



Investigation Report: MF 281 Port Alberni - Restocking
of Area Logged in 2002

Owner: Denis Francoeur Backhoeing Ltd

Investigation #: IN0911

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1.0 INTRODUCTION

It is alleged that Denis Francoeur Backhoeing Ltd (the Owner), as registered owner of Managed Forest 281, contravened section 31(3)(a) of the Private Managed Forest Land Council Regulation 2007 by failing to restock an area logged in 2002 on MF 281 to the minimum restocking requirement within 5 years of the completion of timber harvesting activity.

Mr. Francoeur purchased the property from TimberWest in 2000 and began logging the timber on it that same year. The property was classified as managed forest land in 2002 by BC Assessment.

2.0 BACKGROUND

Chronology of Significant Events

On August 12, 2009 Nancy Pezel RPF, of Islands West Forestry, conducted a routine inspection of MF 281; a 39.46 hectare property near Port Alberni. Mr. Francoeur accompanied her. Ms Pezel observed that a 25.8 ha area (approximately) logged in 2002 appeared to be understocked and likely would not meet the regulatory restocking requirement of 400 stems per hectare (spha) but she was unable to complete a walk-through of the area due to the high and dense bracken fern cover. She recommended the owner have a certified silviculture surveyor conduct a survey in the fall, when the dieback of the brush would make it easier to walk through, and tally seedlings to determine the current reforestation status.

On September 8, 2009 Mr. Francoeur submitted an amendment to the management commitment to add western hemlock, red alder, big leaf maple and lodgepole pine as commercial species in Part 8. This was accepted on November 16, 2009.

On September 29, 2009 I mailed Mr. Francoeur a copy of the draft MF 281 Inspection Summary report prepared by Ms Pezel. The report covered the restocking issue and my cover letter stated that we would be making a follow-up visit in the fall to determine restocking levels.

On November 23, 2009 I informed Mr. Francoeur by letter that an investigation into a potential contravention of the Council Regulation section 31(3) (a) with respect to the restocking of the area logged in 2002 was being initiated. My letter advised that Ms Pezel would be doing a silviculture survey of this area.

Between November 28 - December 6, 2009 Ms Pezel completed a silviculture survey of the subject logged area. The survey was completed to Ministry of Forests standards. An area of 13.5 ha was found to be below the minimum restocking requirement of 400 spha required by the Regulation. A further 3.8 ha was found to be restocked at 560 spha; this is above the minimum stocking requirement. Note Mr. Francoeur was unable to be present to observe the conduct of the silviculture survey.

On December 17, 2009 I sent Mr. Francoeur an addendum to the Managed Forest Inspection report. This addendum reported on a walk through of two areas logged in 2000 (5.9 ha approx) and 2001 (5.4 ha approx). These areas are not part of this investigation; as they were logged prior to the property becoming MF 281 in 2002. The Owner has until 2010 i.e 10 years to restock them. Both areas are restocked at about 200-300 spha. The addendum report recommends that both these areas be fill-planted in the spring 2010 to bring restocking up to the minimum requirement.

3.0 SCOPE

The investigation was concerned with determining whether the Owner may have contravened the *Private Managed Forest Land Act* (the Act) or regulations with respect to restocking the area logged in 2002.

In preparing this investigation report I have drawn liberally from the facts provided in Nancy Pezel's stocking survey report. I have not been on the property. Ms Pezel's report is companion to this investigation report and should be referred to for a more detailed account of the onsite conditions and the restocking status of the treatment units.

4.0 LOCATION and OWNERSHIP

MF 281 is 39.46 hectares and is located on the northeast side Port Alberni, near Milligan Road. Access is via an adjacent private property and private road by agreement with the neighbour. The topography is strongly rolling with steep pitches with a south -easterly aspect. The forest types are a mix of dry site Douglas-fir and moister Douglas-fir/western red cedar. Stand ages range from pockets of mature, 50 year old second growth to younger regeneration.

5.0 ALLEGATION

From my review of the facts outlined in the Pezel report it appears that the owner has contravened section 31(3)(a) of the Private Managed Forest Land Council Regulation 2007 as restocking on 13.5 ha of the area logged in 2002 is below the minimum requirement of 400 spha.

Contravention of Section

The relevant provisions of Section 31 in the Council Regulation 2007 state:

Reforestation of areas where timber harvested or destroyed

- Section 31(3):** If all or part of private managed forest land becomes a disturbed area after the area becomes an owner's land, 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.

Definitions are found in Section 31(1):

- “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
- (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.

“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;

The elements of the contravention that must be established are:

- That Denis Francoeur Backhoeing Ltd is the owner of the land where the alleged contravention occurred;
- That the land where the alleged contravention occurred is private managed forest land on the Coast;
- That the owner logged the area during the period that the property was classed as managed forest land;
- That the owner did not restock the subject area with crop trees to the extent necessary to ensure that it meets the minimum stocking requirement as required by Section 31(3)(c) for properties on the Coast.

