

Woodlot management & horseback riding near Wells Gray Provincial Park

Complaint Investigation 060726

CLOSING LETTER

File: 97250-20/060726

January 30, 2007

Dear Participants:

Re: Report on Complaint Investigation 060726 / Trophy Mountain

The Forest Practices Board has completed its investigation of the Trophy Mountain complaint. This is the Board's report.

Nature of the Investigation

The Trophy Mountain Buffalo Ranch (the complainant) operates a commercial horseback riding business. On June 12, 2006, it submitted a complaint to the Forest Practices Board asserting that logging on Woodlot 1857:

- was carried out in disregard of logging guidelines;
- made trails, that are licensed for horseback riding, unusable;
- unnecessarily interrupted commercial horseback operations; and
- created unsafe conditions for both its clients and the public.

The complainant asked that logging cease on the woodlot during its business season, from May 1st to October 15th each year.

Background

Woodlot 1857 is west of the Clearwater Valley Road and adjacent to Wells Gray Provincial Park. This complaint concerns the Crown land portion of that woodlot.

The potential for a recreation-forestry conflict in this area was recognised years ago, before government granted a commercial tenure to the complainant in 2001, and also before it created Woodlot 1857. In the late 1990s, in response to public concern, the Ministry of Forests and Range (MOFR) developed a public consensus-based planning process to provide advice to the ministry. The process produced a set of principles to guide future forest management in the area. The *Guiding Principles for the Management of Land and Resources in the Upper Clearwater Valley* (Clearwater Guiding Principles) reflect public and government expectations at that time for forest management in the Upper Clearwater Valley, including the woodlot area. They are meant to be applied to influence government policy.

The woodlot licence was awarded in 2002. A management plan, a *Forest Act* administrative document, was approved on April 30, 2002. The licensee did not conduct any harvesting on the woodlot for 3 years after the licence was awarded.

On April 15, 2005, the licensee met with MOFR to discuss woodlot operations in response to damage by mountain pine beetles. The licensee proposed to harvest timber infested with mountain pine beetle, both to control its spread within the woodlot and to salvage infested trees before the wood deteriorated. Sixty-three percent of the timber on the woodlot was pine. Beetle surveys in 2005 showed that only six percent of the pine was infested, so mountain pine beetle were anticipated to have a major potential impact on the woodlot.

Under the *Forest and Range Practices Act* (FRPA), operations are to be guided by a woodlot licence plan, but the licensee had not yet prepared one. Normally, no timber may be harvested until a woodlot licence plan is approved by MOFR. Given the recent and increasing impact of the beetles, the licensee decided he had no time to complete a comprehensive woodlot licence plan. Instead, on April 27, 2005, the licensee wrote MOFR requesting a cutting permit even though he had no approved woodlot licence plan. Provincial legislation includes an exception that takes such situations into account. Under section 12(3) of FRPA, harvesting can be approved if that is required to address a forest health emergency or to harvest timber that has been damaged, or is in danger of being destroyed or significantly reduced in value.

The licensee stated that, even though he had started to create such a plan, he was requesting a cutting permit to harvest as much of the infested pine as soon as possible in the interim. He indicated that he expected to complete a woodlot licence plan by July 25, 2005.

On May 24, 2005, MOFR agreed to issue a cutting permit for up to two years, subject to several conditions. Given that the woodlot licence had been issued three years previously, the district manager expected that the licensee would complete a comprehensive woodlot licence plan in the very near future. In the meantime, MOFR issued a cutting permit for the period of May 25, 2005, to May 24, 2007. It was under that authority that the licensee built

roads, harvested timber, piled slash, and hauled timber periodically during the summers of 2005 and 2006.

Analysis

The Board examined the complainant's assertions in the context of the public and government expectations expressed in the Clearwater Guiding Principles, and in light of the subsequent impact of mountain pine beetles on forest management.

Has the logging made the horse riding trails unusable?

The Clearwater Guiding Principles specified that the aesthetics and integrity of mapped recreation trails were to be respected, by leaving a selectively-logged buffer along both public and commercial recreation trails. Harvesting in the woodlot did leave a selectively logged buffer adjacent to the horse trails. In one area, a skidding trail was immediately adjacent to a horse trail. In several locations, skidding trails crossed or were within sight of the horse trails. Any physical ground disturbance near the trails is temporary, as these areas will green up in one to two years. It is unlikely that, after green-up, there will be any appreciable aesthetic impact for riders.

