

**In the matter of the alleged contravention by AJB Investments Ltd. of s. 28 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.
2. The registered owner of Managed Forest 360 (MF 360) is AJB Investments Ltd.
3. Following an investigation, Council staff alleged that the Owner contravened s. 28 of the *Private Managed Forest Land Council Regulation* (the “Regulation”). This section is copied in Appendix A. Section 28 (1) of the Regulation requires that an owner, or a contractor, employee or agent of the owner carrying out timber harvesting activities in a cutblock adjacent to a Class B stream must, on each side of every 100 m of that stream that is adjacent to the cutblock, retain at least 25 trees that are selected in accordance with ss. 28 (2) and (4). The basis of the allegation is that the Owner failed to retain sufficient trees adjacent to a stream tributary to Chapman Creek (Stream 1) as a result of classifying the stream as a non-fish bearing Class E stream, rather than a fish-bearing Class B stream.
4. In a letter dated November 27, 2018 the Council provided the Owner with an opportunity to be heard before making a determination about whether they had contravened the Regulation. AJB Investments Ltd. provided a written response to Council on January 5, 2019. The Council conducted a written hearing on January 15, 2019.

Issues

5. The Council must determine:
 - a) whether there was a contravention of s. 28 of the Regulation; and if so
 - b) whether an administrative penalty should be levied and whether remediation is required.

¹ The Private Managed Forest Land Council operates under the working name, Managed Forest Council.

Evidence

6. The evidence before Council consisted of:
 - c) The Investigation Report² prepared by Phil O'Connor, Executive Director of the Council;
 - d) A complaint³ filed by Elphinstone Logging Focus;
 - e) A report⁴ by Shawn Hamilton and Associates; and
 - f) AJB Investment Ltd.'s response to the opportunity to be heard which included a report on a fish presence/absence assessment⁵ conducted by Current Environmental Ltd. on the subject stream.
7. The Elphinstone Logging Focus complaint, among other things, alleges the Owner failed to retain sufficient trees within the riparian area alongside Chapman Creek which is a fish-bearing Class A stream and along a stream tributary to Chapman Creek.
8. Council retained Shawn Hamilton and Associates to conduct a riparian assessment associated with the Owner's harvesting of Blk CH4 within MF #360 in 2018. This assessment found:
 - a) Harvesting activities did not result in a failure to retain sufficient trees adjacent to Chapman Creek.
 - b) Stream 1 should have been classified as a Class B stream based on the stream gradient being less than 20% and that a fish presence/absence inventory was not completed by the Owner.
 - c) There were insufficient riparian trees retained alongside Stream 1 in accordance with the requirements for a Class B stream under s. 28 of the Regulation.
 - d) If a fish inventory that includes the appropriate level of sampling showed that the Stream 1 is a non-fish bearing stream above the falls is conducted at a later date, then Stream 1 would be a Class E stream. Shawn Hamilton and Associates did not conduct a fish presence/absence inventory as part of their assessment.
9. The riparian assessment completed by Current Environmental Ltd. found:
 - a) An absence of fish in Stream 1 above a barrier to fish passage downstream of the harvesting in Blk CH4. This finding was qualified that it was based on a single sampling effort.
 - b) Stream 1 is a non-fish bearing Class E stream.

The methods used in this assessment included detailed fish inventories using pole seines, minnow traps, electroshocking, and visual observations.

² Investigation Report – Riparian Retention along Chapman Creek and the Classification of "Stream 1" associated with Blk CH3 and CH 4 associated with AJB Investments Ltd. (Owner) 2018 Timber Harvesting Activities within Managed Forest # 360, Investigation INV 1802, November 5, 2018

³ An email and attached letter sent to the Managed Forest Council by Ross Muirhead on April 24, 2018

⁴ Riparian Assessment Managed Forest #360 Chapman Creek, July 18, 2018

⁵ Fish Presence/Absence Assessment – Tributary to Chapman Creek – Sechelt, BC, prepared by Current Environmental Ltd., January 3, 2019

Analysis

10. The Managed Forest Council's Field Practices Guide (2015) directs owners conducting forest management activities to classify streams based on stream width and fish presence/absence. Streams where the gradient is less than 20% default to a fish stream unless a qualified person determines fish absence through a fish inventory or proves the stream is located upstream of a barrier to fish.

