \$3,000.

17. The Council has authority, under section 27 of the Act, to remedy a contravention by requiring an Owner to either carry out a requirement of the Act or Regulation which the Owner failed to carry out or repair or mitigate the damage to private managed forest land caused by the contravention. Pursuant to this section, the Council requires the Owner to restock Harvest Units A, B, and C in accordance with S. 31 of the Regulation using a species meeting the definition of crop trees no later than June 30, 2019. The Owner must provide a silviculture plan signed by a registered professional forester to Council by October 31, 2018 which outlines how the Owner intends to meet this requirement and provide Council of the results of a restocking survey conducted in accordance with Reforestation Stocking Variability Field Practices Policy #FPO-03 upon completion of replanting.

Reconsideration and Appeal

18. Under section 32 of the Act, the Owner may request the Council to reconsider some or all of this Determination. Under section 33 of the Act, the Owner may appeal this Determination to the Forest Appeals Commission.

A handwritten signature in black ink, appearing to read "Rod Davis". The signature is fluid and cursive, with a prominent "R" and "D".

Rod Davis, Chair
Managed Forest Council

July 3, 2018

Appendix A – Section 31 of the *Private Managed Forest Land Regulation*

31 (1) In this section:

"completion of timber harvesting" means the date that timber harvesting within a cutblock is concluded and is determined by

- (a) the date the area is declared as a cutblock in an annual declaration, or
- (b) if an area is not included in a declaration, a date that does not exceed two consecutive operating seasons from the commencement of harvesting in the cutblock;

"crop tree" means a tree that

- (a) is of a commercial species that is consistent with the species of trees specified in the management commitment for use in reforestation, and
- (b) is unencumbered by pathogens;

"disturbed area" means all or part of private managed forest land where

- (a) timber harvesting has been completed within a cutblock, or
- (b) timber was destroyed but does not include an area occupied by roads referred to in section 13 or logging trails referred to in section 14 (1);

"restock" means to establish a stand of trees that contains at least

- (a) 400 crop trees per hectare reasonably well distributed across the disturbed area if the stand is on the Coast, and
- (b) 600 crop trees per hectare reasonably well distributed across the disturbed area if the stand is in the Interior;

"successfully regenerated stand" means a stand of trees

- (a) that contains at least
 - (i) 400 crop trees per hectare reasonably well distributed across the disturbed area if the stand is on the Coast, and
 - (ii) 600 crop trees per hectare reasonably well distributed across the disturbed area if the stand is in the Interior, and
- (b) where the crop trees exceed the height of competing vegetation within 1 m of the crop tree by
 - (i) 50% if the area is on the Coast, and
 - (ii) 25% if the area is in the Interior.

(2) This section does not apply to an owner of a disturbed area if

- (a) the area where the timber was harvested or destroyed is a contiguous area that is under 1 ha in size, or
- (b) the trees remaining on the area meet the definition of a successfully regenerated stand.

(3) If all or part of private managed forest land becomes a disturbed area after the area becomes an owner's land, the owner or a contractor, employee or agent of the owner must reforest the disturbed area by

- (a) restocking the disturbed area within 5 years of the completion of timber harvesting activity on the cutblock, or the date the timber was destroyed, as applicable, and
- (b) establishing a successfully regenerated stand on the disturbed area within 15 years of the completion of timber harvesting activity on the cutblock, or the date the timber was destroyed, as applicable.

(4) Subject to subsection (5), if all or part of private managed forest land became a disturbed area before the area became an owner's land, the owner or a contractor, employee or agent of the owner must reforest the disturbed area by

- (a) restocking the area within 10 years of the area becoming the owner's managed forest land,
and
 - (b) establishing a successfully regenerated stand on the area within 20 years of the area becoming the owner's managed forest land.
- (5) If, in relation to a disturbed area, the council determines that
- (a) the present owner is a corporation,
 - (b) the previous owner is a corporation and was the owner of the area when the area became a disturbed area, and
 - (c) the present owner is
 - (i) a subsidiary of the previous owner, or
 - (ii) has control of the previous owner, the council may order that the present owner reforest the disturbed area in accordance with subsection (3).
- (6) Nothing in this section requires an owner to reforest a disturbed area if the timber on the area was
- (a) destroyed and the disturbed area is not sufficiently productive to support a successfully regenerated stand, or
 - (b) harvested or destroyed and the disturbed area becomes occupied by buildings or other structures or installations.