



J Gaylie & G Arrison
[REDACTED]
[REDACTED]

File: INV 2201 MF 438
September 9, 2022

Via Registered Mail

Attention: J. Gaylie & G Arrison (previous owners)

Re: Determination INV 2201, MF 438

In the matter of the alleged contravention by J. Gaylie & G Arrison (previous owners) of MF 438 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.

J. Gaylie & G Arrison are the previous owners of MF 438. The Council's Executive Director has alleged that the previous owners 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.

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 July 19, 2022. The Council considered the evidence provided by the Executive Director in his Investigation Report (INV 2201 MF 438)¹ which had been provided to the Owners on several occasions; the Owners did not provide any evidence at the hearing. The salient facts are therefore uncontroverted and can be summarized this way:

- Managed Forest # 438 entered the program in 2009. The parcel PID (015-863-506) within Managed Forest # 438 was previously classified as Class (07) by BC Assessment. It was a total of 27.4 hectares and was located across from Egmont on the Sunshine Coast.
- On April 26, 2021 Managed Forest #438 sold. The Council office never received a Notice of Sale as required by Section 11 of the Private Managed Forest Land Council regulation.
- The Council office e-mailed [REDACTED] letter to the previous owner of MF # 438 on February 11, 2022 indicating there had been a failure to report the sale of Managed Forest # 438 in accordance with Section 11 of the Private Managed Forest Land Council regulation.
- After discussions between the Executive Director and J. Gaylie which concluded on February 14, 2022, it was understood by the Executive Director that the option of proceeding with a Consent Agreement under the Act, including the requirement to pay a fine of \$1000 would be acceptable to the Owners.
- The Executive Director took the following steps with the Owners with respect to the Consent Agreement, but in each case heard no response from the Owners:
 - February 28, 2022 - a DRAFT Consent Agreement was sent via e-mail
 - March 4, 2022 – a FINAL Consent Agreement was sent via e-mail
 - March 16, 2022 – a follow-up reminder e-mail was sent via e-mail.
- On March 29, 2022 the Executive Director sent an e-mail to the Owners that included a letter dated March 29, 2022 indicating Council was initiating a formal compliance determination into their failure to provide a Notice of Sale in accordance with Section 11 of the Managed Forest Council Regulation². The investigation report was attached.
- On April 21, 2022 the Chair provided the Owners with notice that the Council would be making a determination under the Act with respect to the alleged non-compliance by the Owners and providing the Owners with an opportunity to submit written evidence to the Council on or before May 27, 2022.³ The investigation report was attached.
- On May 16, 2022 the Executive Director confirmed an earlier conversation between the Chair and the Owner that the deadline for submitting evidence was extended to June 27, 2022. ⁴
- As of July 19, 2022, no written submission was ever received from the Owners in respect of the alleged contravention.

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?

¹ Investigation Report attached as Appendix A

² March 29, 2022 correspondence attached as Appendix B

³ April 21, 2022 correspondence attached as Appendix C

⁴ May 16, 2022 correspondence attached as Appendix D

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. Managed Forest # 438 PID (015-863-506) is the land to which the alleged contravention relates and 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. 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 Managed Forest # 438 PID (015-863-506).

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. Failure to provide notice of sale has the potential to impact purchasers, although that did not occur in this case.

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 made no effort to remedy the contravention, and
- While the Owner made some effort with respect to potentially entering into a Consent Agreement, the Owner did not follow through

Having considered all of these factors, the Council has decided to levy an administrative penalty in the amount of \$2,000.00.

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. 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.

7.0 Reconsideration and Appeal:

Under section 32 of the Act, the previous owner may request the Council to reconsider some or all of this determination. Under section 33 of the Act, the previous 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.



Trevor Swan, Chair Managed Forest Council
September 23, 2022