



December 18th, 2014

Chris Lunde, Chair
Oregon State Implementation Committee
Sustainable Forestry Initiative
c/o Port Blakely Tree Farms, LP
1501 Fourth Ave, Suite 2150
Seattle, WA 98101

Gregor McIntosh, Senior Director Standards
Sustainable Forestry Initiative
1306 Wellington Street, Suite 400
Ottawa, ON K1Y 3B2

Re: Suspension of SFI Certification for Plum Creek's Operations in Oregon

Dear Mr. Lunde;

By this letter and in accordance with the Sustainable Forestry Initiative's (SFI) inconsistent practices complaint process Center for Sustainable Economy (CSE) is requesting immediate suspension of SFI certification for Plum Creek Timberlands, LP (Plum Creek) operations in Oregon. Contrary to one of the most basic SFI standards (Objective 14: Legal and Regulatory Compliance) Plum Creek Timberlands, LP is a repeat offender of Oregon's Forest Practices Act (ORS 527.610 to 527.770, 527.990 (1) and 527.992) and implementing rules (OAR chapter 629, divisions 600 through 680). Eleven civil penalties have been assessed against Plum Creek and operators on its lands in just six years for failing to adhere to multiple standards related to harvest unit size, protection for waters, and notifications.

The violations are not trivial, and may be just the tip of the iceberg. Detailed aerial and satellite imagery of Plum Creek's operations within and adjacent to the cited operations reveals extensive resource damage inconsistent with regulatory standards in place to protect soil and watershed conditions as well as SFI principles related to forest productivity, water resources, and biological diversity. Some of these additional inconsistent practices may have been identified in the State's most recent forest practices audit report, which found 1,213 instances of non-compliance on private industrial forestlands associated with standards for road construction, harvesting, stream

protection, protection for “other” wetlands, and operations near waters of the State.¹ Although the State does not disclose the landowners associated with these apparent instances of non-compliance, several of the data points on which compliance data were gathered appear to be located on Plum Creek lands.

The fact that Plum Creek’s known violations are geographically dispersed, spread over 6 years, and duplicative suggests a pattern of willful non-compliance – a pattern ignored by Plum Creek’s SFI audits, which have only addressed Oregon operations once in the last six years and which fail to reflect due diligence in investigating the consistency of Plum Creek’s Oregon operations with SFI standards or the law. In addition to an immediate suspension of Plum Creek’s SFI certification we ask that SFI take steps to identify the full scope of inconsistent practices, bar Bureau Veritas Certification North America, Inc. from any future audits of Plum Creek lands, and notify both the Federal Trade Commission and Securities and Exchange Commission that any further use of the SFI label in connection wood products sourced in Oregon would constitute fraud and deceit to consumers of Plum Creek’s wood products and traders of Plum Creek’s securities. Details of these claims and requests follow:

1. CSE and its members are harmed by Plum Creek’s operations and misuse of the SFI label.

CSE is keenly interested in this matter. Our members in Oregon frequently hunt, fish, recreate and enjoy the scenery of Oregon’s forests including parcels directly and indirectly affected by Plum Creek’s management activities. The extensive fragmentation and resource damage caused to fish, wildlife, and watershed conditions by Plum Creek’s unsustainable logging operations diminishes our members’ ability to engage in these activities.

CSE is interested in this matter organizationally, as well. As part of mission and activities CSE promotes the consumption of sustainably certified products and investment in companies with sustainability credentials. For example, our ecological footprint calculator at www.myfootprint.org reaches millions of users each year and displays the footprint-reducing benefits of consuming sustainably certified goods. Plum Creek’s misuse of SFI’s certification and SFI’s complacency in permitting this misuse impedes our ability to engage, consult, and counsel our members and partners about credible sustainable consumption and investment choices.

