



# Forest Appeals Commission

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## DECISION NO. FAC-FRP-22-A003(a)

In the matter of an appeal under the *Forest and Range Practices Act*, S.B.C. 2002, c. 69

<b>BETWEEN:</b>	Nextech Forestry Services Ltd.	<b>APPELLANT</b>
<b>AND:</b>	Government of British Columbia	<b>RESPONDENT</b>
<b>BEFORE:</b>	A Panel of the Forest Appeals Commission Darrell Le Houillier, Chair	
<b>DATE:</b>	Conducted by way of written submissions concluding on October 3, 2022	
<b>APPEARING:</b>	For the Appellant: Chad Lantz, Representative For the Respondent: Shaun Ramdin, Counsel	

## FINAL DECISION

### APPEAL

[1] Nextech Forestry Services Ltd. ("Nextech") appeals a determination (the "Determination") issued on January 10, 2022, by Jill Park, a Resource Manager (the "Manager") in the Stuart Nechako Natural Resource District. The Manager works in the Ministry of Forests (formerly the Ministry of Forests, Lands, Natural Resource Operations and Rural Development) (the "Ministry"). In the Determination, the Manager found that Nextech had contravened section 52(1) of the *Forest and Range Practices Act* (the "Act") by cutting and damaging Crown timber without authority. The contravention involved cutting and damaging trees beside an area where Nextech was authorized to harvest timber. The Manager levied an administrative penalty of \$5,000 for the contravention.

[2] The Forest Appeals Commission (the "Commission") has the authority to hear the appeal under section 83 of the *Act*. Under sections 84(1)(c) and (d) of the *Act*, the Commission may consider the findings of the person who made the determination or decision, and either:

- (i) confirm, vary or rescind the determination or decision, or
- (ii) with, or without directions, refer the matter back to the person who made the determination or decision, for reconsideration.

[3] Nextech asks the Commission to rescind the Determination and the associated penalty. Nextech submits that the contravention occurred because a Ministry employee made errors when mapping the boundary of the area that Nextech intended to harvest.

**BACKGROUND****Forest Licence to Cut A97984**

[4] On January 21, 2021, the Ministry issued Forest Licence to Cut A97984 (the "Licence") to Nextech. The Licence authorized Nextech to harvest and process up to 500 cubic metres ("m<sup>3</sup>") of Crown timber consisting of trees that were dead or damaged as a result of fire, insects, disease, or windthrow, or those under attack by insects. A map (the "Map") attached to the Licence delineates the boundary of the area authorized for harvesting (the "Block"). The Block is approximately 0.44 hectares ("ha") in size and is shown as a very small, irregularly-shaped polygon on the Map, which is at a scale of 1:20,000.

[5] In the Fall of 2020, before the Licence was issued, the boundaries of the Block were laid out and recorded. Chad Lantz, an owner of Nextech and a Registered Forest Technician, laid out orange ribbon along what he thought was to be the boundary of the area of harvesting. Natural Resource Specialist ("NRS") Shane Speziali, then with the Ministry's Fort St. James office, used a GPS device to record points along the boundary of the area of harvesting. NRS Speziali and Mr. Lantz were not always in visual contact with one another when the boundary was ribboned and recorded with the GPS. According to Mr. Lantz, at one point while they laid out the boundaries, they had a discussion about an area that would be the primary trail for skidding timber to the roadside, and an area that might be used as an alternative trail for skidding timber. The GPS data recorded by NRS Speziali was used to create the Map attached to the Licence.

[6] After the Licence was issued, Nextech hired a faller, Herman Haugen, and a skidder operator, David Cromarty, to harvest the Block. Harvesting occurred on or about February 4, 2021. Mr. Lantz cleared snow off a road into the Block, and provided the faller and skidder operator with a map of the Block. He did not walk the boundary of the Block with the workers.

**Ministry Investigation**

[7] On February 4, 2021, NRS Speziali conducted a field inspection of the Block. He observed that harvesting was almost complete. He also observed what he considered to be an unauthorized skidder trail, outside the boundaries of the Block, where some trees had been harvested and some live standing trees had been damaged.

[8] On February 5, 2021, NRS Speziali submitted a complaint report to the Ministry's Compliance and Enforcement Branch ("C&E"), indicating that Nextech appeared to have harvested timber outside of the Block, contrary to the Licence.

[9] On February 12, 2021, Natural Resource Officers ("NROs") Ryan Caldwell and Mike Boyde inspected the area of suspected unauthorized harvesting. They took photographs of the site, and used a GPS device to record the area of suspected unauthorized harvesting. Using that GPS data, NRO Caldwell later obtained a map scaled at 1:1,000, which confirmed that the area of suspected unauthorized harvesting was to the north, and outside the boundaries, of the Block. The map scaled at 1:1,000 shows an unauthorized harvesting area of approximately 0.084351 ha.

[10] On March 1, 2021, NRO Julie Brown sent an email to NRS Speziali, requesting further information about his complaint report. That same day, NRS Speziali replied by email, stating in part:

... The block was ribboned by the licensee (Chad) and myself. The boundary was hung in such a way to allow the loggers to harvest the Douglas Fir currently infested with douglas fir beetle, along with a few other dead and dying trees and skid them to the roadside. At that time Chad didn't mention that he thought another skid trail would be necessary to safely skid the trees to the roadside. As I told Mike Boyde (C&E) when I spoke to him about this incident, I believe we would've tried to amend the boundary to allow him to harvest that skid trail if he made it known prior to harvesting. ...

[11] On March 5, 2021, NROs Boyde and Caldwell inspected the site again and took more photographs, including photographs of harvested timber stacked at the site.

[12] On March 11, 2021, NRO Brown asked NRS Speziali for a copy of the application for the Licence. That same day, NRS Speziali replied. He asked if there was a specific document that NRO Brown wanted to see, and he stated in part that, "Since our District wanted Chad to harvest this FLTC for beetle management purposes, we ... did most of the application work for him." After further discussion, he sent a copy of the Licence to NRO Brown.

[13] On March 19, 2021, NROs Caldwell and James Brady interviewed Mr. Lantz in person, and made an audio recording of the interview. A transcript of the audio recording was provided to the Commission as part of the Government's documents.

