



# Skagit County Planning & Development Services

DALE PERNULA, AICP *Director*

JACK MOORE, CBCO *Building Official*

## Issue Paper

From: Gary R. Christensen

Re: Transfer of Jurisdiction for Regulation of Forest Practices when Land is to be Converted to Non-Forestry Uses;  
and, Proposal to Exempt Certain Uniform Development Code Critical Area Regulations on Forest Lands

Date: December 22, 2015 (updated)

## Table of Contents

|  |    |
|--|----|
| Introduction .....   | 2  |
| A. Forest Practice Authority, Review, and Enforcement When Forested Land is Converted to a Non-Forest Use .....                              | 2  |
| 1. State Law, Rules and Authority to Regulating Timber Management .....  | 2  |
| 2. Growth Management Act 2016 Update: Locally Adopted Comprehensive Plans and Development Regulations to be Consistent with State Laws ..... | 3  |
| 3. Transfer of Forest Practice Jurisdiction from DNR to Skagit County .....  | 3  |
| 4. Coordination with Affected Agencies, Boards and Commissions.....  | 3  |
| 5. DNR and Skagit County Forest Practice Authority.....  | 4  |
| General definitions .....  | 5  |
| B. Rural Forestry Initiative .....   | 7  |
| 1. Application of Critical Area Regulations to Only Those Parcels Which Are Converted From Forestry to Non-Forestry Use.....                 | 7  |
| 2. Rural Forestry Initiative (RFI) Issues: .....   | 7  |
| 3. Rural Forestry Initiative (RFI) Issues & Jurisdictional (Whatcom, Snohomish & King) Approaches .....                                      | 8  |
| Citations.....   | 9  |
| APPENDICIES.....   | 11 |

## Introduction

The purpose of this Issue Paper is to introduce and discuss: (1) forest practice authority, review, and enforcement when forested land is converted to a non-forest use; and, (2) the Skagit County Board of Commissioners appointed Forest Advisory Board's (FAB) recommendation to exempt certain Uniform Development Code critical area review (SCC 14.24) requirements for new land divisions or existing parcels on forest lands where the portion of the property is converted to a non-forest (i.e., residential) use.

These matters are being addressed as part of the Growth Management Act (GMA)<sup>1</sup> 2016 periodic update<sup>2</sup> and as identified in the Skagit County Board of Commissioners resolution adopting a Planning and Development Services 2015 work plan for legislative land use plans, policies, and regulation proposals.<sup>3</sup>

### A. Forest Practice Authority, Review, and Enforcement When Forested Land is Converted to a Non-Forest Use

#### 1. State Law, Rules and Authority to Regulating Timber Management

Timber management is regulated under the Forest Practices Act (RCW 76.09). A forest practice permit is required for the removal of 5,000 board feet or more of merchantable timber. This is the equivalent of approximately one standard log truck load of logs.

The Forest Practices Act (FPA) was enacted by the state legislature in 1974 to protect public resources while maintaining a viable forest products industry. Soon after, the Forest Practices Rules (FPR), Title 222 of the Washington Administrative Code (WAC), was developed in order to implement the objectives in the FPA.

Since 1974, the state Department of Natural Resources (DNR) has regulated timber management and the harvest of merchantable timber for commercial purposes under the FPR based on the type of forest practice permit or "class." In 1997, the FPA was amended giving authority to each city and county to exercise jurisdiction over all Class IV-General forest practices. Under this type of forest practice permit, the harvest of merchantable timber is associated with the conversion of property to a use other than forestry.

Generally, DNR manages long-term forested land under the FPA and FPR, and local government oversees forest lands that have a likelihood of future conversion to urban development (a non-forestry use) and regulates it under the Growth Management Act, and locally adopted comprehensive plans and their associated development regulations. Lands considered likely to be converted include:

- Lands within UGAs (except where the landowner has committed in writing to long-term forest management)
- Lands where the landowner has indicated intent to change the use<sup>4</sup>

Until 2011, the Class IV-General forest practices also included all lands platted after 1960, which would have been a significant burden on local government to attempt to implement, and an additional burden on foresters to comply with local critical areas regulations.<sup>5</sup>

---

<sup>1</sup> RCW 36.70A

<sup>2</sup> RCW 36.70A.130(5)(b)

<sup>3</sup> Resolution #R20150037, February 3, 2015

<sup>4</sup> WAC 222-16-050(2)

<sup>5</sup> See HB 1582 (2011) Sec. 2, modifying RCW 76.09.240(1)(a)(ii)

## **2. Growth Management Act 2016 Update: Locally Adopted Comprehensive Plans and Development Regulations to be Consistent with State Laws**

