



Investigation Report: Stream Protection Dakota Ridge Block

Owner: Columbia National Investments Ltd.

Investigation: IN0702

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Investigation Report by: Stuart J. Macpherson, RPF, CEA
Executive Director
Private Managed Forest Land Council

Technical Expert: Shawn Hamilton, RPBio
Shawn Hamilton and Associates

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1.0 INTRODUCTION

It is alleged that Columbia National Investments Ltd.(CNI), as the owner of Managed Forest # 360, District Lots DL 2462, DL 2463, DL 3373 and DL 3374, contravened section 19 of the Private Managed Forest Council Regulation by failing to retain sufficient trees along a section of a small stream in the Dakota Ridge (DR) cutblock in the East Wilson Creek area. This resulted from the logging of the cutblock during May 2007.

2.0 BACKGROUND

Chronology of Significant Events

On April 19, 2007

Mr. Dan Bouman of the Sunshine Coast Conservation Association called me and made a verbal complaint about CNI logging operation in Chapman Creek and East Wilson Creek. He was particularly concerned about the cumulative effects the logging would have on the community water supply. A day later I called Mr. Bouman and left a message informing him that I would be making an inspection of the CNI operation.

On or about April 28, 2007

I called the managed forest owner, Columbia National Investments to discuss its current logging operations at Dakota Ridge and find out more about its intentions.

On May 3, 2007

I informed Mr. Nicholas Simons, MLA Sunshine Coast/Powell River, during a meeting with the NDP forestry caucus in Victoria that I was scheduling a site inspection of the operation.

On May 9, 2007

I received a formal complaint from a local resident, Mr. Hans Penner. He was concerned about the CNI logging of its property and the potential impact on the community water supply drawn from Chapman Creek. During the next week I received approximately 16 similar complaints from residents of Roberts Creek and the surrounding Sechelt area.

On May 14, 2007

I made a site visit to the current logging operations at Dakota Ridge. Mike Davis, CNI operations superintendent, accompanied me. The streams in the DR cutblock had been classified and ribboned in the field as per *Forest and Range Practices Act* (FRPA) stream guidelines not the Private

Managed Forest Council (PMFLC) regulatory requirements. At the end of the inspection I informed Mr. Davis that I suspected there might be a contravention of sections 18 and 19 of the regulation as it appeared that sufficient streamside trees had not been retained.

On May 15, 2007

I advised Mr. Bruce Mason, chief operations officer for CNI, that based on my inspection the previous day that cutting of trees within the five (5) metre machine free zones of certain streams may not be in compliance with the Private Managed Forest Land Council Regulation. He advised me that coincidentally falling operations were being shutdown to deal with the felled inventory. He also advised me that CNI was retaining a fish biologist to field review the stream classification and that the stream buffers would be re-ribboned so that there would be assurance that streamside falling would be in compliance with the Council Regulation requirements for fish streams.

On May 28, 2007

Mr. Hamilton made his site visit and took tree retention counts at seven points beside streams within the DR cutblock. He reported to me that he had found one instance where the requirement for streamside tree retention had not been met. Mr. Hamilton reported it was unlikely that this stream will be negatively impacted from the harvesting.

On May 30, 2007

I advised CNI that an investigation into a potential contravention of sections 15 and 19 of the Council Regulation was being initiated.

On July 24, 2007

Shawn Hamilton and Associates provided their report titled Block Assessment of MF 360 East Wilson Creek.

3.0 SCOPE

The investigation was concerned with determining whether CNI may have contravened the *Private Managed Forest Land Act* or regulations through its activities on the DR cutblock.

The investigation was triggered by complaints to council office from residents in the Sechelt / Roberts Creek area concerning CNI harvesting of a large clearcut on its property at East Wilson Creek.

Shawn Hamilton and Associates was engaged to:

- Assess the streamside tree retention with respect to compliance with PMFLC regulatory requirements;
- Assess stability of the stream banks where harvesting had occurred;
- Assess the stream crossings and identify any sediment issues; and
- To provide written comments on any potential fish habitat protection concerns.

In preparing this report I have drawn from my own observations of the site, the facts and opinion provided in the Shawn Hamilton and Associates report, and information provided by CNI.