[14] During the interview, Mr. Lantz stated that when he flagged the boundary of the Block with NRS Speziali, they noticed an area where the contour of the land would make the area suitable for use an alternate skid trail, but Mr. Lantz didn't think the alternate trail would be needed. However, Mr. Lantz explained that when the skidder operator began moving harvested trees to the roadside, the operator found that the skidder "wouldn't make that corner as laid out" on the original skid road, so the alternate skid trail was used. Mr. Lantz also said he did not "walk the block" with the faller or the skidder operator before they started harvesting, but he cleared a road into the Block and provided the workers with a map of the Block. He said the faller and skidder operator told him that no trees were cut on the alternate skid trail, as it only contained alder trees. He also said that he and the workers did not intend to harvest trees unlawfully.

[15] On April 21, 2021, NROs Boyde and Caldwell again attended the site and took photographs. They attached seizure notices to some logs that was laying at the site, because it appeared that some timber had been removed for firewood. They also conducted a stump cruise of the unauthorized harvesting area and measured a total of 31 stumps: 26 Douglas Fir trees; and 5 Spruce trees. Each stump was photographed and painted with a number, and its location was recorded using a GPS device.

[16] On April 22, 2021, NROs Boyde and Caldwell returned to the site and recorded information to calculate the volume of timber harvested without

authorization. They also took more photographs of stumps in the unauthorized harvesting area. Two of those stumps matched the butt ends of two logs at the site.

[17] The results of the Ministry's investigation are compiled in a report titled, "OTBH Investigative Report: DVA-40361" (the "Investigation Report"), prepared by NRO Brown. According to the Investigation Report, Nextech cut 31 trees without authorization, amounting to 41 m<sup>3</sup> of Douglas fir and 1 m<sup>3</sup> of spruce, based on the stump cruise of the site. The Investigation Report estimated that the timber had a market value of \$4,659.90, based on the average market value of logs in the Interior region from January to March 2021, and that stumpage of \$1,239.89 would have been paid to the Government for the timber.

### **The Determination**

[18] On October 14, 2021, the Manager conducted an opportunity to be heard ("OTBH") meeting. At that time, a representative of Nextech had an opportunity to make submissions and respond to the information in the Investigation Report.

[19] On January 10, 2022, the Manager issued the Determination. The District Manager found that Nextech was responsible for harvesting and damaging Crown timber outside the boundaries of the Block, contrary to section 52(1) of the *Act*. The Manager also found that none of the defences in section 72 of the *Act* applied. She found that there was no evidence to support the defences of mistake of fact or officially induced error. Regarding the defence of due diligence, she stated on page 4 of the Determination:

... In the ... interview from March 19, 2021, Mr. Lantz indicated that the natural looking skid trail outside the [Block] had been identified. If this area may have been utilized in any capacity, it should have been included in the boundary layout. It was also mentioned in this interview that Mr. Lantz had completed a prework [meeting] with the crew prior to the start of operations. The area was not walked, and the operators received a map of the [Block] prior to starting harvesting. The map given to operators at the prework did not include this skid trail as part of the [Block].

During the ... OTBH..., the representative for Nextech ... indicated that this FLTC [Licence] is a very small area (0.44 hectares) and that there may have been issues with the boundary ribboning. However, if this was a concern, the block should have been walked with operators during the prework to mitigate potential issues. Considering all the facts, I find that Nextech did not exercise due diligence to prevent the contravention.

[20] Regarding the appropriate penalty for the contravention, the Manager noted that the maximum penalty for a contravention of section 52(1) of the *Act* is governed by section 13 of the *Administrative Orders and Remedies Regulation* (the "*Regulation*"). Section 13 provides that the maximum penalty is the greatest of the three calculations set out under that section, all of which are based on the volume of timber that was harvested without authorization. The Manager applied the calculations and determined that the maximum penalty that could be levied for the contravention was \$10,532.73.

[21] The Manager then made the following findings after considering the factors listed in section 71(5) of the *Act*:

- Nextech has no previous contraventions of a similar nature;
- the gravity and magnitude of the contravention were low;
- the contravention was not repeated or continuous;
- the contravention was not deliberate;
- Nextech derived no economic benefit from the contravention; and
- Nextech was cooperative during the investigation, but there was no practical way for it to correct the contravention.

[22] On page 7 of the Determination, the Manager concluded:

I do not find the contravention to be trifling and I do find it in the public interest to levy a penalty. In consideration of the above factors, I am levying penalty of \$5,000. The area and volume of unauthorized harvest are both small, and Nextech did not receive any economic benefit from the contravention .... However, if the inspection had not been completed at the time it was, Nextech would have benefitted, and this cannot be ignored. A deterrent penalty will serve as incentive to follow legislated requirements instead of favouring operational efficiencies or other disregard.

### **The Appeal**

[23] Nextech appealed the Determination on February 10, 2022. In general, Nextech submits that it conducted the harvesting as a joint project with the Ministry to assist in curtailing a beetle infestation in the area, and it trusted NRS Speziali to be accurate in his work. Nextech's staff logged the area marked by orange boundary ribbon, but NRS Speziali did not record two spots that were ribboned: the area north of the Block; and one fir tree. The Map was made from the inaccurate GPS data recorded by NRS Speziali. In addition, Nextech says Mr. Lantz relied on NRS Speziali to note their discussion about using the alternate skid trail, and to include that area in the Map. Nextech maintains that the alternate skid trail was used for safety reasons, was harvested before 2013, and contained no merchantable timber. Nextech says it did not benefit financially from the harvesting.

[24] The Government is the Respondent in the appeal. The Government submits that the Determination and the associated penalty should be confirmed, and the appeal should be dismissed.

### **RELEVANT LEGISLATION**

[25] The following sections of the *Act* are relevant to the appeal:

**52** (1) A person must not cut, damage or destroy Crown timber unless authorized to do so

(a) under this Act, the Forest Act or an agreement under the Forest Act,

...

**71** (5) Before the minister levies an administrative penalty under subsection (2), he or she must consider the following:

(a) previous contraventions of a similar nature by the person;

- (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 cooperativeness and efforts to correct the contravention;
- (g) any other considerations that the Lieutenant Governor in council may prescribe.

**72** For the purposes of a determination of the minister under section 71 or 74, no person may be found to have contravened a provision of the Acts if the person establishes that the

- (a) person exercised due diligence to prevent the contravention,
- (b) person reasonably believed in the existence of facts that if true would establish that the person did not contravene the provision, or
- (c) person's actions relevant to the provision were the result of an officially induced error.