2. Plum Creek Timberlands, LP represents that *all* of its lands are managed sustainably.

As you know, Plum Creek Timberlands, LP boasts that “[w]e are proudly Sustainable Forestry Initiative certified and manage all our timberlands according to SFI standards.”² Plum Creek further maintains that its management of all timberlands, including lands in Oregon, has been

¹ Clements, Paul, Jeremy Groom and John Hawksworth. 2013. Oregon Department of Forestry Forest Practices Compliance Audit 2013. Salem, OR: Oregon Department of Forestry. Available online at: <http://www.oregon.gov/odf/privateforests/pages/techreportsnumerical.aspx>.

² Claim made on Plum Creek’s public website at: <http://www.plumcreek.com/sustainability/environment-our-commitments/sustainable-forest-management>.

SFI consistent since 1999.³ For consumers, Plum Creek claims “to meet the public's need for wood and paper products while ensuring healthy and sustainable forests far into the future.”⁴ To investors, Plum Creek is equally confident of its claims. In its most recent (2013) annual report filed with the Securities and Exchange Commission (SEC), Plum Creek represents that “[w]e follow the principles of the Sustainable Forestry Initiative® program (“SFIS-M”) which are aimed at the sound management of all natural resources, including soils, air, watersheds, fisheries and wildlife habitats. Forestry practices on all of our timberlands have been independently audited and certified under the SFIS-M program.”⁵

3. Plum Creek is a repeat offender of Oregon’s Forest Practices Act and rules.

Since 2009, Plum Creek has been one of the most frequent single recipients of civil penalties levied by Oregon’s Department of Forestry (DOF) for violations of forest practices rules as well as statutory provisions of Oregon’s Forest Practices Act. Table 1, below, provides a list of the violations by year, rule number or statutory provision, and a brief description of the nature of the violation. Civil penalty data from prior years is not currently available online.

Plum Creek Civil Penalties 2009 – 2014⁶

Year	Rule No.	Nature of violation
2014	527.740(2)	Size of contiguous clearcut area exceeds 120 acres
2013	527.740(2)	Size of contiguous clearcut area exceeds 120 acres
2012	629-625-0330(4)	Failure to protect waters of the State from road drainage
2011	629-640-0100(2)b	Logging within 20 feet of high water along fish bearing streams
2009	629-630-0200(3)	Landing deck placed in riparian zone
2009	527.740(2)	Size of contiguous clearcut area exceeds 120 acres
2009	527.670(6)	Failure to notify State Forester of operations
2009	527.670(7)	Failure to notify State Forester of change in operations
2009	527.740(2)	Size of contiguous clearcut area exceeds 120 acres
2009	629-605-0170(1)a	Written plan deficiencies, riparian management area
2009	629-630-0200(3)	Landing deck placed in riparian zone

Of most concern are Plum Creek’s regular violations of clearcut size limitations. The fragmentation caused by large clearcuts is a driver of extinction for wildlife dependent upon interior forest conditions and one of the most damaging ecological impacts associated with forest operations in Oregon. As DOF notes, “[w]hen a forest is fragmented into small pieces, ecological processes can be disrupted and habitat areas reduced or unavailable to wildlife. Fragmented areas

³ Claim made on Plum Creek’s public website at: <http://www.plumcreek.com/sustainability/environment-our-commitments/sustainable-forest-management/sfi-principles-objectives>.

⁴ Claim made on Plum Creek’s public website at: <http://www.plumcreek.com/sustainability/environment-our-commitments/sustainable-forest-management/sfi-certifications>.

⁵ Plum Creek Timber Company, Inc. 2013. Form 10-K: Annual Report Pursuant to Section 13 OR 15(d) of The Securities and Exchange Act of 1934. Available online at: <http://www.plumcreek.com/investors/financial-publications/sec-filings>.