Temporary log decks and slash piles were also within sight of the horse trails and adversely affected the aesthetics of the trails. Again, the impact to aesthetics is short-term. Once the logs are hauled and the slash piles burned, the effect will be eliminated.

Overall, the operations on the woodlot are having a temporary negative effect on the trail aesthetics, but the trails remain usable.

Has the logging unnecessarily interrupted the commercial horseback operations?

The government has granted two tenures over this forest. The government and the tenure holders each have obligations to ensure that their uses are compatible.

Under the complainant's licence of occupation, the Crown may make other dispositions over the land, and the complainant is not eligible to claim compensation where such a disposition does not materially affect the exercise of its rights under the agreement. Therefore, the complainant is allowed to use some of the area for a horseback riding business and must accept some impact from the Crown's licensing of the area as a woodlot. However, the operations of the woodlot should not materially affect the use of the area for the licensed horseback riding use by the complainant. If such an effect were proven, the complainant could claim compensation from the Crown.

In order to determine whether the logging unnecessarily interrupted the horseback operations, the first question is whether it was necessary for harvesting to occur during the complainant's business season. MOFR approved the cutting permits to allow the harvesting

of beetle-infested pine during the summer period, because MOFR accepted the licensee's rationale that contractors were not available for such a small volume of timber during their busy season from October to May. Given that constraint, MOFR considered it necessary to allow harvesting of beetle-infested timber during the summer months.

Given that MOFR agreed that summer harvesting was necessary, the approval allowed the licensee to harvest. The approval had no conditions to mitigate the effects of those operations on the complainant's tenure. Neither the section 12(3) FRPA exemption, nor the cutting permit, contained any legal requirements to abide by the Clearwater Guiding Principles.

The Clearwater Guiding Principles recommended that the public have opportunities for input into the management plan for the woodlot and that tenure holders be informed of any planned forest development activities. Specifically, the Clearwater Guiding Principles stated the licensee must provide the community substantial opportunity for input and review into the management plan and, ideally, members of the community would participate directly in the development of the management plan.

The Clearwater Principles also state that the woodlot licensee should ensure that tenure holders, such as the commercial guiding operators, are informed of any planned forest development activities. It is at this stage that the woodlot licensee should learn of the interests of other tenure holders. However, in the absence of a woodlot licence plan, there was no formal public review and comment on the woodlot's development planning.

Nevertheless, the licensee did eventually inform the complainant of his intention to harvest. He did not do so at the time he requested the cutting permit on April 27, 2005, because he was not certain that the permit would be issued. As a result, the licensee did not inform the complainant of his plans until his cutting permit had been approved, on May 24, 2005. The effect was that the complainant did not have its interests explicitly considered by the licensee or by MOFR in a formal interactive planning process prior to approval of operations. If that had occurred, the complainant would have been able to consider the possible impacts to its business in the upcoming season. Instead, the complainant was simply told, as the 2005 summer riding season began, that harvesting was going to occur.

The licensee did make some voluntary efforts to mitigate the impact of the woodlot forest practices on the complainant's business. In 2005, the licensee called the complainant each day to determine when the day's rides were occurring and promised to cease operations during those times. The licensee stated that there was only ten and one-half days of harvesting and hauling that year. He said harvesting began on June 7th and was completed on June 18, 2005. Log hauling began on June 16 and consisted of eight loads in June, ten in July and nine in August. The licensee maintains that two-thirds of the wood had been hauled by July 22.

The licensee recalled that, on many of the days of operations, there were no trail rides. In contrast, the complainant's perspective was that the logging lasted for a month or more and that some operations continued throughout the summer of 2005.

For 2006, the licensee stated that harvesting operations began on June 5 and finished on June 15, with log hauling completed by July 6, 2006. Active harvesting precluded morning trail rides in the area of operations. Therefore, the licensee told the complainant he would cease operations daily at 3:00 p.m. and that there would be no logging on weekends. Conversely, the complainant recalls that, throughout the entire summer of 2006, the licensee was active on the woodlot, operating either logging equipment, excavators, skidders, bulldozers or a dump truck. Despite the disagreement over the extent of operations and their effect on the complainant's business, the complainant maintains that, in both 2005 and 2006, the harvesting operations reduced the number of trail rides it could offer.