## **ISSUES**

[26] The appeal raises the following issues:

1. Did Nextech contravene section 52(1) of the *Act*?
2. If so, do any of the defences in section 72 of the *Act* apply?
3. If not, what is the appropriate penalty in the circumstances?

## **DISCUSSION AND ANALYSIS**

### **1. Did Nextech contravene section 52(1) of the Act?**

#### *Summary of Nextech's Submissions*

[27] Nextech submits that on the day when he and NRS Speziali laid out the area to be harvested, NRS Speziali and Mr. Lantz were not always in sight of one another. Nextech submits that NRS Speziali was supposed to follow Mr. Lantz's ribbon line while using a GPS to record the area intended for harvest, but NRS Speziali did not always follow Mr. Lantz as he should have.

[28] Nextech submits that the ribbon laid out by Mr. Lantz was easy to see when standing on the Block. Mr. Lantz says the Block was so small that he "did not notice that the block boundary was different from the map." Nextech provided affidavits from Mr. Lantz, Mr. Cromarty, and Mr. Haugen which confirm that Nextech's workers stayed inside the ribboned area when harvesting. Nextech submits that when the harvested logs were moved to the roadside, the alternate skid trail was used because the loaded skidder had trouble making it around a corner while avoiding a power pole. Nextech maintains that when NRS Speziali and Mr. Lantz laid out the harvesting boundary, they discussed the possibility of using the alternate skid trail if the skidder had trouble moving the logs to the roadside. Mr.

Lantz says he and NRS Speziali agreed during their discussion that the alternate skid trail could be used, because it was an old skid trail and there was no merchantable timber on it.

[29] On behalf of Nextech, Mr. Lantz provided a summary of the steps taken to mark and record the boundaries of the Block, and his actions and observations before harvesting began. He states, in part:

Shane [Speziali] and I jointly decided that I was to ribbon the boundary on the ground using orange ribbons and Shane was to GPS the boundary following the orange ribbons, create the area to be logged map, submit the Block application for logging approval and prepare the contract.

... I went first and tied the ribbons on the boundary trees encompassing all the green attack beetle infested trees identified in the beetle probe as well as any red or grey beetle attack trees, damaged trees, and dead standing trees in an attempt to salvage everything within the ribboned boundary. Shane followed a few minutes behind me along the ribbon line collecting GPS points.

At what is now identified as Beetle Tree #7 ... in the North West corner of the patch, I struggled through a patch of dense brush to capture the last of the beetle infested red and grey trees within the orange ribbon boundary. When I reached the most northerly spot in the patch, I could see an open area to the East with fewer trees and no more salvage trees. I started heading South along an old previously established skid trail. At the south end of the old skid trail, I saw Shane standing in front of me. I was somewhat confused as to why Shane was ahead of me because I was still establishing the orange ribbon boundary of which he agreed to GPS.

Where we joined up, we both could see the old skid trail along the East boundary of the block. We discussed the possibility of using it as an alternate Skid trail as it already existed and followed a natural swale. I then finished ribboning and Shane finished GPS'ing a couple minutes behind me. Shane then submitted the data, created a map for the block and wrote a contract for the [Licence]. When I went home after work I was still confused as to how Shane got ahead of me by following my ribbons. I verbalized my concern to my wife at dinner.

...

The day prior to starting operations on the block, I plowed snow to access the area ... and walked the skidder onto the block from the Old Cunningham Road to create a walkable trail through the snow for the hand fallers to access the block. I did not walk the boundary with the hand fallers. The block was such a small size that most of the ribbons were visible from the center of the block where I left the skidder. I was confident the orange ribbons were easily visible.

...

I was surprised to hear of the alleged trespass and immediately contacted my workers for their comments. I also put a hold on transporting the timber once I heard about the ongoing investigation.

[30] Nextech says unanswered questions remain about the layout of the Block. Among other things, Nextech questions why NRT Speziali did not follow Mr. Lantz's ribbon, and why he cut through the middle of an area with "red and greys Douglas fir trees on his left and green attack on his right" and did not encompass them in the Block when he knew Mr. Lantz's objective was small scale salvage. Nextech submits that the alternate skid trail that Nextech's workers are accused of constructing was harvested before 2013, as shown in photographs. Nextech also questions why the Ministry did not identify the ages of stumps if they were harvested over five years earlier.

*Summary of the Government's Submissions*

[31] The Government submits that the Licence expressly states that Nextech, as licensee, "may not harvest timber under [the] Licence except in accordance with [the] Licence and must comply with the conditions and requirements set out in the Schedules attached to this Licence". In furtherance of this, the Map attached to the Licence defined the area authorized for harvest.

[32] The Government submits that the evidence overwhelmingly supports a finding that Nextech harvested outside the boundary defined by the Map. When NROs Caldwell and Boyde visited the site, they documented their observations that harvesting had occurred outside of the boundaries set out on the Map, as confirmed by photographs they took and GPS maps that plotted the perimeter of the unauthorized harvesting area. Further, NROs Caldwell and Boyde were able to tie timber resulting from unauthorized harvesting to the timber laying on the site or to stumps in the unauthorized harvesting area. During the stump cruise, NROs Boyde and Caldwell ultimately identified 31 stumps as having been taken from the unauthorized harvesting area. The location of each stump was recorded with a GPS, photographed, and painted with a number. The GPS co-ordinates of the stumps in the unauthorized harvesting area were used to create maps confirming the precise location of those stumps and that they were outside of the Block. The Government says this evidence supports a finding that 31 trees were harvested outside of the Block, resulting in 42 m<sup>3</sup> of timber harvested without unauthorized.

[33] The Government submits that Nextech's submission hinges almost entirely on not harvesting timber outside the ribboned area, but the Government says this is irrelevant. The Government does not dispute the evidence that Mr. Lantz used orange ribbon at the site while NRS Speziali used a GPS to record the boundaries provided in the Map. However, the Government maintains that neither the ribboning nor Mr. Lantz's understanding of where the Block was or should have been determines the authorized harvesting area. Rather, the Map attached to the Licence exclusively defines the area of authorized harvest according to the Licence.

[34] Further, the government submits that Nextech's own evidence is unhelpful, because Mr. Lantz says he considered potential discrepancies between his ribboning and NRS Speziali's GPS recording on the day they laid out the boundary. This indicates that Nextech considered at the material time, and before the Licence was issued, that Mr. Lantz may have created a different area for harvesting from the Ministry. Yet, there is no evidence or suggestion that Nextech sought to address any boundary concerns at the time of ribboning, before the Licence was issued, or any time after. Further, there is no evidence or suggestion that Nextech reviewed



or considered the Map before commencing harvesting, or conducted a boundary walk or inspection before commencing harvesting.