⁶ Civil penalty data is provided quarterly by the Department of Forestry at: <http://www.odf.state.or.us/cases/default.asp>.

may be too small to maintain viable breeding populations of some species. The distances between forest fragments can interfere with pollination, seed dispersal, wildlife movement, and breeding.”⁷ Despite this recognition, the OFPA and its implementing rules are amongst the most permissive in the region. For example, California maintains a clearcut size of 20-30 acres, 40 acres in some circumstances with permission. On national forests in Oregon, clearcut size limits range from 40 to 60 acres. Under the OFPA, however, with permission, operators can create an opening of up to 120 acres on a single ownership. SFI’s standards echo this. Yet Plum Creek cannot abide by even these weak resource standards, with four of the eleven citations issued over the past six years dealing with the creation of large, contiguous clearcuts exceeding the 120-acre limit.

Protection for riparian areas and waters of the State is another recurrent problem area for Plum Creek. Again, the Oregon Forest Practices Act and rules are weak in comparison to scientific standards and those in other states. No cut riparian buffers along fish bearing streams range from 300 to 340 feet on federal lands managed under the Northwest Forest Plan’s Aquatic Conservation Strategy, 30-50 feet in Washington. In contrast, on state and private forestlands in Oregon fish-bearing streams receive no cut buffers of only 20-25 feet while non-fish bearing streams get nothing.⁸ Nonetheless, four of Plum Creek’s civil penalties since 2009 have been in association with these extremely weak standards.

Taken together, Plum Creek’s civil penalties are geographically dispersed, spread over time, duplicative, and represent inability to comply with even the weakest forest practices standards in the region. Clearly, such actions are a far cry from what Plum Creek’s consumers and investors are told and a myth that is perpetuated by SFI by continuing to offer its seal of approval.

4. These violations are in units associated with extensive resource damage.

These violations are not trivial – in each case, the violations are associated with logging units that exhibit extensive resource damage on site as well as severe fragmentation of the landscape. The official violations offer but a small glimpse into the severity of impact. Aerial and satellite imagery is far more telling. Figure 1, below, provides close-up satellite images of Plum Creek’s clearcutting operations in the area of its 2012 citation. Township, section, and range information were provided by DOF on their civil penalties database. Satellite imagery was provided by Google Earth and Terra Server.⁹ Landowner information was provided by Onxmaps’s Hunt plat coverage map series.¹⁰

All of the wood harvested here was sold and marketed under the SFI banner. Yet the inconsistency of these harvest practices not only with State law but SFI’s own standards is exceedingly obvious. Note the extensive soil damage associated with poorly planned roads and

⁷ Oregon Department of Forestry, Indicators of Sustainable Forest Management, Indicator 1, Criteria 5. Available online at: http://www.oregon.gov/odf/pages/state_forests/frp/crt1ind5.aspx.

⁸ For a useful comparison of riparian buffer protections offered in the region visit Pacific Rivers website at: <http://pacificrivers.org/conservation-priorities/land-management/forest-practices/forest-practices-on-private-lands-in-oregon>.

⁹ Available online at:

¹⁰ Available online at: www.huntinggpsmaps.com/plat-coverage#.VIdOqSffhzY.

skid trails and excessive runoff from these roads into a nearby riparian buffer. Forest practices rules contain many standards for minimizing harm from roads and landings and for protection of soils and site productivity that appear to have been violated (e.g OAR 629: 625-0310; 625-0330; 630-0100; 630-0150; 630-0200).

Figure 2 provides close up satellite images of Plum Creek’s clearcutting operations in the area of its 2009 citations. Note the extreme damages to stream courses and headwalls. In the lower photo, note the extensive slumping and sliding in association with roads, skidding, and yarding practices. At minimum, these practices appear inconsistent with the standards at OAR 629: 625-00330 and 630-0100. Note also that the two images were taken in 2013 – a full five years after the harvest was apparently commenced. This calls into question whether or not Plum Creek has met the required time allowed for reforestation of a “free to grow stand of trees” set forth in OAR 629-610-0040.