4.0 LOCATION and OWNERSHIP

The DR Block is located on a south-facing slope south east of Sechelt in an area known as Dakota Ridge. It is primarily in the East Wilson Creek catchment. A small portion lies within the Chapman Creek community watershed. The area of the DR cutblock is 266.4 hectares. There are four recently harvested areas within the DR block that contain streams. These areas are identified as DR1 to DR4 on the block map (refer to Figure 1 in the Hamilton report).

There are 14 identified streams within the DR cutblock. Two of these streams flow into Chapman Creek. Four streams make up East Wilson Creek. Seven streams flow either into wetland areas, become discontinuous, or flow out of the DR cutblock.

5.0 ALLEGATION

From my review of the facts outlined in Mr. Hamilton's report it appears that the owner has contravened section 19 the Private Managed Forest Land Council Regulation as during harvesting sufficient trees along a 100 m section of a small stream crossed by road DR 160 were not retained (The location is referenced as site 6 in the Hamilton report).

Contravention of Section 19

The relevant provision of Section 19 in the Council Regulation states:

Retention of trees adjacent to small streams

19. (1) If an owner carries out timber harvesting activities in a cutblock adjacent to a stream whose stream channel is more than 1.5 m but less than 3.0 m wide, the owner must, on each side of every 100 m of the stream that is adjacent to the cutblock, retain at least 10 trees that
- (a) are within 10 m of the edge of the stream channel,
 - (b) are 20 cm or more in diameter, and
 - (c) maintain
 - (i) the same proportion of coniferous to deciduous trees as in the pre-harvest stand, and
 - (ii) the same range of sizes, for both coniferous and deciduous trees, as in the pre-harvest stand, if the gradient of the stream is 8% or less.
- (2) Despite subsection (1), if fewer than 10 trees meet the criteria set out in that subsection, the owner is required to retain only those trees within that area that meet the criteria in that subsection.

The elements of the contravention that must be established are:

- That CNI is the owner of the land where the alleged contravention occurred;
- That the land where the alleged contravention occurred is private managed forest land;
- That the owner harvested the cutblock during the period that the *Private Managed Forest Land Act* was in force (i.e. after August 1, 2004); and
- That the harvesting was not conducted in a manner that retained sufficient trees beside unnamed stream as required by regulation.

CNI as owner

At no time has the owner's representative, Mr. Bruce Mason, disputed that CNI is the owner of the land. It is submitted that CNI is the owner of the land.

Area is private managed forest land

The MF 360 properties, District Lots DL 2462, DL 2463, DL 3373 and DL 3374 are listed in the BC Assessment 2007 property assessment roll as managed forest. It is submitted that the Block is private managed forest land.

Owner responsible for timber harvesting

While onsite on May 10, 2007 I observed harvesting and road construction of the DR cutblock was in progress. I was provided a copy of the logging plan map by CNI. The forest management activities are within the period that the *Private Managed Forest Land Act* applies.

On page 18 of his report Mr. Hamilton states that it is his understanding that the streams that flow through the DR block were not assessed for fish habitat potential prior to harvesting. This means that in accordance with the definition of a fish stream in the PMFLC Matters Regulation streams within the DR cutblock must be managed as fish habitat if the channel gradients are less than 20% and the water bodies are connected to fish habitat for at least part of the year. Chapman and Wilson Creeks are known to support salmonid fish species downstream of the DR cutblock.

Mr. Hamilton completed site assessments at eight locations along streams within the cutblock; seven (7) of these were within the East Wilson Creek catchments and one was within the Chapman Creek catchment. He took tree retention measurements at count points beside seven streams. Refer to Hamilton report figure 1 and section 6 for a description of the streams and locations. He found that measurements for one stream (site 6) did not meet retention requirements of the regulation. This stream is 1.8 meters wide and is classified as a small fish stream. Mr. Hamilton's findings are described in section 6.1 of his report. The salient points Mr. Hamilton makes are:

- Tree retention requirements were not met at one of the three count points tallied.
- At count point 6-1 seven conifers and 1 deciduous (red alder) trees were retained. This does not meet the Council Regulation requirement of at least 10 trees greater than 20 cm in diameter.
- At site 6-2 and 6-3 more than 10 trees greater than 20 cm in diameter were retained.
- Additional conifer trees of an appropriate size could have been retained since conifer stumps were noted in the 10 metre riparian zone. This is evidence that enough trees could have been retained to meet regulatory requirements.