[35] In that regard, the Government submits that Mr. Lantz confirmed during the March 19, 2021 interview that:

- a. subsequent to the ribboning, he only returned to the area once to open the road to start logging;
- b. he did not walk the Block himself or with his workers prior to harvesting or at all;
- c. his workers ended up deeming it necessary to harvest outside of the Block to be able to get back out to the road; and
- d. he did not have a map or anything that allowed him to go outside the Block, and the alternate skid trail was considered during ribboning but “nothing further was done about it”.

[36] Further, the Government submits that Nextech’s submission that its workers did not cut a new skid trail, and rather used an old skid trail, is irrelevant. In his affidavit, Mr. Lantz states that after discussion with NRS Speziali, he “felt” Nextech could use the alternate skid trail if necessary or the original skidder trail was found to be unsafe. However, the Government says this is inconsistent with NRS Speziali’s comments to NRO Brown in their March 1, 2021 email exchange, in which NRS Speziali noted that if this access had been requested, it would have been accommodated by amending the Licence. The Government also says this is illogical given that NRS Speziali is the person who filed the complaint report.

[37] Regardless, the Government maintains that the Map defines the area for harvesting, and it is not defined by Mr. Lantz’s view of what it should have been. Even a cursory review prior to harvesting would have confirmed for Mr. Lantz that his understanding was incorrect, and the Licence could have been amended or addressed.

#### *Summary of Nextech’s Reply Submissions*

[38] In reply, Nextech submits that NRS Speziali and Nextech agreed to do a joint submission when applying for the Licence. Nextech maintains that it logged inside the agreed boundary, but NRS Speziali misrepresented the Block boundary with incorrect GPS information which resulted in an inaccurate Map, which led to the contravention.

[39] Nextech says the ribbons laid out by Mr. Lantz were supposed to be the authorized boundary. However, NRS Speziali did not record the ribbon exactly, and his error resulted in harvesting outside the Map boundary.

[40] Nextech says its appeal submission “entirely exists” on the incorrect GPS data submitted by NRS Speziali, which was used to create the incorrect Map, when NRS Speziali did not follow the ribbon laid out by Mr. Lantz. The area in dispute is between the orange ribbon boundary and the incorrect GPS data, and totals 0.06 ha on the north side of the Block. The Ministry and Nextech co-operated to jointly apply for the Licence, and Nextech’s job was to establish the “actual” harvest boundary on the ground with orange ribbon. This ribbon was to be followed exactly,

recorded by GPS, and used for the Map submission in the application for the Licence.

### *Panel's Findings*

[41] Section 52(1)(a) states that a person must not cut, damage or destroy Crown timber unless authorized to do so "under this Act, the *Forest Act* or an agreement under the *Forest Act*". The Licence that authorized harvesting in this case is a forest licence to cut, which is an agreement under section 12(2)(b) of the *Forest Act*. Nextech's harvesting had to comply with the Licence. The Licence authorized harvesting within the boundaries specified by the Map, and not the boundaries marked by the ribbons placed by Mr. Lantz. Thus, the boundaries set by the Map are the legal boundaries of the Block, and are the boundaries within which Nextech was authorized to harvest.

[42] Based on the evidence, I find that Nextech's workers cut or damaged Crown timber outside of the boundaries authorized by the Licence, which are those specified by the Map, in contravention of section 52(1) of the *Act*. Indeed, Nextech acknowledges that its workers harvested an area that was outside of the boundaries specified by the Map. Nextech agrees that the boundaries specified by the Map did not fully align with Mr. Lantz's ribbons, and that Nextech's workers relied on the ribbons rather than the Map to determine where to harvest. I accept the Government's evidence that 31 trees amounting to 42 m<sup>3</sup> of timber were cut outside of the boundaries specified by the Map.

[43] I acknowledge that Nextech's staff provided evidence that there were no merchantable trees on the alternate skid trail, and that Mr. Lantz told them it was alright to use that area as long as there was no merchantable timber on it. Specifically, Mr. Cromarty's affidavit states that, as the skidder operator, he did "cross the orange boundary line directly adjacent to the old skid trail", but he did not remove any trees or stumps to construct a new skid trail. He attests that after a couple of trips on the original skid trail and almost tipping over while making a sharp turn with the skidder, he called Mr. Lantz, who said it would be alright to use the alternate skid trail if there were no merchantable trees on it.

[44] However, I find that a contravention of section 52(1) is not limited to unauthorized cutting or damaging of "merchantable" Crown timber. Section 52(1) states that a person must not cut or damage "Crown timber" without authorization. "Crown timber" is defined in section 1 of the *Forest Act* to mean "timber on Crown land, or timber reserved to the government." Section 1 of the *Forest Act* defines "timber" to mean "trees, whether standing, fallen, living, dead, limbed, bucked or peeled". Although the definitions of "Crown timber" and "timber" are found in the *Forest Act* and not in the *Act*, both apply to BC's forest resources, and there is a general presumption of coherence between statutes that deal with similar subjects. The Commission has previously held that section 52(1) applies to Crown "timber" generally, which means all trees on Crown land, whether mature or immature, and not only merchantable timber or mature trees (see *George Buhler v. Government of British Columbia*, Decision No. 2019-FRP-003(a), February 26, 2021, at para. 38). Furthermore, Schedule B in the Licence expressly states that non-merchantable timber is reserved from harvest.

[45] In conclusion, I find that Nextech contravened section 52(1) of the *Act* by harvesting or damaging trees outside of the boundaries provided on the Map that formed part of the Licence.

## **2. Do any of the defences in section 72 of the *Act* apply?**

### *Summary of Nextech's Submissions*

[46] Nextech submits that the defence of officially induced error applies, because NRS Speziali made an error when recording the harvesting boundaries by GPS, and his GPS data was used to produce the Map which was inaccurate.

[47] Mr. Lantz, on behalf of Nextech, says he relied on an honest set of facts. Specifically, he relied on NRS Speziali to follow his orange ribbons, to make a note of possibly using the old skid trail, and to submit the application for the Licence with the correct information. Mr. Lantz also says he relied on erroneous advice from a government official, in that he relied on NRS Speziali to make notes about the old skid trail, to remember their discussion about the old skid trail, and to follow Mr. Lantz step by step when using the GPS to record the ribboned boundary.

