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## **Construction of a Logging Road Near Woodward Creek**

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**Complaint Investigation 070777**

**FPB/IRC/139**

**July 2008**



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## Executive Summary

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On June 11, 2007, the Board received a complaint from an individual living near Port Alberni asserting that a woodlot licensee, his neighbour, needlessly built a new logging road instead of using an existing roadway (the Log Train Trail or LTT), damaging forest values in the process. In order to examine these assertions, the Board investigated the following questions:

1. Did the woodlot licensee adequately consider the LTT and was it appropriate to propose the road?
2. Was the district manager's approval of the road reasonable?
3. Were licensed water users properly notified?
4. Has construction of the road damaged other forest resources?
5. Were other monetary considerations legitimate?

The Board found that the woodlot licensee had adequately considered using the LTT for its access road, but other considerations such as long term management of the woodlot and recreational use of the trail made it preferable to propose the new road.

The district manager's approval of the road permit was found to be reasonable, as she had considered relevant information. The new road had previously been approved in a forest development plan and its location was consistent with that approval. The LTT's primary purpose was viewed by many in the community as a recreational trail that would conflict with log hauling, and the short access roads necessary to access the LTT could result in water and erosion concerns. At the time of the investigation, the road had not crossed a licensed stream, so notification of water users was not required. Since then, the road has been built across the stream and the woodlot licensee advised the Board that all water users were notified. The licensee protected old growth, fisheries and water values during road construction. Finally, monetary considerations for building the new road met legal requirements and were legitimate.

# The Complaint

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The Board received a complaint on June 11, 2007, about a woodlot licensee's activities in the area of Woodward Creek, near Port Alberni. The complainant, who lives near Port Alberni, made a number of assertions:

1. A woodlot licensee and the Ministry of Forests and Range's (MFR) district manager did not adequately consider the complainant's advice to use an existing roadway (the Alberni Valley Log Train Trail or LTT), rather than construct another road parallel to the trail, called the Hal Creek South Main Line Road.
2. Adjacent water licensees were not properly notified of the road construction.
3. Construction of the road has damaged, and will continue to damage, a cranberry swamp, old growth forest, fish habitat, and drinking water.
4. The woodlot licensee built the road to get cheap timber.
5. The woodlot licensee charged a forest company for using the woodlot road.

In order to examine these assertions, the Board investigated the following questions:

1. Did the woodlot licensee adequately consider the LTT, and was it appropriate to propose the road?
2. Was the district manager's approval of the road permit reasonable?
3. Were licensed water users properly notified?
4. Has construction of the road damaged other forest resources?
5. Were other monetary considerations legitimate?

In July 2007, the Board inspected the road and surrounding area.

## Background

The complainant lives near Port Alberni, at the base of the Beaufort Mountain Range. The complainant's neighbour holds a woodlot licence. On the face of the mountain above the woodlot is a forest company's private managed forest land.<sup>1</sup> In 2003, MFR added a narrow band of Crown land to the woodlot between the complainant's land and the private managed forest land, expanding the licensee's woodlot.

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<sup>1</sup> Private managed forest land is a special classification of private land under the *Assessment Act*.

An abandoned logging railroad runs along the base of the Beaufort Range, through the narrow strip of land that was added to the woodlot. The ties and rails have been removed to leave only the railroad bed. The railroad right-of-way for the abandoned logging railroad is administered by the Ministry of Transportation (MOT), but the Alberni-Clayquot Regional District currently leases the railroad corridor from MOT for use as a recreational trail. In the community, it is known as the Alberni Valley Log Train Trail.

The LTT is over-topped by mature forest, and the culverts, bridges and trestles are in poor repair. MOT and the regional district granted approval for the forest company and the woodlot licensee to use some sections of the LTT as a haul road. However, MFR also approved the licensee's plan to build the Hal Creek South Main Line Road on the new portion of the woodlot, rather than using the LTT behind the complainant's property.

Woodward Creek and a number of its tributary streams flow from the private managed forestland on the mid and upper slopes of the mountain behind the complainant's property, and are the source of domestic water for the complainant. Woodward Creek has two main channels: the first (see Woodward Creek labelled on Figure 1) is an intermittent stream that enters the complainant's property (Lot 129) on its east boundary, and the second is the tributary from which the complainant draws his water. This second channel drains into a wetland to the north of the complainant's property, which the complainant says is home to wild cranberries, and which he calls the cranberry swamp. Both channels merge further downstream on the complainant's property. As well, Woodward Creek is tributary to Beaver Creek and the Beaver Creek Water Improvement District has a water intake over a kilometre downstream from the confluence.

