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September 27, 2007

REGISTERED MAIL

Steve Lorimer  
Manager, Public Affairs & Government Relations  
TimberWest Forest Corp.  
#3-4890 Rutherford Road  
Nanaimo, BC V9T 4Z4

Dear Mr. Lorimer:

**Re: Notice of determination regarding alleged contraventions  
Beech Creek – CW500**

## **1. Introduction**

### **1.1 Authority**

It has been alleged that TimberWest Forest Corp (TimberWest), as owner of Managed Forest #65, contravened section 18 of the Private Managed Forest Land Council Regulation, BC Reg. 336/2004 (the regulation) by failing to retain sufficient trees along a portion of Beech Creek in Block CW500.

The Private Managed Forest Land Council (the Council), after giving a person who is alleged to have contravened a provision of the *Private Managed Forest Land Act* (the Act) or the regulations an opportunity to be heard, is authorized under sections 26 and 27 of the Act to determine whether the person contravened the provision. If the Council determines that a contravention has occurred, the Council may levy an administrative penalty and may issue a remediation order.

### **1.2 Opportunity to be heard**

On August 3, 2007 the Council provided TimberWest with the investigation report<sup>1</sup> and a supplementary technical report<sup>2</sup>. On August 28, 2007 TimberWest provided the Council with

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<sup>1</sup> The investigation report, dated July 23, 2007, was prepared by Stuart Macpherson, RPF, Executive Director of the Council and was entitled "Investigation Report: Harvesting beside Beech Creek, Comox Lake Community Watershed".

<sup>2</sup> The technical report, dated July 2007, was prepared by Shawn Hamilton, RPBio, of Shawn Hamilton and Associates and was entitled "Block Assessment of WF500 Beech Creek – TimberWest Forest Corp".

a written submission in respect of the allegations<sup>3</sup>. On August 29, 2007 the Council carried out a hearing in respect of the allegations based on the information and evidence provided to the Council in the investigation report, the technical report and the written submission of TimberWest. During the Council's deliberations, it became apparent that additional information was required concerning the nature and extent of the measures TimberWest had taken to prevent the events that were the subject of the allegation from occurring. As a result, a hearing in respect of that specific issue was held on September 25, 2007.

This determination is based on the Council's consideration of the investigation report, the technical report and TimberWest's written and oral submissions.

### **1.3 Issues**

1. Did TimberWest contravene section 18 of the regulation by failing to retain sufficient trees along a section of Beech Creek in cutblock CW500?
2. If TimberWest contravened section 18 of the regulation,
  - (a) what administrative penalty, if any, is warranted?
  - (b) what remediation order, if any, is warranted?

## **2. Did TimberWest contravene section 18 of the regulation?**

### **2.1 Evidence**

#### **Council staff evidence:**

In part, the Council staff evidence indicated:

1. Block CW500 is owned by TimberWest and is private managed forest land. The area is within the Comox community watershed and is therefore a water supply area as defined in section 1 of the regulation
2. The allegations concern timber harvesting which occurred in 2005 within a portion of Block CW500 adjacent to Beech Creek
3. TimberWest prepared a logging plan for Block CW500 dated June 8, 2005 which provided that
  - both clearcutting (5.2 ha) and single stem (47.8 ha) harvesting were to be carried out
  - of the total area of 5.2 ha to be clearcut, approximately 1 ha was located on the east side of Beech Creek (the clearcut area)
  - the timber within the clearcut area was to be hand-felled and aurally yarded
  - a buffer of approximately 25 m was to be retained between the downslope edge of the clearcut area and the eastern bank of Beech Creek (the buffer area)

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<sup>3</sup> The submission, dated August 28, 2007, was prepared by Steve Lorimer, Manager, Public Affairs and Government Relations and was entitled "Re: Beech Creek – CW500: Investigation of Forest Practices".

4. The portion of Beech Creek adjacent to the buffer area
  - has an average stream channel width of 14.6 m
  - has the potential to support resident trout, but not anadromous salmonids
5. The buffer area, in its pre-harvest condition, supported sufficient trees to conform with the requirements of section 18 of the regulation
6. All of the trees within the area located in the buffer area between the clearcut area and an approximately 200 m length of Beech Creek were felled and removed.

**TimberWest evidence:**

TimberWest does not dispute any of the evidence presented in the investigation report and the technical report as the evidence relates to describing the events which occurred in Block CW500. TimberWest noted that the timber harvesting that removed the buffer area along Beech Creek that was identified in the logging plan was carried out by a contractor. TimberWest accepts that it is responsible for the incident, but submits that it did not intentionally carry out logging within the riparian area.