Figure 3 is a dramatic pair of images from the units at issue in the 2014 citation. Since the time the images were produced, Plum Creek has placed another large unit immediately adjacent to these, in apparent violation once again of the adjacency requirement meant to keep contiguous clearcut areas less than 120 acres in size. But notice the immense scale of damages to soils, watershed conditions, streams and forest productivity associated with a dozen or more landslides – damages that many provisions of the OFPA and its implementing rules are designed to prevent (e.g. OAR 629-623, generally; OAR 629: 615-0250; 625-0310; 630-0150; 630-0500).

These images are associated with just three of the eleven civil penalties levied against Plum Creek since 2009. But they provide a compelling case that the official citations may be just the tip of the iceberg. A thorough investigation of these and others sites that exhibit the kinds of extensive resource damages illustrated by Figures 1-3 would provide a far more accurate assessment of the scope of Plum Creek’s inconsistent practices and pattern of noncompliance with the OFPA and its implementing rules.

Additional non-compliance information may be contained in the State’s most recent forest practices act compliance report.¹¹ That report noted 1,948 apparent instances of noncompliance. Of these, 1,213 were identified as being located on private industrial forestland. The instances of apparent noncompliance noted by the report were based on the observation of unsatisfactory conditions, including “ongoing and imminent delivery of sediment or organic debris to waters of the State,” “stream channel disturbance,” and “disrupted hydrology” – all noncompliance issues readily apparent in Figures 1-3.

The water resources most frequently affected by these apparent noncompliances were small wetlands and bogs. The apparent noncompliances were identified during field inspection of 200 sites. Some of the sites appear to be located on Plum Creek lands, and so the scope of Plum Creek’s violations can also be informed by carefully reviewing this report and the underlying data samples in combination with satellite and aerial imagery.

¹¹ See Note 1.

5. These violations are inconsistent with SFI certification and SFI principles.

The official violations themselves as well as the extensive damages associated with them are clearly at odds with SFI certification. SFI's most recent standards (SFI 2010-2014) are set forth in the context of 14 normative objectives.¹² Objective 14: Legal and Regulatory Compliance is one of the most basic. It merely requires that companies that bear its seal of approval abide by the law. As an indicator, SFI's requires "[d]emonstration of commitment to legal compliance through available regulatory action information." However, available regulatory action information in Oregon demonstrates the opposite in Plum Creek's case – a willful pattern of non-compliance that is geographically dispersed, spread over 6 years, and duplicative.

As illustrated by Figures 1-3, the damages associated with these violations are wholly inconsistent with many other SFI principles including those related to forest productivity and health (Objective 2), protection of water resources (Objective 3), and protection of biological diversity (Objective 4). One of the key requirements of Objective 2 is to ensure prompt reforestation and soil conservation. One of the key requirements of Objective 3 is to protect all waters of the state including small wetlands and bogs. One of the key requirements of Objective 4 is to conserve wildlife habitat at the stand and landscape level through retention of significant amounts of biological legacy on-site (snags, mast trees, down woody debris, den trees and nest trees) and by adhering to the 120-acre clearcut size limit size. All of Plum Creek's cited violations as well as those apparent from aerial and satellite imagery (Figures 1-3) are at odds with one or more of these principles.

6. SFI audits cannot be relied upon to justify certification of Plum Creek's Oregon operations.

To maintain its SFI certification, Plum Creek has retained the firm Bureau Veritas Certification North America, Inc (BVCN) to conduct periodic audits of its operations.¹³ The audits bear dates of September 2011, August 2012, August 2013, and February 2014, although the dates the audits were actually prepared differ substantially. The 2011 audit did not include Oregon timberlands in any of the sites evaluated, instead concentrating on operations in Alabama, Arkansas, Georgia, and South Carolina. The 2013 audit focused on the Northern Hardwood region, consisting of timberlands in the Lake States, New England, and West Virginia. The 2014 audit addressed lands acquired from Mead Westvaco in West Virginia, Virginia, South Carolina and Georgia. Thus, the sole basis on which SFI certification in Oregon is based during the period in question is a single audit prepared in 2012.