[48] Regarding the defence of due diligence, Nextech submits that Mr. Lantz speaks with Nextech's employees on a continual basis, safety is always emphasized, and pre-work meetings may take place by email, cellular phone, texts, or on site. Nextech says there had been "considerable discussion about this site" with Mr. Cromarty. Also, as stated in their affidavits, Mr. Cromarty and Mr. Haugen went over the information before they started working on the site, they consulted a map of the site, and they did not cut any trees outside of the orange ribbon.

[49] In addition, Nextech says that it was not negligent, but it acknowledges that neither Mr. Lantz nor NRS Speziali were clear in verbalizing or confirming their thoughts on the day they laid out the harvesting boundaries. Nextech says it was clear that it wanted to apply for a licence for small scale salvage harvesting, whereas NRS Speziali was clear in his mind that he needed to "deal with the green attack."

### *Summary of the Government's Submissions*

[50] The Government submits that no statutory defences apply in this case. Neither the defence of due diligence nor the defence of mistake of fact have been established, and Nextech's own submissions undermine those defences. The Government notes that Mr. Lantz's affidavit states that "he relied on the accuracy of the GPS map created by Shane Speziali". Yet, his affidavit also states that he was not always with NRS Speziali when they walked the boundaries, and he was "confused" as to how they got separated. Nextech's submissions also state that Mr. Lantz "was confused as to how Shane got ahead of me by following my ribbons" and that he "verbalized my concern to my wife at dinner". However, there is no evidence that Mr. Lantz raised those concerns with NRS Speziali at the time, or that Mr. Lantz subsequently contacted the Ministry to discuss those concerns.

[51] The Government also submits that there is no evidence that Mr. Lantz or anyone else at Nextech reviewed the Licence or the Map before commencing harvesting. Rather, after ribboning the boundary, Mr. Lantz returned to the site

only once to open the road for harvesting, and he did not walk the boundary of the Block on his own or with his crew before they started work.

[52] The Government says the foreseeability of the contravention is a relevant consideration in the defences of due diligence and mistake of fact. The Government says Nextech's own evidence shows that it was foreseeable to Nextech that there may be discrepancies between Mr. Lantz's ribboning and NRS Speziali's GPS recording of the harvesting boundary, but Nextech took no steps to address those concerns, nor did it review the Licence or survey the Block.

[53] Regarding the defence of officially induced error, the Government says this defence requires Nextech to show that it reasonably relied on advice from a legal official. However, the Ministry provided the authorized harvesting area to Nextech by way of the Map attached to the Licence, which Nextech did not review or consider before harvesting. Therefore, there was no official advice that Nextech could have reasonably relied on that would authorize or justify the unauthorized harvesting.

#### *Summary of Nextech's Reply Submissions*

[54] In reply, Nextech says the difference between the ribboned boundary and the area mapped by GPS was caused by NRS Speziali's error. Mr. Lantz's responsibility was to identify the harvest boundary with orange ribbon, and NRS Speziali's responsibilities were to follow Mr. Lantz and record the orange ribbon boundary with a GPS. NRS Speziali improperly recorded the orange ribbon boundary laid out by Mr. Lantz. The area of unauthorized harvesting is outside the incorrect boundary plotted by GPS and shown on the Map, and inside the orange ribbon boundary laid by Mr. Lantz. Nextech says NRS Speziali agreed that the orange ribbon boundary was correct while he was on site. Mr. Lantz laid out the boundary diligently with orange ribbon that was visible and fully encircled the salvage patch, and Nextech had no reason to think that NRS Speziali would not record the entire orange ribbon boundary.

[55] Nextech says that with no affidavit from NRS Speziali, we can only assume that his thought process was to deal only with the current year's beetle infestation (green attacked beetle trees and not the red and grey beetle infested trees), whereas the Licence entitled it to harvest dead or damaged trees as a result of fire, insect, disease or wind throw including those currently or previously attacked with bark beetles. Mr. Lantz laid the orange boundary ribbons to include all standing dead trees, but NRS Speziali's boundary only encompassed the green attacked trees. While performing his duties at the site, Mr. Lantz was engrossed in looking for all potential salvage timber, and was not aware of where NRS Speziali was with his GPS line.

[56] Nextech also says that the official advice in this case was NRS Speziali providing GPS data and the Map that was to represent the orange ribbon boundary established by Mr. Lantz. Nextech says it signed the Licence without knowing that NRS Speziali improperly represented the Block boundary. Nextech says Mr. Lantz reviewed the Map but it was a 1:20,000 scale and there was no way to see a discrepancy of 0.06 ha. No other maps were provided with the Licence. The 0.44 ha Block was so small that the difference of 0.06 ha was not evident at the time of

harvesting. Mr. Lantz did not receive a 1:722 scale map from the Ministry until after the investigation started.

[57] In addition, Nextech submits that even if Mr. Lantz had walked the boundary with his workers prior to logging, the results would have been the same, because they would have followed the orange ribbons that Mr. Lantz laid out. Nextech's due diligence involved relying on NRS Speziali to accurately record the ribbon boundaries, hiring one of the most experienced fallers in the area and a very experienced supervisor/skidder operator who was also a licensed faller, and Mr. Lantz discussing the logging of the Block with them. Nextech's job was to establish the Block boundary, not to supervise NRS Speziali, the Ministry representative who agreed to record the boundary with a GPS, prepare the Map submission, and ensure its accuracy. The Government has also neglected to acknowledge that Mr. Lantz had made a verbal request to NRS Speziali to use the previously constructed skid trail for matters of safety.

### *Panel's Findings*

[58] Section 72 of the *Act* provides three potential defences to a contravention. Nextech's submissions specifically refer to the defences of due diligence and officially induced error. The Government addressed all three defences, because Nextech's submissions suggest that it may also be relying on the defence of mistake of fact. I have addressed all three potential defences.

[59] First, I will address the defence of due diligence provided in section 72(a) of the *Act*. To successfully claim this defence, Nextech must establish that it exercised due diligence to prevent the contravention. In *Pope & Talbot Ltd. v. British Columbia*, 2009 BCSC 1715 [*Pope & Talbot*], the BC Supreme Court described the defence of due diligence at paragraph 81 as follows:

... it is a question of fact, and of applying facts to the law, as to whether a company has taken all reasonable steps to avoid the contravention in issue. This assessment may include consideration of a contractor's behaviour and the foreseeability of the contravention itself.