**2.2 Applicable legislation:**

Section 18 of the regulation provides in part:

- (1) If an owner carries out timber harvesting activities in a cutblock adjacent to a stream whose stream channel is at least 3.0 m wide, the owner must, on each side of every 100m of that stream that is adjacent to the cutblock, retain at least 20 trees that are selected in accordance with subsections (2) and (4):

**2.3 Analysis:**

From the evidence, there is no dispute in respect of any of the following:

- TimberWest is the owner of the area on which Block CW500 is located and that the area is private managed forest land
- Block CW500 is adjacent to Beech Creek
- Beech Creek exceeds 3.0 m in width, is a fish stream and is within a community watershed
- There were sufficient trees in the pre-harvest stand within the buffer area to meet the requirements of section 18 of the regulation
- TimberWest's contractor removed all of the trees along one side an approximately 200 m portion of Beech Creek and TimberWest accepts that it is responsible for the incident

The Council finds that TimberWest contravened section 18 of the regulation by failing to retain at least 20 trees along each 100 m of the east side of Beech Creek that is adjacent to Block CW500. As the area from which all of the trees were removed is approximately 200 m, the Council finds that TimberWest has contravened section 18 of the regulation on two counts.

### **3. What administrative penalty, if any, is warranted?**

#### **3.1 Authority**

Under section 26 (2) of the Act, if the Council determines that a person has contravened a provision of the Act or the regulations, the Council may

- (a) levy an administrative penalty against the person in an amount that does not exceed \$25 000, or
- (b) refrain from levying an administrative penalty against the person if the person considers that the contravention is trifling.

The Council does not consider that the contravention of sections 18 of the regulation, on either count, is trifling.

Section 26 (5) of the Act requires that, before the Council levies an administrative penalty, the Council must consider all of the following:

- (a) any previous contraventions 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 derived by the person from the contravention;
- (f) the person's cooperation and efforts to remedy the contravention;
- (g) the person's efforts to prevent the contravention;
- (h) whether relevant forest management objectives specified in Division 1 of Part 3 of the Act are being achieved despite the contravention.

#### **3.2 Consideration of Factors**

The Council has determined that there were two contraventions of section 18 of the regulation. In determining the amount of any administrative penalty that may be appropriate for both counts, the Council will evaluate the factors below together, with no one factor being given greater or less weight than another.

**(a) *any previous contraventions of a similar nature***

TimberWest does not have any previous contraventions of a similar nature. TimberWest's previous contravention concerned stream crossings and not retention of streamside trees.

**(b) *the gravity and magnitude of the contravention***

The gravity of the contravention goes to the significance of the impact of the contravention. The evidence suggests that the current or future channel bank stability has not been significantly affected by the removal of the streamside trees. In addition, there does not appear to have been a significant potential loss of fish rearing habitat. However, as Beech Creek is semi-alluvial, the presence of large woody debris on an on-going basis is an important management consideration in respect of sediment storage. TimberWest has removed the potential for large woody debris to be contributed from the eastern bank of the

affected portion of Beech Creek for many years. Accordingly, the Council finds that the gravity of the contraventions, taken together, is moderate.

The magnitude of the contravention goes to the overall scope of the contravention. In this instance, there were 2 contraventions associated with failure to retain sufficient streamside trees. Almost 200 m of stream was impacted with a total removal of all trees within that area. The magnitude of the contraventions, taken together, is very high.

**(c) *whether the contravention was repeated or continuous***

TimberWest's two counts of failing to retain sufficient streamside trees occurred on immediately adjacent areas at substantially the same time. Therefore the contraventions were repeated.

**(d) *whether the contravention was deliberate***

TimberWest's contractor deliberately harvested the streamside trees that were required to be retained under section 18 of the regulation. However, there is no evidence to suggest that, in removing the trees, TimberWest deliberately intended to contravene the regulation.

**(e) *any economic benefit derived by the person from the contravention***

TimberWest would likely have derived an economic benefit from the removal of the trees from the buffer area. This benefit would be the net profit on the logs that were removed. From the evidence, it appears that the costs of the clean up measures ordered by TimberWest were borne by the contractor responsible for falling the trees within the buffer area. TimberWest would have incurred some additional administrative costs as well as enhanced reforestation costs in respect of the clearcut area and buffer area. The net economic benefit to TimberWest is not known.

**(f) *the person's cooperation and efforts to remedy the contravention***

TimberWest was very cooperative with the Council in respect of the contraventions. This began with the initial self-reporting of the events and continued with the providing of information in a timely fashion to Stuart Macpherson and Shawn Hamilton.

TimberWest has taken steps to remove any debris associated with the timber harvesting within the buffer area. TimberWest has also promptly reforested the affected areas. These actions will contribute to reducing any long term impacts on Beech Creek.

**(g) *the person's efforts to prevent the contravention***

TimberWest made some efforts to prevent the contraventions from occurring. In particular, in accordance with its environmental management system, TimberWest prepared a logging plan for Block CW500 and discussed the plan with both the falling contractor and the helicopter yarding contractor. In addition, TimberWest had procedures in place which prevented the falling contractor from modifying a logging plan without TimberWest's approval.

On the other hand, TimberWest did not identify the clearcut area in close proximity to a fish bearing stream in a community watershed to be of sufficient importance to walk the area with the falling contractor. Furthermore, there was a complete lack of supervision of the fallers in such a critical area by either the contractor or by TimberWest. The Council finds that TimberWest's efforts to prevent the contraventions were not sufficient.