Denis Francoeur Backhoeing Ltd as owner

The Council managed forest database lists the company as the owner of Block 1447 and identifies the property as Managed Forest 281. The BC Assessment database also identifies Block 1447 Alberni Land District as managed forest land and owned by Denis Francoeur Backhoeing Ltd. At no time has Mr. Francoeur disputed that he or his company is the owner of the property.

It is submitted that Denis Francoeur Backhoeing Ltd is the owner of the land.

Area is private managed forest land

By virtue of the fact that the property is listed in the Council database and listed on the BC Assessment property assessment roll as property Class 7- managed forest land, it is apparent that the property is private managed forest land and therefore the *Private Managed Forest Land Act* applies to the area in question. As the managed forest is on Vancouver Island it is located on the Coast.

It is submitted that the subject property, Block 1447 Alberni Land District is private managed forest land on the Coast as per the *Private Managed Forest Land Act* and is managed forest land as per section 24 of the *Assessment Act*.

Area was logged while it was private managed forest land

A letter on the council file dated July 23, 2002 indicates that the property complies with the requirements of the *Forest Land Reserve Act*, and would continue to be MF 281 and classified as managed forest land under the *Assessment Act*. The 2002 annual declaration from the Owner reports logging took place as shown on a map that outlines the outer boundary; the area and volume logged was not provided. The month in 2002 that logging was completed is not stated. Nevertheless this is during the period that the property was owned by the Owner and was private managed forest land.

Owner responsible for restocking disturbed area

Given that the area was logged in 2002, the Owner had until the end of 2007 (5 years) to restock the area with a minimum of 400 spha of well distributed commercial crop trees. The commercial crop trees are listed in Part 8 of the management commitment as fir (Fd) and red cedar (Cw), also

known as Douglas-fir and western red cedar. The management commitment amendment submitted by Mr. Francoeur (September 2009) added a further four species; western hemlock (Hw), lodgepole pine (Plc), big leaf maple (Mb) and red alder (Dr). The Pezel stocking survey reports on the stocking status as of December 2009; this is over seven years after harvesting was completed. This report should be referred to for technical details of the survey and results. The net area required to be restocked is 17.3 ha; this is after area deductions are made for roads, landings and non-productive rock outcrops. It should be noted that Ms Pezel determined the gross area harvested and net area to reforest based on the 2002 annual declaration map and GeoBC orthophotography. Therefore all areas are approximate; a closed traverse was not performed.

The survey reports on the stocking of two treatment units as follows:

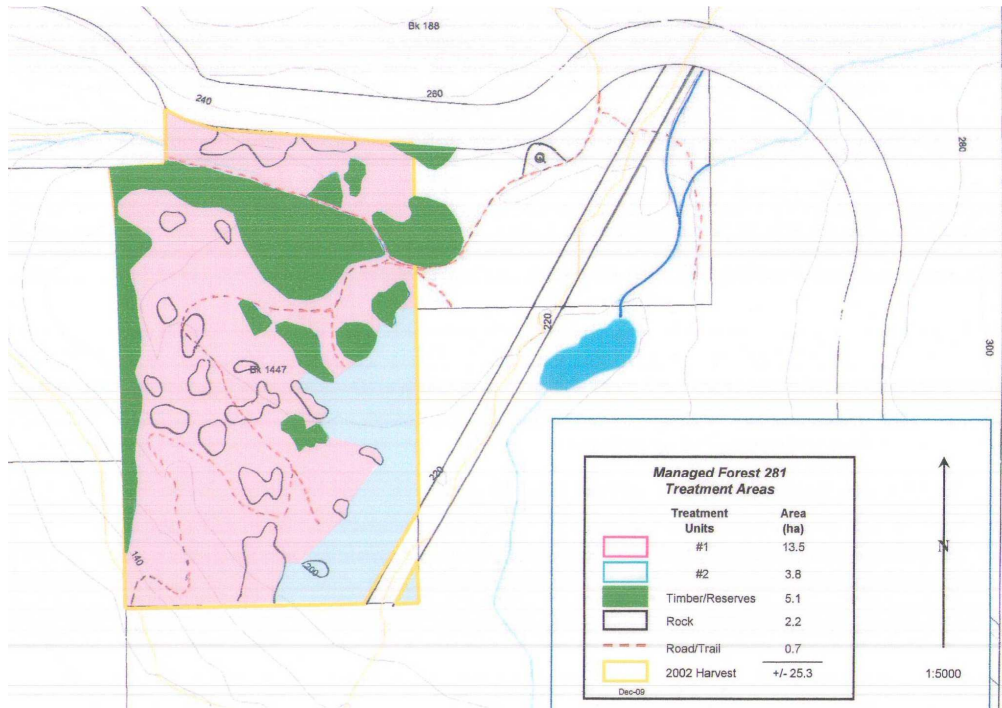
Treatment Unit #1: 13.5 ha restocked with 315 spha well-spaced with 40% Fd, 25% Dr, 20% Cw, 12% Mb and 3% Hw.