This single audit for a handful (eleven) of Plum Creek's harvest units verified one of the civil penalty violations related to logging in a riparian zone. The auditor found additional problems associated with reforestation: For two units in Plum Creek's Butte Falls unit, the auditor found that "[r]egeneration was poor, and while Plum Creek is in the process of investigating the cause, an opportunity for improvement was issued to make sure the company follows through on its

¹² Sustainable Forestry Initiative (SFI). 2010. Section 2: SFI 2010-2014 Standard.

¹³ SFI surveillance audits for Plum Creek are available online at: <http://www.sfiprogram.org/sfi-standard/audit-reports/params/filter/P/>. On the website, the audits bear dates of September 2011, August 2012, August 2013, and February 2014 although the dates the audits were actually prepared differ substantially.

corrective actions.” Despite these inconsistencies, “[t]he lead auditor believed the body of evidence indicated Plum Creek to be committed to regulatory compliance, and this one action did not constitute a system-wide deficiency.”¹⁴ Yet in 2013, and despite the fact that Oregon was not included in the units surveyed, the auditor noted “Plum Creek did receive a citation in Oregon due to a violation of adjacency requirements. While Plum Creek did receive a forest practices act citation, the lead auditor did not believe this constituted a non-conformance, given the company self-reporting of the violation, and development of robust corrective actions. Compliance will continue to be an area monitored closely in the future.”

The auditor’s pledge rings hollow. Compliance was not reviewed prior to or subsequent to the violations noted in the 2012 and 2013 audits, and as a result, the ongoing pattern of willful non-compliance was not recognized. Nor were any of the additional non-compliant conditions on the ground identified that could have been if the auditor had engaged in due diligence and reviewed additional public records (like the annual civil penalties database) or aerial and satellite imagery of at least a sample of Plum Creek logging units. Taken together, the fact that: (1) SFI certification for Plum Creek’s operations is based on a single audit report over six years; (2) the single audit report actually documented inconsistent practices; (3) the auditor failed to engage in due diligence in determining Plum Creek’s level of compliance with the law or compliance with other SFI principles renders Plum Creek’s 2011, 2012, 2013 or 2014 audit reports irrelevant as a basis for certifying its Oregon operations. Clearly, these deficiencies call into question the legitimacy of BVCN’s accreditation by SFI. At the very least, BVCN should be barred from future audits of Plum Creek operations.

We also note that Plum Creek’s reliance upon these audit reports to assert that *all* of its timberlands – including lands in Oregon – are “independently certified”¹⁵ each year violates Federal Trade Commission (FTC) guidance issued to help marketers avoid making environmental marketing claims that are unfair or deceptive under Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. This FTC “Green Guide” states unambiguously: “[i]t is deceptive to misrepresent, directly or by implication, that a product, package, or service has been endorsed or certified by an independent third party.”¹⁶ Yet this is precisely what Plum Creek represents to the public with respect to BVCN: “[o]ur procurement activities are evaluated by the independent, third-party auditor Bureau Veritas as part of our company’s SFI audit program.”¹⁷

7. Continuing to offer SFI certification to Plum Creek defrauds consumers and investors.

By being complacent in the misuse of SFI certification with respect to Plum Creek operations, SFI runs afoul of important protections offered by law for both consumers and investors. The basic consumer protection statute enforced by the FTC is Section 5(a) of the FTC Act, which provides that “unfair or deceptive acts or practices in or affecting commerce...are...declared unlawful.”¹⁸ “Unfair” practices are “defined as those that cause or are likely to cause substantial

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¹⁵ See, e.g. Plum Creek’s 2013 Annual Report filed with the SEC, Note 5.

¹⁶ Green Guide at § 260.6. The Green Guide is downloadable from FTC at:

¹⁷ Claim made on Plum Creek’s public website at: <http://www.plumcreek.com/sustainability/environment-our-commitments/responsible-fiber-sourcing>.