To understand the complaint, it is important to know where the roads are parallel and some recent history.

### **Parallel road locations**

In October 2003, MFR authorized the woodlot licensee to build about a kilometre of road between Block 9 and Block 12 of his woodlot, known as Spur 3. Spur 3 and the LTT run parallel to each other. Spur 3 is about 35 metres higher and 250 metres away from the LTT.

Block 12 is situated in the narrowest piece of the Crown land portion of the woodlot, between the private managed forest land and the complainant's property.

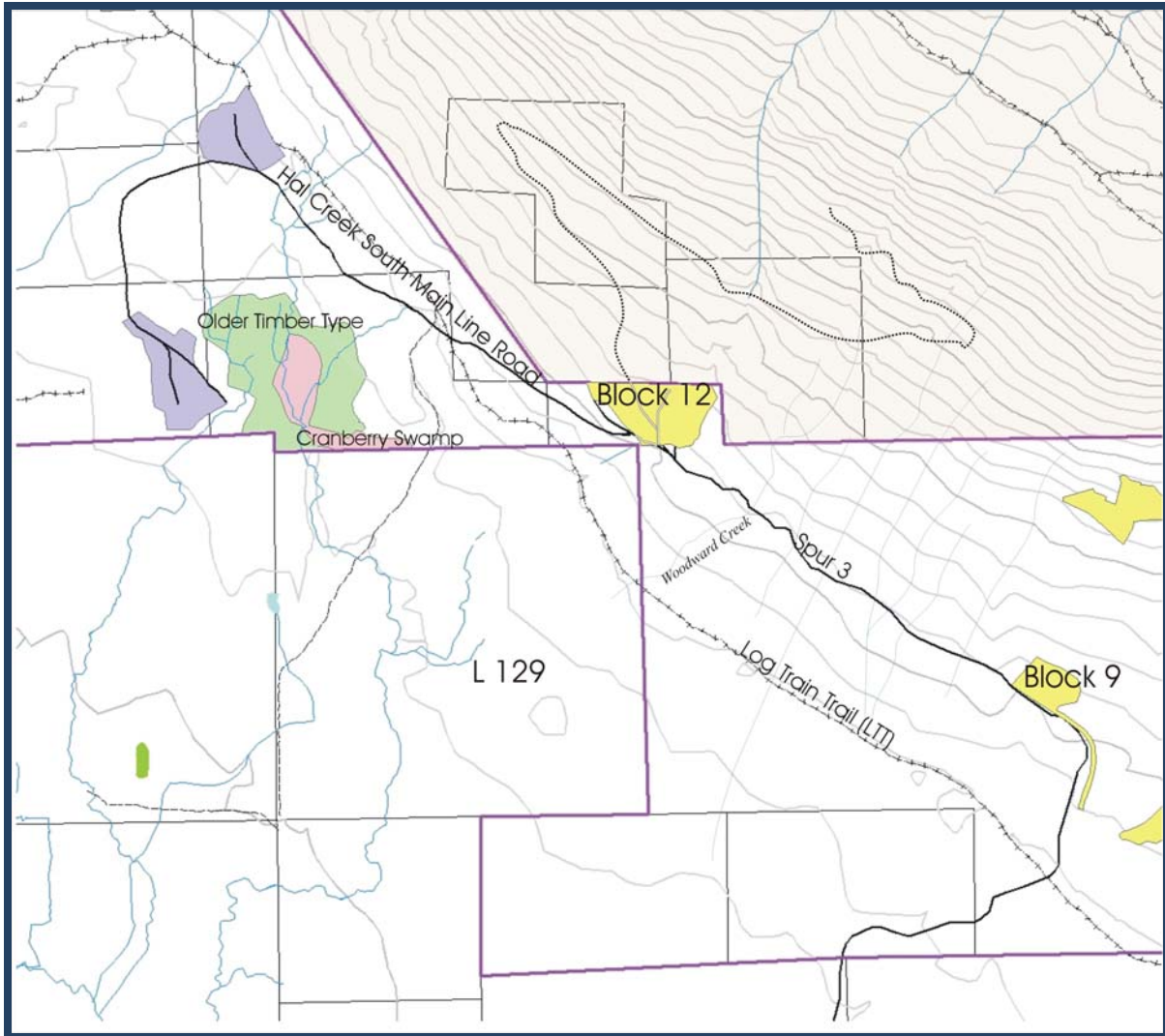


Figure 1. Hal Creek South Main Line Road.