11. The Owner had classified Stream 1 as a non-bearing fish stream based on there being a barrier to fish passage between the stream and Chapman Creek. There was no evidence that a fish absence/presence assessment had been conducted by the Owner prior to the investigation or that there was a proven barrier to fish downstream.

12. The riparian assessment conducted by Shawn Hamilton and Associates which concluded that Stream 1 was a fish-bearing Class B stream was based on a field review which did not include an inventory of fish presence/absence.

13. Based on the new evidence from the fish presence/absence assessment conducted by Current Environmental Ltd. submitted to Council by AJB Investment Ltd. in response to the opportunity to be heard, the Council has determined on the balance of probabilities that Stream 1 is most likely not fish bearing and therefore is a Class E stream, and that s. 28 of the Regulation was not contravened.

A handwritten signature in black ink, appearing to read 'Rod Davis', with a stylized flourish at the end.

Rod Davis, Chair
Managed Forest Council

January 23, 2019

Appendix A – Section 28 of the *Private Managed Forest Land Council Regulation*

Retention of trees adjacent to class B streams

28 (1) An owner or a contractor, employee or agent of the owner carrying out timber harvesting activities in a cutblock adjacent to a class B stream must, on each side of every 100 m of that stream that is adjacent to the cutblock, retain at least 25 trees that are selected in accordance with subsections (2) and (4).

(2) For the purposes of subsection (1), the owner or a contractor, employee or agent of the owner must select trees sequentially in accordance with the criteria set out in paragraphs (a) to (f), until a total of at least 25 trees have been selected:

- (a) all trees that are
 - (i) within 10 m from the edge of the stream channel,
 - (ii) 30 cm or more in diameter,
 - (iii) necessary to maintain the same proportion of coniferous to deciduous trees as in the pre-harvest stand, and
 - (iv) necessary to maintain the same range of sizes, for both coniferous and deciduous trees, as in the pre-harvest stand;
- (b) all trees that are
 - (i) within 10 m from the edge of the stream channel,
 - (ii) 20 cm or more in diameter, and
 - (iii) necessary to maintain the same proportion of coniferous to deciduous trees as in the pre-harvest stand;
- (c) all trees that are
 - (i) within 20 m from the edge of the stream channel,
 - (ii) 30 cm or more in diameter
 - (iii) necessary to maintain the same proportion of coniferous to deciduous trees as in the pre-harvest stand, and
 - (iv) necessary to maintain the same range of sizes, for both coniferous and deciduous trees, as in the pre-harvest stand;
- (d) all trees that are
 - (i) within 20 m from the edge of the stream channel,
 - (ii) 20 cm or more in diameter, and
 - (iii) necessary to maintain the same proportion of coniferous to deciduous trees as in the pre-harvest stand;
- (e) all trees that are
 - (i) within 30 m from the edge of the stream channel,
 - (ii) 30 cm or more in diameter,
 - (iii) necessary to maintain the same proportion of coniferous to deciduous trees as in the pre-harvest stand, and
 - (iv) necessary to maintain the same range of sizes, for both coniferous and deciduous trees, as in the pre-harvest stand;
- (f) all trees that are
 - (i) within 30 m from the edge of the stream channel,
 - (ii) 20 cm or more in diameter, and
 - (iii) necessary to maintain the same proportion of coniferous to deciduous trees as in the pre-harvest stand.

(3) Despite subsection (1), if fewer than 25 trees meet any of the criteria set out in subsection (2) (a) to (f), the owner or a contractor, employee or agent of the owner is required to retain only those trees within that area that meet the criteria.

(4) The trees selected under subsection (1) must be distributed as evenly as is practicable along all of the 100 m length of the stream unless

(a) the area on the opposite side of that 100 m portion of the stream meets the tree retention requirements of subsection (1), and

(b) the tree species present on the area to be harvested are not suitable for partial cutting silvicultural systems.

(5) An owner or a contractor, employee or agent of the owner may remove a tree that is otherwise required to be retained under subsections (1) to (4) only if the tree falls by natural causes outside the stream channel.