[60] In *Atco Wood Products Ltd. v. Government of BC* (Decision No. 2010-FOR-001(a), February 28, 2012), the Commission summarized the test for due diligence at paragraph 256 as follows:

... did the accused take all reasonable care to avoid the particular event (contravention)?

[61] In other words, due diligence applies when the person knew or ought to have known of the hazard or risk of contravention, but the person establishes that they took reasonable care to avoid the contravening event.

[62] In the circumstances of this case, I find that Nextech did not take all reasonable care to avoid the contravention. Specifically, I find that on the day when Mr. Lantz laid out the orange ribbons, he had concerns that the boundary he delineated with orange ribbons may not have been accurately followed by NRS Speziali. These concerns were enough that Mr. Lantz discussed the matter with his wife that evening, yet he did not discuss the matter with Ministry staff or assess the

differences between the boundary marked by ribboning, and the boundary marked on the Map.

[63] In the circumstances of this case, it would have been reasonable to verify that NRS Speziali had followed Mr. Lantz through the difficult terrain he had encountered, and had faithfully recorded that boundary via GPS. Alternatively, this would have allowed Mr. Lantz to confirm that the boundary he intended to mark via ribboning would not match the boundary that ultimately appeared on the Map, within which he was authorized to harvest timber. There may have been other reasonable steps Nextech could have taken, but given that Mr. Lantz was aware of a possible discrepancy between the ribboned boundary and the boundary marked by GPS, for Nextech to have exercised due diligence, it would have needed to take reasonable steps to confirm the Block's boundary. This is particularly so here, where the Block was small and irregularly shaped.

[64] I recognize that there is no affidavit evidence from NRS Speziali, but I do not think that is required in this case. Here, the information provided by Mr. Lantz supports the conclusion that NRS Speziali did not record the ribboned boundary as Mr. Lantz thought he would, but also that Mr. Lantz reasonably suspected that had happened at the time. No matter what NRS Speziali was doing at the time, Mr. Lantz knew enough to enquire about whether the ribboned boundary would, in fact, be reflected in the Licence. Because Nextech failed to be duly diligent about the boundaries of the harvest area, no matter how diligent it was in communicating instructions to those conducting the work onsite, Nextech failed to exercise due diligence to avoid the contravention in this case.

[65] As far as the skidder trail goes, I similarly find that asking that an alternate trail be authorized does not qualify as due diligence. Nextech can and should have confirmed whether this request was granted, and whether the use of an alternate skidder trail was contemplated in the Permit.

[66] Next, I will address the defence of mistake of fact provided in section 72(b). To successfully claim this defence, Nextech must establish that it "reasonably believed in the existence of facts that if true would establish that [Nextech] did not contravene the provision". The Commission discussed the test for this defence in *Forest Practices Board v. Government of British Columbia*, (Decision Nos. 2017-WFA-005(a) and 006(a), October 2, 2018) [*Forest Practices Board*], noting at paragraph 62 that "mistake of fact focuses on reasonable care to know the true facts." At paragraph 63, the Commission explained that mistake of fact:

... applies when the accused establishes that they did not know, and could not reasonably have known, of the existence of the hazard in question. ...

[67] At paragraph 64 of *Forest Practices Board*, the Commission noted that an honest mistake of fact is not necessarily a reasonable one, and the Commission went on to quote *Libman on Regulatory Offences in Canada* (Salt Spring Island, BC: EarlsCourt Legal Press Inc., 2002 loose-leaf), at page. 7-204:

... a person who honestly believes that he or she is not committing an essential element of the offence does not possess the requisite mental state necessary for a conviction.

However, in the strict liability offences, the defendant must demonstrate that not only was the mistake of fact an honest one, but also that it was based on reasonable grounds.

...

The mistake of fact must be "done honestly" and its reasonableness must be based on an objective standard, and not merely the subjective standard of the defendant as to what is reasonable.

[68] I find, for similar reasons to those above, that the defence of mistake of fact does not apply in this case. I find that Nextech honestly believed that it was not committing a contravention because it was operating within the ribboned boundary, upon which it believed the boundary indicated on the Map was based. This belief was not, however, reasonable.

[69] Mr. Lantz was aware that NRS Speziali did not follow along the boundary he marked while ribboning, particularly in an area of difficult terrain. While Nextech stated that Mr. Lantz did not know exactly where NRS Speziali was and what information he was recording during the ribboning, Mr. Lantz knew that NRS Speziali had been behind him, and suddenly was in front of him, without having passed him. In these circumstances, it was not reasonable for Nextech to believe that the ribboned boundary represented the boundary of the Block.

[70] I similarly find that it is not a reasonable mistake of fact to believe that, simply because an applicant for a licence requests a provision, that that provision will appear in the Licence. Even if genuinely held, this mistake of fact is not sufficiently reasonable to qualify as a defense in this case. It would have been reasonable, for example, for Nextech to confirm whether the requested designation of an alternate skidder trail was included in its Licence.

[71] Finally, I will consider the defence of officially induced error provided in section 72(c) of the *Act*. To claim this defence, Nextech must establish that its "actions relevant to the [contravened] provision were the result of an officially induced error". In *Lloyd Bentley v. Government of British Columbia* (Appeal No. 2001-FOR-003, April 9, 2002) [*Bentley*], the Commission discussed this defence, noting at paragraph 43 that the Supreme Court of Canada concluded in *R. v. Jorgensen*, [1995] 4 S.C.R. 55 [*Jorgensen*], that "an officially induced error of law argument will only be successful in the clearest of cases." At paragraph 44 of *Bentley*, the Commission set out the elements of this defence, noting that all elements must be made out before this defence can be successful. A person seeking the benefit of this defence must establish that they:

1. made an error of law, or mixed law and fact;
2. considered their legal position;
3. consulted an appropriate official;
4. obtained reasonable (but erroneous) advice from that official; and
5. relied on that erroneous advice in carrying out their actions.

[72] Thus, the question is whether, on the facts of this case, Nextech has established the required elements of this defence.

[73] In this case, I am satisfied that Nextech made an error of mixed law and fact, by misunderstanding the area within which they were authorized to harvest timber under the Licence. They did not, however, obtain advice from an appropriate official, who would trigger the defense of officially induced error.