**(h) *whether relevant forest management objectives specified in Division 1 of Part 3 of the Act are being achieved despite the contravention***

The forest management objectives that are relevant to the contraventions are set out in sections 13 and 14 of the Act. These sections provide, in part:

- 13 (1) The forest management objective for private managed forest land with respect to water quality is to protect human drinking water, both during and after harvesting.
- 14 (1) The forest management objective for private managed forest land with respect to protection of fish habitat, both during and after harvesting, is to retain sufficient streamside mature trees and understory vegetation to protect all of the following:
  - (a) a natural variation in water temperatures;
  - (b) sufficient cover for fish;
  - (c) a continual source of large woody debris for stream channel stability purposes;
  - (d) a vigorous mass of roots capable of controlling stream bank erosion;
  - (e) a filter to prevent the transport of sediment into stream channels;
  - (f) woody debris sufficient for in-stream habitat;
  - (g) a source of nutrients to the stream through litter fall.

The removal of all of the trees from within the buffer area over a 200 m portion of the east bank of Beech Creek is completely inconsistent with the forest management objectives set out in sections 13 (1) and 14 (1) of the Act.

The hillside in CW500 is inherently stable. In other circumstances, the removal of the trees from steep slopes right up to the stream edge could have significantly increased the potential for sediment transport into Beech Creek with a corresponding negative effect on human drinking water.

The removal of all the streamside trees will have some detrimental effect on the achievement of the forest management objective in section 14 (1) of the Act. On the western bank of the affected portion of Beech Creek, TimberWest retained trees in an amount and distribution that exceeded the requirements of section 18 of the regulation. As a result, the negative impacts of the contravention on the objective of protection of fish habitat will at least be partially mitigated.

### **3.3 Amount**

Having considered each of the factors set out in section 26 (5) of the Act, the Council levies an administrative penalty of \$35 000.00 for the two counts of contravening section 18 of the regulation. This amount must be paid to the Minister of Finance by November 30, 2007.

#### **4. What remediation order, if any, is warranted?**

##### **4.1 Authority**

If the Council determines that a person has contravened a provision of the Act or regulations, the Council is empowered under section 27 of the Act to order the person to remedy the contravention by

- (a) carrying out a requirement of the Act or regulations that the person has failed to carry out, or
- (b) repairing or mitigating the damage to private managed forest land caused by the contravention.

The power of the Council under paragraph (b) is limited to damage to private managed forest land and does not extend to other lands that may have been affected by the contravention.

##### **4.2 Considerations**

With respect to the affected areas within Block CW500, TimberWest has submitted that it has done each of the following:

- Cleaned the debris from Beech Creek the resulted from the harvesting of the timber from the buffer area;
- Reforested the clearcut area and buffer area to twice the density required by the regulation;
- Committed to carrying out additional silviculture activities within the block to promote faster regeneration;
- Retained additional trees on the western bank of Beech Creek opposite the affected area.

In addition, TimberWest submits that it has taken steps to improve the way it communicates with its contractors to minimize the risk of this type of incident occurring again. The Council is hopeful that these improvements include

- addressing the issues of identification of potentially critical areas, especially those adjacent to streams such as Beech Creek, and
- ensuring that the those carrying out the activities within these critical areas are adequately supervised.

From the evidence, it does not appear that the contraventions resulted in any appreciable delivery of sediment into Beech Creek. Accordingly, there was likely no negative impact on water quality or fish habitat at the time immediately following the contravention.

Nonetheless, the Council requires further assurance that the actions of TimberWest within Block CW500 will not have a long term negative impact on

- the quality of drinking water within the community watershed, or
- the productivity of the fish habitat along Beech Creek both within the cutblock and in the 1 km portion of Beech Creek located between the cutblock and Comox Lake.

### 4.3 Remediation Order

The Council orders that TimberWest do the following:

1. monitor the trees planted within the buffer area and the clearcut area to ensure that the area supports a successfully regenerated stand in the earliest practicable timeframe;
2. as soon as practicable retain a qualified registered professional to assess each of the following:
  - (a) if any measures are required within the stream channel of the portion of Beech Creek adjacent to Block CW500 to help ensure that the natural log jams within the stream remain stable and continue to hold back sediment and provide fish rearing habitat;
  - (b) if any measures are required on the eastern bank of the portion of Beech Creek adjacent to Block CW500 to ensure that the bank will continue to remain stable as the roots of the stumps decay;
  - (c) if any opportunities exist downstream on Beech Creek to offset the removal of the streamside trees within Block CW500 by
    - reducing the risk of any large amounts of sediment that is deleterious to human drinking water being discharged into Comox Lake in the future, and
    - enhancing the ability of the creek to provide fish habitat;
3. submit the report of the qualified registered professional to the Council as soon as practicable upon its completion.

### 5. Reconsideration and Appeal:

Under section 32 of the Act, TimberWest may request that the Council reconsider some or all of this determination, including the administrative penalty and remediation order.

Under section 33 of the Act, TimberWest may appeal this determination to the Forest Appeals Commission.

If you need clarification of any aspect of this determination, please contact the undersigned at the Private Managed Forest Land Council Office, at (250) 386-5737.

Yours truly,



Trevor Swan, Chair  
Private Managed Forest Land Council