Just before entering Block 12, Spur 3 crosses the named Woodward Creek channel. In Block 12, the road forks: one fork climbs through Block 12 and exits onto the forest company’s private managed forest land; and the other is the start of the Hal Creek South Main Line Road. The Hal Creek South Main Line Road accesses a new part of the woodlot southeast of Hal Creek. It drops at approximately a six percent grade over 350 metres to intersect the LTT and continues to diverge from the LTT, dropping at the same grade for another 230 metres until it is about 100 metres away and 15 metres below the LTT.<sup>2</sup>

After crossing the un-named tributary of Woodward Creek, the road runs parallel to the LTT again for 300 metres before sweeping away and curving around the cranberry swamp for about a kilometre.

<sup>2</sup> At the time of the field visit to the area, the Hal Creek South Main Line road construction had stopped just before crossing the first tributary of Woodward Creek. The woodlot licensee planned on building a box culvert at the stream crossing.



## Recent History

In 2005, the forest company clearcut its private managed forest land above the complainant's property. To haul the timber, the forest company used Spur 3 and the woodlot licensee's private road. In order to do this, the forest company:

- contracted the woodlot licensee to fall the private managed forest land;
- paid the woodlot licensee to use the road on the private portion of the woodlot; and
- maintained the road on the Crown portion of the woodlot.

In mid-November 2006 and again in early January 2007, rain-on-snow events in the area caused rapid snowmelt and high runoffs. This high level of precipitation caused debris flows, flooding, erosion, and diversions to a number of creeks on the Beaufort Range, including the named Woodward Creek channel on Figure 1. Culverts failed on the private forest company's roads, the woodlot's Spur 3 road and the LTT, resulting in large volumes of gravel and debris being deposited on the complainant's property. The complainant thought the forest company's clearcut logging and road building had caused the damage.

After a field review in November 2006, to inspect the area following the precipitation events, the source water protection specialist for the Ministry of Environment (MOE) sent an e-mail to MFR's woodlot forester that stated,

... this road development should consider the potential adverse affects (sic) to downstream water users ... We recommend that the designated official consider having the applicant use existing roads wherever possible to access the Woodlot. Lower road densities would help to maintain the integrity of existing watercourses and help to reduce the cumulative hydrological affects (sic) that sometimes occurs (sic) from drainage conveyance works.

Following the January 2007 precipitation event, the source water protection specialist and regional geomorphologist from MOE visited the area on foot and by helicopter. They determined that a natural landslide into the stream channel caused the flooding and erosion. Another report by a qualified professional hired by the Private Managed Forest Land Council<sup>3</sup> to investigate the forest company's logging, found that the forest company's roads had both positive and negative effects but concluded,

"that the logging was not responsible for the large magnitude of the flood and associated sedimentation ... It is unlikely that the development ... had any significant effect on the volume of water – nor of the pattern of deposition."

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<sup>3</sup> The Private Managed Forest Land Council is a provincial agency established to protect key public environmental values on private managed forest land.

## Discussion

### **Did the woodlot licensee adequately consider the LTT and was it appropriate to propose another road location?**

In 2004, plans for the road were shown publicly in Amendment 3 of the woodlot's forest development plan (FDP). The amendment went through public review and comment, but the woodlot licensee did not receive any comments regarding the road. The woodlot licensee met with the regional district's Log Train Trail Committee and showed them the FDP amendment with the Hal Creek South Main Line Road crossing the LTT. The woodlot licensee also showed the committee other areas where they proposed to use segments of the LTT. The committee approved the crossing and proposed use of the LTT.

During the investigation, the licensee explained to Board staff that he did consider using the LTT, but ultimately decided that it was not the best access for the woodlot. Constructing the new road was easier, cheaper, provided better access for logging, and was a long term solution. Using the LTT would require numerous spurs coming off the LTT and would result in steep, adverse hauling conditions. As well, the woodlot licensee could either build 350 metres of new road, or upgrade the LTT for two kilometres. Even more important, MOT would only give a temporary five-year permit to use the LTT as the road. The complainant explained that his father gave him the woodlot and he expected to give it to his children. Therefore, the Hal Creek South Main Line Road was to be used for generations.

In addition, for at least the last 12 years, MFR had encouraged the licensee not to use the LTT but to leave it for recreationists, so the licensee wanted to avoid using it. The regional district does not provide direction on use of the LTT. The woodlot licensee reasons that there are at least as many people who don't want the LTT used for a logging road as do. Therefore, the woodlot licensee proposed the Hal Creek South Mainline Road on the FDP amendment.