[74] At paragraphs 14 and 15 of *Jorgensen*, the court references *R. v. Flemming* (1980), 43 N.S.R. (2d) 249 (N.B. Co. Ct.) [*Flemming*], a decision written by O Hearn J. In writing *Jorgensen*, Chief Justice Lamer (as he then was) described *Flemming* as "thoroughly reasoned". Lamer C.J. notes, at paragraph 15, that O Hearn Co. Ct. J. "... specifies that the official whose advice is followed must be involved in the administration of the law in question, so that following his advice is reasonable, and that the opinion itself should be reasonable in the circumstances."

[75] Lamer C.J. squarely accepted O Hearn Co. Ct. J.'s analysis at paragraph 30 of *Jorgensen*, stating:

In general, therefore, government officials who are involved in the administration of the law in question will be considered appropriate officials. I do not wish to establish a closed list of officials whose erroneous advice may be considered exculpatory. The measure proposed by O Hearn Co. Ct. J. is persuasive. That is, the official must be one whom a reasonable individual in the position of the accused would normally consider responsible for advice about the particular law in question. ... The determination of whether the official was an appropriate one to seek advice from is to be determined in the circumstances of each case.

[76] Nextech has made clear that it relied on NRS Speziali to input GPS data consistent with the ribboned boundary marked by Mr. Lantz. Neither Mr. Lantz nor Nextech sought advice from NRS Speziali, but rather trusted him to input data that would form the basis for the harvesting area authorized under the Licence. Had Mr. Lantz verified that NRS Speziali had inputted GPS coordinates consistent with the ribboned boundary, a defence of officially induced error may apply. He did not, however. Even if NRS Speziali is considered an official, entering GPS information to be considered by a decision-maker is not advice to the applicant for that licence. It is, at most, advice in the form of spatial information given to the decision-maker. An error in information passed to the decision-maker does not trigger the defense of officially induced error.

[77] Similarly, relying on NRS Speziali to document a desire to use an alternate skidder trail does not qualify as seeking advice from NRS Speziali. Mr. Lantz and Nextech did not assert that NRS Speziali told them they could use the alternate trail they wished to use. They did not confirm with NRS Speziali that they would be able to use the alternate trail they proposed. As Mr. Lantz stated in his submissions to the Commission, "I relied on the MOF employee [NRS Speziali] to make note of the discussion of using the alternate skid trail in the event that it was required for safety."

[78] For these reasons, I conclude that the defense of officially induced error does not apply.

### **3. What is the appropriate penalty in the circumstances?**



*Summary of Nextech's Submissions*

[79] Nextech submits that the contravention was not deliberate in any way, and arose from a misunderstanding Mr. Lantz and NRS Spezialti about the forest management objectives and purpose of salvage operation, and which trees were targeted for harvesting.

[80] Nextech says it cooperated with all aspects of the investigation.

[81] Nextech submits that it had no economic gain from the unauthorized harvest. In fact, Nextech maintains that it incurred a loss of \$93.34 to harvest the entire site, including timber that was harvested with and without authorization. Nextech provided a breakdown of the revenue from all the timber harvested (101.84 m<sup>3</sup> sold for \$120 per m<sup>3</sup> = \$12,220.80), minus \$360 for 3 m<sup>3</sup> lost to firewood cutters, and minus harvesting costs totaling \$12,487.46 including the stumpage and silviculture levy that were paid.

[82] Finally, Nextech also requests that the silviculture levy of \$596.75 be returned to it, because the harvested area was less than 1 ha, and the Crown was responsible for silviculture on the Block. In that regard, Nextech provided copies of an email exchange between Mr. Lantz and a Ministry employee. On February 24, 2021, the Ministry employee informed Mr. Lantz by email that a silviculture levy applied to timber harvested under the Licence. That same day, Mr. Lantz replied by email, saying he was unaware there was a silviculture levy associated with the Licence and asking if it could be taken off. On March 1, 2021, another Ministry employee responded by email that the levy is collected on all conifer grades 1 and 2 timber unless an exemption is granted by the District Manager, but exemptions need to be completed for a licence is issued.

[83] Nextech also asks that its security deposit of \$500 on the Licence should be forfeited or returned.

*Summary of the Government's Submissions*

[84] The Government submits that a \$5,000 penalty is reasonable in the circumstances and there is no basis to vary it. In this case, the contravention appears not to have been deliberate, nor was it continuous. Further, Nextech was co-operative with the investigation. Nonetheless, the contravention was avoidable if Nextech had simply reviewed the Map or walked the Block prior to harvesting. Mr. Lantz's evidence was that he only visited the site once after ribboning, to open the road for the harvesting. He did not walk with the Block with his crew prior to harvesting, nor did he attend at any time or require them to review the Map. Finally, although Nextech did not profit from the unauthorized harvesting, it could have profited if the investigation had not occurred, as the timber cut without authorization was found mixed with the timber that was lawfully cut.

[85] The Government notes that in *Rick Lightburn and Wade Lightburn v. Government of British Columbia* (Appeal No. 2003-FOR-003(a), September 24, 2003), the Commission stated that "the purpose of a deterrent penalty ... is to impede or prevent future misconduct or non-compliance by the person, or by the larger regulated population". Given all of this, and pursuant to the *Regulation*, the Manager could have levied a maximum penalty of \$10,532.73 in this case. Nonetheless, she levied a penalty of less than half that amount, \$5,000.00. The

Government submits that such an amount is reasonable and fair, and reflects an appropriate balancing of the considerations under section 71(5) of the *Act*.

[86] In addition, the Government submits that the questions of whether Nextech was unfairly charged a silviculture levy or whether its deposit on the Licence should be returned, were not decided in the Determination and are not properly before the Commission in this appeal.

*Panel's Findings*

[87] In deciding the appropriate penalty, I have considered the factors listed in section 71(5) of the *Act*, as well as the deterrent effects of a penalty.

[88] There is no evidence that Nextech has previous contraventions of a similar nature.

[89] The Manager found, and I agree, that the gravity and magnitude of the contravention were both low. The area of unauthorized harvesting and the volume of timber harvested without authority were both small. There is also no evidence that the contravention resulted in harm to any environmental values associated with the site. Furthermore, NRS Speziali indicating to NRO Brown on March 1, 2021 that, had Nextech applied for an alternate skidder trail to be allowed under the Licence, that request likely would have been granted.