The Board accepts that the logging interrupted the commercial horseback operations by interfering with the number of rides the complainant could offer. However, it is significant that the MOFR accepted that some summer operations were necessary. The Board could not determine whether the degree of interruption was necessary or not, but finds that the impact on the complainant's business could have been further mitigated. For example, the licensee could have consulted with the complainant to determine the placement of log decks to reduce the visual impact to the horse riders. Alternatively, log decks visible from the trail could have been hauled or removed as a priority.

Has logging created unsafe conditions for commercial clients and the public?

The Clearwater Guiding Principles state that the safety of recreational users must be respected and that winter logging is preferred because public safety is particularly an issue from May to September.

As described previously, the licensee took some action to address safety concerns. He proposed to temporarily stop operations in the summer of 2005 when trail rides were going through the area. In 2006, the licensee decided to cease operations at 3:00 p.m. daily. The licensee also posted the area, indicating that there were active harvesting operations on-going.

Nevertheless, the complainant and licensee both reported that there were instances of equipment operating while horses were in the area in both 2005 and 2006. The licensee and MOFR were unaware of any safety incidents in 2005, and were only informed in 2006 of the past incidents. The complainant and licensee blame these incidents on each other. The complainant maintains that the licensee was operating at times when he agreed not to do so, and the licensee maintains that the complainant entered the work area when active operations were clearly under way. Thus, the use of horse trails concurrent with active logging operations did create the potential for unsafe conditions for both the public and the complainant's clients. The Clearwater Guiding Principles anticipated this problem, but due

to the beetle infestation and MOFR accepting that the licensee could not arrange for harvesting during other seasons, the licensee and MOFR accepted some risk to public safety from summer operations on the woodlot. MOFR assumed the parties would work cooperatively to mitigate that risk.

Commentary

The Board encourages participants to work together to resolve complaints wherever possible and offers the following suggestions.

The integration of commercial horseback riding and woodlot management is not particularly difficult. Successful integration primarily depends on the woodlot licensee, because it is the licensee's operations that create the conditions for conflict and safety risk. However, both parties have some ability to adjust and moderate the level of conflict.

The need for integration has increased recently because the mountain pine beetle has now inundated the woodlot. The licensee wrote MOFR on October 26, 2006, requesting that his allowable cut be significantly increased, from the current 2,010 m³ to 17,000 m³. The licensee has also asked that the existing cutting permit be extended by one year and has advised that harvesting may need to extend to the end of October in 2007. The licensee continues to ask that the harvesting be done on an exemption basis, without a woodlot licence plan. The licensee notes that the timber has been damaged and is losing value, which meets the conditions for which the exemption was created. Thus, the licensee considers it unnecessary and inappropriate for MOFR to require a woodlot licence plan as a precondition for further harvesting, particularly if it delays salvage harvesting for another year.

It is the Board's view that management of the public's forest resource should be open and accountable, and that this is achieved in part through effective public consultation. Such consultation allows the affected public to find out what is happening in their forests, to express their views and to have them seriously considered by forest planners and decision-makers. Parties with interests directly affected by forest activities especially need the opportunity to comment. Licensees should show that they understand the issues raised and that they have taken those issues seriously. That consultation is provided in association with a woodlot licence plan as prescribed under section 12 of the *Forest and Range Practices Act*. A woodlot licence plan is required to ensure the management of all resources, not just timber. The FRPA requirement for woodlot licence plans includes an opportunity for public review and comment. Therefore, the Board suggests that a woodlot licence plan be in place prior to further harvesting.

This complaint highlighted an on-going conflict between two tenure holders, a conflict that has not been resolved by the amount of consultation that the licensee has undertaken. It is time for MOFR to further encourage the licensee to engage the public in the management of this woodlot. One logical way to accomplish that is by requiring the licensee to complete a woodlot licence plan. This is increasingly important given the considerably-expanded further harvesting that is anticipated. The exemption under which the licensee has been

operating should be used in exceptional purposes, and they no longer appear to apply here. The beetle infestation was foreseeable. The licensee originally was to complete a woodlot licence plan during the summer of 2005, but decided to delay. Continued approval of harvesting under section 12(3) would perpetuate limited planning, limited public involvement and continued operation in a way that continues to create conflict with other tenured users of the land. Of course, this is government's decision to make. However, if the Ministry of Forests and Range determines that the section 12(3) exemption is still warranted, it should attach conditions that accommodate the business needs of the complainant and the safety of the public.

Yours sincerely,

A handwritten signature in black ink that reads "Bruce Fraser". The signature is written in a cursive, flowing style.

Bruce Fraser, PhD
Chair