If Bg is counted, (although not a listed commercial species as per the management commitment) the restocking is 347 spha, still below the minimum requirement

Treatment Unit #2: 3.8 ha restocked with 560 spha well-spaced with 50 % Fd, 43% Cw and 7% Hw.

If Bg is counted, (although not a listed commercial species as per the management commitment) the restocking is 600 spha

These treatment units are illustrated on the stocking map shown below (reproduced from the Pezel stocking survey report). It indicates that only 22% (3.8ha) of the logged (net) area is restocked to the requirements. Given that section 31(3) requires the disturbed (logged) area to be restocked with well distributed trees, it is submitted that the Owner has contravened section 31(3)(a) of the Council regulation 2007.



Potential cause of the understocked area

In my view, based on my reading of the Pezel survey report, the main cause of the failure for the logged area to be successfully restocked is that the Owner relied on natural seeding and coppicing as the regeneration method and did not carry out monitoring to assess the restocking levels being achieved. It is apparent that this natural regeneration has not been supplemented by fill-planting to ensure minimum stocking would be met. This approach is not consistent with the reforestation strategy described Part 4 of the MF 281 management commitment (March 28, 2001). This states “*may from time to time include planting, natural regeneration, vegetation propagation, direct seeding and coppicing*”.

Given the silvics of Douglas-fir, successful natural regeneration needs the right combination of site factors. On MF 281 given the variability in site conditions and the presence of rich brushy sites as evident by the presence of vigorous bracken fern, opting for natural regeneration would be a risky strategy. Seed source and site conditions have an important bearing on the success of natural regeneration. It should be noted that good seed years for Douglas-fir are sporadic, seed volumes and dispersal can be quite low and seeds have low germination levels. Also Douglas-fir seed germinates best on mineral soil so the amount of ground disturbance and mineral soil exposure influences germination success and can result in patchy and uneven distribution of naturally established seedlings if there is insufficient ground disturbance. On MF 281 natural regeneration has only been successful on 22% of the logged area. Most of the seedlings established would have resulted from germination that occurred within the first three years after harvesting. Site factors such as regrowth of herbaceous vegetation, notably bracken fern, have prevented continual recruitment of new germinants and thereby increasing the stocking. Ms Pezel was asked to tally germinants to determine if fill-in was still occurring; but the results indicated germinants were almost negligible.

The Owner has not employed any artificial reforestation techniques. Most foresters with experience reforesting the type of ecosystems found on the Owner's property would generally advise that replanting is the most assured way of complying with the reforestation stocking requirements and time frames of the Council Regulation.

Consequences

There are two basic consequences of the failure to meet restocking requirements:

1. The area will likely not restock without supplementary fill-planting to minimum requirements as there is too much ground vegetation cover in the understocked areas that prevents new germination from becoming established.
2. That being the case it is highly improbable that the area will become successfully regenerated by the due date of 2017 without supplementary fill-planting.

The Pezel survey stocking survey report addresses these matters and provides recommendations on fill-planting for each of the two treatment units.

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 agreement may include provisions to:

1. Carry out remedial measure specified;
2. Take measures to prevent occurrence of a similar contravention from occurring in the future; and
3. Agree to pay a penalty not greater than \$5,000.

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 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;
- (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:

- The Owner has not had any previous contraventions of this nature.
- The extent of the net area harvested and not restocked is 78% and I consider this significant.
- The Owner's reforestation strategy was to rely on natural regeneration; planting was not planned. An allowance for supplementary fill-planting to fill in gaps of natural regeneration also was absent from the reforestation strategy in the management commitment.
- If Grand fir was allowed as a commercial species the stocking level increases to 347 spha, however this still falls short of the minimum requirement of 400 spha.
- As the recruitment of new germinants is minimal it is unlikely that the stocking level would increase to minimum of 400 spha within the next seven years (the successfully regenerated date of 2017).
- The Owner may have benefited economically by not incurring the cost of replanting after the harvesting was completed in 2002.
- The Owner may not have understood that planting is the best option to ensure that restocking required by regulation is achieved. However the Owner has indicated that he is looking into carrying out fill-planting this spring
- Mr. Francoeur has been cooperative both with the inspection by Ms Pezel and with the subsequent investigation.

Remediation Order

If Council decides to issue a remediation order under section 27(2) then it should consider the restocking fill-planting recommendations in the survey report. The fill-planting levels recommended are likely conservative and might be reduced although at a higher risk that stocking levels may not be increased to the minimum required if there is poor seedling survival.



Stuart Macpherson

Executive Director

February 08, 2010

References

1. Stocking Survey on Harvested Area of MF 281- Nancy Pezel December 2009
2. MF 281 Inspection Summary – Nancy Pezel August 2009
3. MF 281 Inspection Summary Addendum – Nancy Pezel, December 2009
4. MF 281 Area Reconciliation - Nancy Pezel
5. MF 281 Management Commitment – March 28 2001
6. MF 281 Management Commitment Amendment – September 8 2009