*It is the Board's view that the woodlot licensee adequately considered the LLT and that it was appropriate to propose the Hal Creek South Main Line Road for long-term management of the woodlot.*

### **Was the district manager's approval of the road permit reasonable?**

The FDP and associated approval documents from 2004, show that the district manager carefully considered how the road would affect the LTT before approving the FDP amendment. Most significantly, the district manager considered that the regional district's LTT committee had approved the location of the Hal Creek South Main Line Road.

In 2005, the forest company clearcut its private managed forest land above the woodlot and complainant's property. Then in late 2006 and early 2007, the precipitation and associated creek disasters caused damage to the complainant's property, heightening the complainant's concern. In light of these events, the complainant thought that the district manager should have stopped the Hal Creek South Main Line Road from being built.

The district manager considered three issues before approving the road permit in late 2006:

1. First, the previous district manager had approved the road in the FDP amendment. The discretionary decision about balancing all forest resources had already been made, and no new information of significance had arisen. If the road permit application showed that the road was in approximately the same place as proposed on the FDP amendment, then the district manager could not refuse the road permit application on the basis of its location.
2. Second, the district manager was concerned about governance. The LTT has two conflicting purposes: a legal purpose for MOT to use as a road right-of way; and a separate recreational purpose, which is suggested by the lease agreement with the regional district. Community members are divided on the purpose. The district manager talked to representatives of MOT, MOE, the regional district and the Mayor of Port Alberni, and found out that no formal plan exists for the LTT. Volunteers who maintain and use the LTT support the Hal Creek South Main Line Road, as shown on the FDP, as it pre-empts logging traffic from what they view as a recreational trail.
3. Third, the district manager and the woodlot licensee met with the MOE water stewardship officer, who had commented after the November 2006 storms. The licensee explained that if he used the LTT to haul timber, short steep spurs running perpendicular to the LTT would need to be built, which would cause similar or worse drainage problems than using the Hal Creek South Mainline Road location. MOE wanted to minimize the amount of road to be built, so it accepted the idea of building the road as proposed.

Based on these factors, the district manager approved the road permit.

The previous district manager had considered the use of the LTT when he approved the Hal Creek South Main Line Road in the FDP amendment. The district manager's approval of the road permit: ensured that the road was in approximately the same place as approved on the FDP amendment, examined other governance issues, and considered MOE input about road drainage.

*It is the Board's view that these were reasonable considerations and that approving the road permit was reasonable.*

### **Were licensed water users properly notified?**

The complainant was concerned that the woodlot licensee had not notified licensed downstream water users before building a road across a stream used for drinking water.

The FDP amendment showed the proposed Hal Creek South Main Line Road crossing an un-named tributary to Woodward Creek, about 100 metres upstream of the cranberry swamp. The woodlot licensee committed in the FDP amendment to inform downstream water users

whenever he would install a major culvert or a bridge. The stream crossing in question did not require a bridge or a major culvert.

When Board staff visited the site, the licensee had halted construction just before crossing the tributary. That stream drains into the cranberry swamp. The complainant's water intake is at least 100 metres downstream from the cranberry swamp.

The legislation does not require a woodlot licensee to notify water user about building a road across a stream, except in a community watershed. The area is not a community watershed. However, the Board considers it a good practice to notify people who use surface water before building roads or logging upstream from their water intake.

The woodlot licensee reports that he has since crossed the streams and that all licensed water users were notified, including the complainant. When the licensee crossed the stream, he did notify water users.

*At the time of the complaint, the road had not crossed a stream used for drinking water and there was no legal requirement for the woodlot licensee to notify licensed water users about its road construction. Despite there being no requirement, the woodlot licensee has since crossed the stream and notified the complainant.*

### **Has or will construction of the road damage forest resources?**

The complainant was concerned that the road was damaging forest resources, namely: an old growth forest stand, fish habitat and downstream drinking water.

#### *Old-growth forest*

The complainant was concerned that the road has been put through a patch of old-growth forest that he thought was reserved when the woodlot was expanded. The complainant was also concerned about another patch that he considered to be old growth, near the cranberry swamp.

When MFR expanded the woodlot in 2003, it held a public open house and invited community comment. There was a piece of vacant Crown land that was being considered for inclusion in the woodlot. The complainant made the following written comment:

My main concern is an old growth stand of timber of about ten hectares north of the old railway grade and bordering my northwest boundary of district lot 129. I believe this stand of timber should be left intact for future generations as I think it has to be one of the last stands of old growth timber left on public lands.

In response to the complainant's concern at the open house, the woodlot owner committed to allowing withdrawal of an older timber type in that piece of land, if the Integrated Land Management Bureau (ILMB) determined it was required as an old growth management area (OGMA).