[90] There is no evidence that the contravention was repeated or continuous. It was a single incident during a brief harvesting operation.

[91] I agree with the Manager that the contravention was not deliberate. However, I disagree with the Manager's statement that the contravention was "likely a result of [Nextech] trying to find efficiencies in moving timber to roadside", which she found to be negligent but not deliberate. I find that the Manager was speculating about the intentions behind for the contravention. There is no evidence that Nextech was trying to find operational "efficiencies" by harvesting outside the Block's boundaries. Rather, the evidence is that the unauthorized harvesting occurred due to misunderstandings about the location of the Block's boundaries and whether NRS Speziali authorized the use of the alternate skidder trail. The evidence provided by Nextech, including the affidavits of Mr. Lantz, Mr. Cromarty, and Mr. Haugen, shows that they all misunderstood the location of the Block's boundary. It is likewise not clear that the contravention could have been avoided if Mr. Lantz or someone else in Nextech had reviewed the Map, as the version of the Map attached to the Licence was at a scale that was difficult to see the Block in sufficient detail. Mr. Lantz did not receive a map that showed the boundary in greater detail until after the investigation began. Similarly, it is not clear that Mr. Lantz or Nextech could have avoided the contravention by walking the Block before harvesting, given that Mr. Lantz's error was assuming the trees demarcated by orange ribbons faithfully outlined the boundaries of the Block, and walking the Block only would have confirmed for him where the ribbons were, not where the boundaries of the Block were.

[92] In addition, the skidder operator's evidence is that he used the alternate skid trail, which is part of the unauthorized harvesting area, due to safety concerns when he found the loaded skidder had difficulty turning a corner on the original skid trail and was at risk of tipping over.

[93] I find that Nextech's evidence supports a conclusion that it derived no economic benefit from the contravention. The Manager also found that Nextech derived no economic benefit from the contravention, and that Nextech may have even had a financial loss from the operation. However, the Manager went on to say that Nextech would have benefited if it had not been for an inspection.

[94] I disagree that potential profits in a hypothetical situation, where Nextech's error was not discovered, warrant consideration. I am to consider "any economic benefit derived", not whether any would have been derived had the contravention not come to light. In fact, treating these as the same would disincentivize those ceasing operations and cooperating with investigations when a contravention is discovered. For these reasons, I disagree with the Manager on this aspect of the appropriate amount of the penalty.

[95] I agree with the Manager's conclusion that Nextech was co-operative throughout the investigation, but there is no practical way to correct the contravention now that harvesting has occurred.

[96] Regarding deterrence, I agree with the Government that a deterrent penalty is intended to impede or prevent future misconduct or non-compliance by the person, or by the larger regulated population. However, I find that in the present case, there is little need for deterrence specifically in relation to Nextech, as I have found that the contravention was not the result of Nextech trying to find operational efficiencies, but rather, was the result of misunderstandings about where Nextech was authorized to harvest.

[97] Lastly, although I am not bound by the Commission's past decision, I take note of the decision in *McBride Community Forest Corporation v. Government of British Columbia*, Decision No. 2014-FRP-002(a), June 1, 2015 [*McBride*], for the sake of comparison. In that case, the appellant was found responsible for the unauthorized harvesting of 238 m<sup>3</sup> of timber in 0.9 ha inside an Old Growth Management Area ("OGMA"). The appellant argued that it was impossible to precisely determine the boundary of the OGMA because the scale of the map (1:30,000) appended to its Forest Stewardship Plan was too small to allow proper boundary identification. However, the Commission found that the appellant was obligated to take reasonable steps to identify the OGMA boundary. The appellant had identified the OGMA in a site plan map it prepared at a scale of 1:10,000, but did not mark the OGMA boundary on site. The appellant's staff had one meeting with its contractor before work commenced, but that meeting was not on site and the OGMA boundary was not discussed in any detail. The contractor testified that he was aware of the presence of the OGMA from the site plan map, and he estimated the boundary distance on the site using the map scale.

[98] In considering the appropriate penalty amount, the Commission found in *McBride* that the magnitude of the contravention was low, as in the present case. However, unlike the present case, the gravity of the contravention in *McBride* was "quite significant" given that 238 m<sup>3</sup> of timber was cut and removed without authority from an OGMA. The Commission noted that OGMAs protect ecological and biological values that cannot be replaced in the short or medium terms through silviculture treatments. In addition, the appellant was not fully cooperative in

responding to requests for information concerning the circumstances under which the unauthorized harvest occurred.

[99] Other considerations in *McBride* were similar to those in Nextech's case: the appellant had committed no previous contravention of a similar nature; the contravention was not repeated or continuous; the appellant obtained no economic benefit from the contravention; the contravention was not deliberate but resulted from taking insufficient care; and the appellant had paid stumpage on the timber. After considering the whole of the evidence, and that a \$3,000 penalty was "very modest" compared to the maximum penalties allowed under the legislation, the Commission confirmed that penalty.

[100] In these circumstances, I find that the \$5,000 penalty levied against Nextech is too high, as I disagree with the Manager's speculation as to Nextech's motives in committing the contravention and the relevance of any profits that it may have realized if the contravention had not come to light. These two errors in the Manager's reasoning were critical in justifying the \$5,000 penalty that was imposed. The Determination says, at page 7:

I do not find the contravention to be trifling and I do find it in the public interest to levy a penalty. In consideration of the above factors, I am levying a penalty of \$5000.00. The area and volume of unauthorized harvest are both small, and Nextech did not receive any economic gain from the contravention as the harvested volume was destroyed by firewood cutters. However, if the inspection had not been completed at the time it was, Nextech would have benefits, and this cannot be ignored. A deterrent penalty will serve as incentive to follow legislative requirements instead of favoring [sic] operational efficiency or other disregard.

[101] Based on the foregoing, I consider it appropriate to reduce the penalty to \$1,500. This figure reflects the proper consideration of the lack of economic gain in this case, and the lack of a need to deter Nextech from future contraventions through a penalty, as well as the other mitigating factors described above.

## **DECISION**

[102] In making this decision, I have carefully considered all of the evidence before me, and the submissions and arguments made by the parties, whether or not they have been specifically referenced in this decision.

[103] For the reasons provided above, I reduce the penalty to \$1,500. The appeal is allowed, in part.

"Darrell Le Houillier"

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Darrell Le Houillier, Chair  
Forest Appeals Commission

October 21, 2022