This evidence supports the allegation of a contravention of section 19. Although Mr. Hamilton states in his report that the consecutive measurements were taken at the narrowest point it is expected that tree retention would be in compliance along all sections of the stream.

During my site inspection I observed that a 5 meter machine free zone had been maintained beside the stream, with some minor exceptions. This had not caused any disturbance; understorey vegetation had also been maintained. Mr. Hamilton, who completed a more extensive review onsite,

verified my observation. This provides sufficient evidence for me to conclude that harvesting had been in compliance with section 15 of the Council Regulation.

Environmental Impacts

Bank stability

Mr. Hamilton in section 7.4 states that he did not note evidence of bank instability at any of the sites inspected. Most importantly, riparian tree retention adjacent to the large stream channels within the cutblock exceeded the minimum requirements of the Council Regulation.

Mr. Hamilton states that the stream power at sites 3, 5, and 6 is low enough that the removal of trees growing on the edge of the stream bank will not result in a significant change in channel morphology over the long term. He concludes that the streamside harvesting did not significantly affect long term bank stability.

Fish habitat

Mr. Hamilton cautions in section 7.4, that the harvesting of trees growing on the banks of streams has the potential to degrade fish habitat (either on site, or located downstream) and water quality under certain conditions. For example, if a non fish-bearing stream with erodible banks is harvested to the edge of the channel, there may be the potential for erosion and bank instability.

He does not report any negative effects to fish habitat within the DR cutblock and concludes that there are not any significant impacts to downstream water quality or fish habitat downstream of the cutblock

Water quality

A minor (undetermined) area within block DR 2 west of the DR200 road is within the Chapman Creek catchment. This is insignificant and it is highly unlikely that the harvesting will impact water quality in the community watershed.

6.0 ADMINISTRATIVE REMEDY CONSIDERATIONS

The *Private Managed Forest Land Act* empowers the Council to establish one or more administrative remedies if the Council determines that the owner has contravened a requirement of the Act or regulations. Specifically the Council may impose penalties under sections 25, 26, and remediation orders under section 27 of the Act.

Consent Agreement

The council may enter into a consent agreement if the owner agrees to the alleged contravention the owner agrees to:

- i) carry out remedial measures specified;
- ii) take measures to prevent occurrence of a similar contravention from occurring in the future;
and
- iii) agree to pay a penalty not greater than \$5,000.

If Council were to entertain a consent agreement it should be mindful that CNI shutdown operations

after the inspection and revised the logging plan so that stream classification and tree retention followed the Council Regulation.

Financial Penalty

The maximum penalty that may be imposed for a contravention of the Act or regulation is \$25,000. The Council may decide to not levy a penalty if it considers the contravention trifling.

When determining the amount of a penalty under section 26(5) the Council must consider it must consider all of the following:

- (a) any previous contravention of a similar nature by the person if the contravention was the subject of :
 - (i) a determination under this section in the previous 10 years, or
 - (ii) a consent agreement under section 25 in the previous 12 months;
- (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; and
- (h) whether relevant forest management objectives specified in Division 1 of Part 3 are being achieved despite the contravention.

When evaluating the above factors the council should consider the following:

- CNI has not had any previous contraventions of this nature.
- The contravention is minor; trees count was not met at 1 of 3 consecutive count points beside the small stream.
- The impact or loss of in-stream habitat is immeasurable and inconsequential.
- The bank of the small stream remains stable; understorey has been retained within a 5 m machine-free zone and there is a potential source of woody debris contribution from standing trees retained.
- CNI has verbally advised me that resident trout were found in the tributary of East Wilson Creek (the largest stream within the block), but not in the other small streams.
- Water quality has not been affected.
- There is evidence that CNI deliberately intended to harvest the cutblock as shown by the logging plan.
- CNI may have benefited by recovering additional volume by harvesting trees that should have been retained beside the stream.
- CNI has been cooperative in the investigation, providing information on the circumstances and in taking corrective action.

Remediation Order

If Council decides to issue a remediation order under section 27(2) then it should consider that CNI have revised the logging plan and reclassified the streams as per the Council Regulation.

Stuart Macpherson

Executive Director

July 23, 2007