The Growth Management Act (GMA) requires that a County's comprehensive plan and development regulations be consistent with state law and also be internally consistent with other documents. Further, counties planning under the GMA are required to perform a periodic compliance review to identify and address any inconsistencies within locally adopted plans and regulations.<sup>6</sup> Skagit County must complete its comprehensive plan and development regulation review and update by July, 2016.<sup>7</sup>

In 2007, GMA was amended to allow the transfer of jurisdictional authority from the DNR to local governments for Class IV-General forest practice permits.<sup>8</sup> Skagit County meets the population and forest practice permitting thresholds and is therefore required to (shall) assume jurisdictional authority over this type of forest practice class, harvest and permit.<sup>9</sup>

As of July, 2015, twelve counties met the population and forest practice permitting thresholds. Of those, six counties have assumed jurisdiction for Class IV-General forest practice permits.<sup>10</sup>

## **3. Transfer of Forest Practice Jurisdiction from DNR to Skagit County**

Skagit County is now tasked with adopting code to address these legislative amendments. The proposal to transfer forest practice harvest review when land under specific circumstances is converted to non-timber management uses would not mean a significant change for the County in the administration of forest practices under the FPA. Skagit County currently approves Conversion Option Harvest Plans; conducts State Environmental Policy Act (SEPA) review for Class IV-General permits; enforces the six-year development moratorium; applies critical area regulations which have different standards than the FPA; imposes drainage requirements; and, conducts site inspections.

The FPA also requires Skagit County have regulations in place to address forest practices in shoreline jurisdiction, critical areas, and the clearing of land. Proposed code amendments would need to assure that Skagit County's existing Shoreline Management Program (SMP) and critical area regulations are addressed, and it would be likely that new land disturbing or clearing/grubbing regulations would need to be drafted and adopted. Stormwater and surface water runoff requirements would also need to be addressed.

Furthermore, it is common practice that forest practice activities or reviews are processed in conjunction with an underlying development permit, and therefore much of the administration, review, inspections and fees are already in place.

## **4. Coordination with Affected Agencies, Boards and Commissions**

DNR, state Departments of Ecology (DOE), and Revenue (DOR), and Skagit County have statutory requirements and responsibilities regarding the transfer of Class IV-General forest practice permits from the state to county government. Local tribal governments and the Skagit County Forest Advisory Board (FAB) have expressed interest in this matter.

Skagit County Planning and Development Services (PDS) staff met with DNR staff on June 30, 2015, to discuss the process for transferring jurisdiction. The requirements and the process for Local Government Entities (LGEs) to

---

<sup>6</sup> RCW 36.70A.130

<sup>7</sup> RCW 36.70A.130(5)(b)

<sup>8</sup> RCW 36.70A.570

<sup>9</sup> RCW 76.09.240 and WAC 222-16-050

<sup>10</sup> According to DNR NW Regional Office, June 30, 2015

assume jurisdiction of forest conversion harvests (Class IV-General) is outlined in state statute.<sup>11</sup> The transfer process is to be initiated by Skagit County, is reviewed for completeness by the DNR Region, and a DOE representative, and when all requirements are met then the Commissioner of Public Lands transmits an acknowledgment letter to Skagit County formally transferring the authority from the state to the county with an effective date.<sup>12</sup>

PDS will also be coordinating with DOE to review and address water quality and stormwater related issues under the FPA. Skagit County is also required to report forest practice permit activity to DOR in order to improve the administration of the forest excise tax in Chapter 84.33 RCW.<sup>13</sup>

PDS staff briefed the Skagit County Planning Commission on June 16, and the FAB on June 8, July 13, and November 9, 2015, on the requirements of transfer of Class IV-General forest practice permits from the state to county government.

### 5. DNR and Skagit County Forest Practice Authority

After transferring jurisdiction to Skagit County, forest practices would be regulated as follows:

| Forest Practice Class | Inside UGAs  |                    |  | Outside UGAs   |
|-----------------------|--|--------------------|--|--|
|                       | w/ statement of intent not to convert AND FMP, enrolled in timber tax program, or COHP <sup>14</sup> |                    | w/o statement of intent to keep in forestry, i.e. "conversion"         |  |
|                       | 20 acres or larger   | Less than 20 acres |  |  |
| <b>Class IV-S</b>     | DNR  | County             | County   | DNR<br>County has jurisdiction over conversions or lands likely to convert |
| <b>Class I</b>        | DNR  | County             | County<br>WAC 222-16-050(2)(c) makes these forest practices Class IV-G | DNR  |
| <b>Class II</b>       | DNR  | County             |  | DNR  |
| <b>Class III</b>      | DNR<br>County has jurisdiction over Shoreline CUP or COHP  | County             |  | DNR<br>County has jurisdiction over Shoreline CUP or COHP                  |
| <b>Class IV-G</b>     | n/a  | n/a                | County   | County   |

<sup>11</sup> RCW 76.09.240

<sup>12</sup> For additional information, see Appendix A, Transfer of Jurisdiction Process for Counties and Cities RCW 36.09.240, DNR handout, dated 3/2015

