

**In the matter of the alleged contravention by 546761 BC Ltd. of Section 11 of the Private
Managed Forest Land Council Regulation 2007 BC Reg 182/2007**

DETERMINATION

1.0 Introduction

The Private Managed Forest Land Council is an independent tribunal established under the *Private Managed Forest Land Act* (the Act). The Council has oversight regulatory responsibilities aimed largely at ensuring that owners of private managed forest land comply with the Act and any regulations made under it. 546761 BC Ltd. (the Owner) is the registered Owner of Managed Forest 238 (MF 238), and the Owner's representative is Kent Cronsberry. The Council's Executive Director has alleged that the Owner contravened section 11(1) of the Private Managed Forest Land Council Regulation (the Regulation) by failing to provide a Notice of Sale within 30 days of the disposal of private managed forest land.¹ Section 11(1) provides as follows:

Notification of sale of private managed forest land

11(1) If the holder of a management commitment under section 17 of the Act disposes of land to which the management commitment applies, the holder must give notice to the council within 30 days of the disposal.

(2) A notice referred to in subsection (1) must be in writing and include all of the following:

- (a) the date of completion of the sale;
- (b) the name and address of the purchaser;
- (c) the legal description of the property.

Consistent with section 23 of the Act, the Council provided the Owner with an opportunity to be heard before making a determination about whether the Owner had contravened section 11 of the Regulation, as alleged by the Executive Director.

2.0 Evidence

The Council proceeded by way of written hearing on August 21, 2012. The Council considered the evidence provided by the Executive Director in his Investigation Report, as well as the written submissions provided by Mr. Cronsberry on behalf of the Owner. Notably, the Owner did not dispute the facts as set out in the Executive Director's Investigation Report. The salient facts are therefore uncontroverted and can be summarized this way:

¹ Executive Director's Investigation Report: MF238 Radium – Failure to Provide Notice of Sale August 2011, May 28, 2012 prepared by Stuart Macpherson, RPF.

- On December 2, 2011, the Council was notified by the BC Assessment Authority that one of the parcels of MF 238 (PID: 012-506-893; N ½ District Lot 7561, Land District Kootenay) (the Property) had been removed from managed forest class.²
- On February 22, 2012 the Executive Director sent a letter to the Owner indicating that the Council was not notified of the sale of the Property as required by the Regulation, and providing it with an opportunity to comment.³
- The Owner's March 1, 2012, email response confirmed that the Notice of Sale was not completed.⁴
- On April 30, 2012 the Council notified the Owner that the Council would be proceeding with a written hearing on July 16, 2012 regarding the alleged contravention, and provided the Owner with an opportunity to be heard as required under Section 26(1).⁵
- On May 28, 2012 the Executive Director provided the Owner with a copy of his Investigation Report.
- On June 11, 2012 the Owner responded to the Council indicating the information in the Investigation Report was accurate.⁶
- The Council sent a letter to the Owner on July 13, 2012 advising that the original written hearing date of July 16, 2012 had been moved to August 21, 2012.⁷

3.0 Issues

The Council must consider three issues:

1. Did the owner contravene section 11(1) of the Regulation as alleged?
2. If a contravention did occur, what, if any, administrative penalty should be levied?
3. If a contravention did occur, what, if any, remediation order should be given?

² BC Assessment's letter to Stephan Fear and Kim Fraser dated December 2, 2011, copied to Council.

³ Executive Director's letter to Mr. Cronsberry dated February 22, 2012.

⁴ Mr. Cronsberry's email dated March 1, 2012.

⁵ Council Chair's letter dated April 30, 2012.

⁶ Mr. Cronsberry's letter of response dated June 11, 2012.

⁷ Council Acting Chair's letter dated July 13, 2012.

4.0 Did the Owner Contravene Section 11(1) of the Regulation as Alleged?

In determining whether or not there has been a contravention of the Regulation, the Council must consider whether, on a balance of probabilities, it has been established on the evidence that:

1. The Owner did not comply with section 11(1) of the Regulation; and,
2. A defence available to the Owner under section 29 of the Act applies.

The uncontested evidence before the Council is that:

1. N ½ District Lot 7561, Kootenay Land District, where the alleged contravention occurred, was private managed forest land prior to its sale,
2. the Owner owned the land where the alleged contravention occurred, and
3. the Owner did not file a Notice of Sale with the Council office within 30 days of completion of the sale.

Accordingly, the Council finds that the Owner contravened section 11(1) of the Regulation by failing to provide the Council with 30 days' Notice of Sale.

The Council is also satisfied that none of the defences available under section 29 of the Act apply here. Section 29 provides:

Defences to administrative proceedings

- 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 facts 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 an 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 an officially induced error. In fact, the Owner's evidence was that the failure was due to administrative oversight on its part arising from a change of personnel.

Accordingly, the Council finds that the Owner contravened section 11(1) of the Regulation when it failed to give notice to Council within 30 days of the disposal of N ½ District Lot 7561, Kootenay Land District.

5.0 Should an Administrative Penalty be Levied?

Having found that the Owner contravened the Act, the Council must next 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 to consider those factors set out in section 26(5) of the Act, which are these:

- 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 the contravention
- Whether relevant forest management objectives specified in Division 1 of Part 3 of the Act are being achieved despite the contravention.

Having regard to these factors, the Council does not consider the Owner's breach to be trifling. The evidence before the Council was that this was the second time the Owner had contravened section 11 of the Regulation by failing to provide a Notice of Sale and that its prior contravention was fairly recent. On the first occasion, the Owner was sent a warning letter (dated June 13, 2011). Additionally, the Council has also taken into account the consequences of the Owner's failure to provide such Notice of Sale on the purchaser of the Property. Those consequences are these:

- The Council was not aware that a sale had occurred until December 2, 2011, which was too late for it to contact the purchaser to allow it an opportunity to apply to have the Property remain as managed forest land
- The Property was declassified as managed forest land for 2012 by the BC Assessment Authority
- As a result of the declassification, the purchaser was liable for the payment of an exit fee under the Act. The exit fee was calculated at \$2,283.41.

In assessing the appropriate penalty, the Council has had regard to those factors it is directed to consider under section 26(5). Of particular note in the circumstances of this case are the following considerations:

- The Owner committed a similar contravention less than two years ago
- The impact of the contravention on the purchaser

- There is no evidence that the contravention was deliberate; rather the Owner acknowledged it was due to administrative error;
- On being informed of the lack of notice, the Owner filed a Notice of Sale, albeit outside of the 30 days required by the Act
- The Owner was cooperative in the Executive Director's investigation of the contravention.

Having considered all of these factors, the Council has decided to levy an administrative penalty in the amount of \$5,000.00.

6.0 Should the Council make a Remediation Order?

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 Council has determined that a Remediation Order is not warranted in this case. It would be pointless at this juncture, given that the 30 day limitation period for providing Notice of Sale of the Property under the Act has long since lapsed, to order the Owner to file a Notice of Sale. In any event, as noted, the Owner did provide such a notice, but only after the Executive Director brought the section 11 Regulation requirement to the Owner's attention, which as noted was too late to avoid the implications to the purchaser described above.

7.0 Reconsideration and Appeal:

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.

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.

Rod L. Davis, Chair
Private Managed Forest Land Council
October 12, 2012