¹⁸ 15 U.S.C. § 45(a)(1)).

injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition."¹⁹ In light of FTC's Green Guide requirements and the information presented here about Plum Creek's pattern of inconsistent practices, SFI's complacency in permitting Plum Creek to continue to represent that all of its timberlands including timberlands in Oregon have been independently certified by a third party as conforming to SFI principles would implicate SFI as conspiring with Plum Creek to transgress FTC's basic consumer protection statute. To guard itself, SFI can take the simple step of notifying the FTC that it does not concur with Plum Creek's claim with respect to (a) SFI certification of its Oregon operations, and (b) the claim that Plum Creek has earned independent third party certification.

The basic investor protection statutes enforced by the Securities and Exchange Commission (SEC) are the Securities Act of 1933 and the Securities and Exchange Act of 1934.²⁰ Both Acts prohibit manipulative and deceptive practices and provide the SEC with broad powers to punish any attempt to manipulate the market. In pursuing allegedly fraudulent activity, the SEC and shareholders commonly rely upon Section 10b of the '34 Act and Rule 10b-5 promulgated under the '34 Act. Rule 10b-5 makes it illegal to: "employ any device, scheme, or artifice to defraud. . . [or] make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security."

The application of these prohibitions to environmental certification schemes and potential securities fraud liability has been well researched.²¹ By routinely claiming that all of its timberlands, including those in Oregon, are SFI certified by an independent third party auditor and otherwise managed in accordance with SFI principles, Plum Creek may be engaging in securities fraud. As with the FTC, and to protect itself, SFI should notify the SEC that it does not endorse either of these claims.

8. Requested actions

To obviate the need for further actions by CSE on this matter, we request that SFI do the following no later than 30 days from the date of this notice:

1. Suspend SFI certification for Plum Creek Timberland, LP logging operations in Oregon. At the very least, this suspension should be based on the consistent track record of non-compliance with Oregon's Forest Practices Act and implementing rules as evidenced by eleven civil penalties levied by the Oregon Department of Forestry on Plum Creek timberlands over the 2009-2014 period. The pattern of willful noncompliance demonstrated by these citations is a clear violation of SFI Objective 14.

¹⁹ 15 U.S.C. § 45(n)).

²⁰ 15 USC § 77a; 15 USC § 78c.

²¹ See, e.g. Anderson, Brian, Esq. 2008. "Green building representations and the emerging potential for securities fraud liability." *Real Estate Issues* 33(3): 53-58.

2. Investigate the full extent of Plum Creek's inconsistent practices in Oregon that are readily apparent from satellite images such as those offered by CSE as Figures 1-3. These additional inconsistent practices may be corroborated by review of public records such as DOF's 2013 compliance audit.
3. Disqualify Bureau Veritas Certification North America, Inc. as a credible SFI auditor of Plum Creek timberlands for failing to conduct due diligence in researching Plum Creek's record of consistency with SFI principles or compliance with the law in Oregon.
4. Notify the Federal Trade Commission that SFI does not concur with Plum Creek's assertions about third party, independent certification of its timberlands nor the consistency of Oregon operations with SFI principles.
5. Through the SEC complaint portal²² or other means, notify the Securities and Exchange Commission that SFI does not concur with Plum Creek's assertions about third party, independent certification of its timberlands nor the consistency of Oregon operations with SFI principles.

Please feel free to call me to discuss these issues in person. We look forward to your timely response.

Yours truly,



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cc/

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²² SEC's online complaint portal can be accessed here:
<http://www.sec.gov/complaint/tipscomplaint.shtml>.

Figure 1
Area of Plum Creek Civil Penalty Assessment 2012
(12-CS038)
32S 13W Section 13



Figure 2
Area of Plum Creek Civil Penalty Assessments 2009
(09-FTN02, 07-60287, 08-60182)
27S 9W Section 33



Figure 3
Area of Plum Creek Civil Penalty Assessments 2014
(No reference number yet assigned)
19S 9W Section 10