In the 2004 FDP amendment that showed the road, the woodlot licensee made two commitments concerning his treatment of old growth: first, he would inventory old-growth and look for old growth recruitment areas in the woodlot; and second, he would not log old growth, “except where required to provide road access.”

ILMB has looked at the woodlot and decided that it does not meet the criteria for an OGMA. Nevertheless, during road construction, the woodlot licensee did not log any old-growth trees in the area that the complainant had identified in his comments at the open house. The road terminates in a proposed cutblock near the cranberry swamp and neither the road nor any approved cutblock enter the older timber type.

### *Fish habitat*

During construction of the road, the complainant contacted the Federal Department of Fisheries and Oceans (DFO). As a precautionary measure, DFO requested that the woodlot licensee stop activities and address the road’s potential impacts to fish-bearing wetlands before resuming road construction. The licensee stopped construction and hired a qualified professional to specify road building practices. Once the report was submitted to DFO, that agency had no further concerns, and the licensee continued road construction. The woodlot licensee reports that he hired a fisheries technician to supervise the construction of fish crossings and monitor water quality. The Board’s investigation found that, as far as the road had been built, it was built to the professional specifications and had not crossed a fish-bearing stream.

### *Drinking water*

The complainant has a domestic water licence and intake on the un-named tributary of Woodward Creek. A person cannot introduce a substance that is harmful to human health into water used for human consumption, or alter a stream above a domestic water intake in such a way as to cause a drinking water health hazard.

At the time of the Board’s field trip, the road construction had stopped at the stream crossing. The licensee had planned an open bottom box culvert for that stream crossing. Following the complaint, the licensee completed construction of the roads and an environmental inspector supervised the box culvert installation. Based on this, there was no evidence that the road construction caused, or is likely to cause, harm to drinking water supplies.

*It is the Board’s view that the licensee protected old growth, fisheries and water values during road construction.*

### **Were other monetary considerations legitimate?**

The complainant asserted that the woodlot licensee could have used the LTT, and that the cost of upgrading the LTT could have been offset against stumpage. Since the woodlot licensee did not upgrade the LTT, the complainant asserts that the woodlot licensee constructed the road to get low-cost timber from the right-of-way. The complainant also asserts that the woodlot licensee charged the forest company for using the woodlot Spur 3 road for hauling logs off its private managed forest land.

The district manager approved the 2004 FDP amendment that included the Hal Creek South Mainline Road. Stumpage paid on a road right-of-way is dependent on the stumpage the licensee paid within the last calendar year. So, like all other licensees, the woodlot licensee is free to pick a time to build the road when the stumpage is low. Again, as with all other licensees, there are other economic, operational, and environmental considerations to be examined when determining when to build a road, not just stumpage.

A person who has a road permit cannot charge another person a fee for using the road, but can charge for a reasonable contribution to maintain the road. The forest company used Spur 3 to haul timber from its private managed forest land, but had an agreement with the woodlot licensee to do its own maintenance and leave the road as it found it. The forest company did pay the woodlot licensee for using the road on the private portion of the woodlot. However, that is a matter between two private parties that the Board does not have jurisdiction to investigate.

All these monetary considerations fit within the regulatory framework.

*The Hal Creek South Main Line Road had been approved in the 2004 FDP amendment. It is the Board's view that the woodlot licensee was free to choose when to build the road, regardless of the stumpage rate. There was no monetary consideration for road maintenance. Payment for use of a private road is outside the purview of the Board.*

## Conclusions

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**1. Did the woodlot licensee adequately consider the LTT and was it appropriate to propose the Hal Creek South Main Line Road?**

Yes. It is the Board's view that the woodlot licensee adequately considered the LLT and that it was appropriate to build the Hal Creek South Main Line Road for long-term management of the woodlot.

**2. Was the district manager's approval of the road permit reasonable?**

Yes. It is the Board's view that the district manager's approval of the road permit was reasonable.

**3. Were licensed water users properly notified?**

At the time of the complaint, the road had not crossed a stream used for drinking water and there was no legal requirement for the woodlot licensee to notify licensed water users about its road construction. The woodlot licensee has since crossed the stream and notified the complainant.

**4. Will construction of the road damage other forest resources?**

No. It is the Board's view that the licensee protected old-growth, fisheries and water values during road construction.

**5. Were the other monetary considerations reasonable?**

Yes. It is the Board's view that the woodlot licensee was free to choose when to build the road, regardless of the stumpage rate. There was no monetary consideration for road maintenance. Payment for use of a private road is outside the purview of the Board.