<sup>13</sup> RCW 76.09.240

<sup>14</sup> FMP = Forest Management Plan. COHP = Conversion Option Harvest Plan. See [WAC 222-16](#) for definitions

**General definitions** for related forest practices terms are:<sup>15</sup>

| Term                                  | General Definition   |
|---------------------------------------|--|
| Forest Practices                      | Those activities related to growing, harvesting or processing timber such as road construction and maintenance, thinning, salvage, harvesting, reforestation, brush control and using fertilizers and pesticides.  |
| Class I                               | Those minor forest practices that have no direct potential for damaging a public resource. Examples include timber harvests on parcels where contiguous ownership is less than two acres in size, that are not within a shoreline designation such as, the culture and harvest of Christmas trees and seedlings; tree planting and seeding; and cutting and/or removal of less than 5,000 board feet of timber for personal use (e.g., firewood, fence post, etc.) in any consecutive 12-month period. |
| Class II                              | Forest practices which have less than an ordinary potential for damaging a public resource. Examples include the construction of advance fire trails; timber harvests of less than 40 acres; and the partial cutting of 40 percent or less of the live timber volume on a site.  |
| Class III                             | Commercial timber production. Class III forest practices require permit approval by the DNR. Property logged as a Class III permit must be reforested and is intended to remain in timber production.  |
| Class M-Special                       | Forest practices which have the potential to result in a substantial impact to the environment. Examples include forest practices conducted on lands designated as critical wildlife habitat for threatened or endangered wildlife species; timber harvest in national, state or local parks; and forest practices involving the filling or draining of more than 0.5 acres of wetland.  |
| Class M-General                       | Forest practices occurring on lands within urban growth areas (UGAs); or on lands which are being converted to a use other than commercial timber production. Examples include harvest of timber and conversion of land to residential or commercial uses.   |
| Conversion option harvest plan (COHP) | A voluntary plan developed by the landowner for Class II, III or M-Special forest practices to preserve the landowner's option to convert forest land to a non-commercial forest use and exempt the land from the six-year development moratorium. The COHP should indicate the limits of harvest areas, road locations, and open space.   |
| Six-year development moratorium       | A restriction placed on a parcel as a result of logging conducted without the proper forest practice authorization. A development moratorium prohibits the authorized jurisdiction from accepting permit applications for the development of land (i.e. building permit, site development permit, formal subdivision, short plat). The development moratorium lasts for a period of six years or until a request to remove the moratorium is approved.   |

<sup>15</sup> See [RCW 76.09.050](#) and [WAC 222-16-050](#)

| Term  | General Definition  |
|---|---|
| Lifting the six-year development moratorium         | Allows for removal of the six-year development moratorium which applies to the entire parcel.   |
| Waiving the six-year development moratorium for SFR | <p>Allows development of a single-family residence and accessory structures/uses on an undivided area up to 2 acres in size.</p> <p>The development moratorium remains in effect on the remainder of parcel until it expires.</p> |

## B. Rural Forestry Initiative

### 1. Application of Critical Area Regulations to Only Those Parcels Which Are Converted From Forestry to Non-Forestry Use

The Skagit County Forestry Advisory Board (FAB) has recommended that when a forest landowner intends to convert forest land to a non-forest use that Skagit County limit the application of critical areas review to only those portions of the parcel that will be developed (rather than requiring critical areas review of the entire parcel). The FAB has proposed a “Rural Forestry Initiative” (RFI) that seeks to address this issue.<sup>16</sup> Notwithstanding, the Forest Practice Act requires that Skagit County must first assume authority, ensure that critical areas and development regulations are in compliance with GMA, and accept the transfer of jurisdiction for all relevant forest practice classes before DNR will actually transfer administration.<sup>17</sup>

The FAB proposed amendments to Skagit County Code (SCC) includes a new definition for “ongoing forestry,” and modifications to SCC Chapter 14.18, Land Divisions, and Chapter 14.24, Critical Areas Ordinance.<sup>18</sup> The intent of the amendments is to apply critical area regulations under SCC Chapter 14.24 “only” to those parcels, or portions thereof, where the land will be converted from forest management to a non-forestry use.

A timber harvest is initiated by a landowner. A forest practice permit is required for the removal of 5,000 board feet or more of merchantable timber.<sup>19</sup> This is the equivalent of approximately one standard log truck load of logs.

The landowner must determine if the forest land will be re-planted or converted to a non-forest use. A Class IV-General forest practice permit is required for conversions. Pursuant to state law, Skagit County is to assume administrative review and land use regulatory authority when a Class IV-General forest practice permit is needed.

### 2. Rural Forestry Initiative (RFI) Issues:

- a) Should there be a minimum parcel threshold size for RFI eligibility?
- b) Should the RFI be limited to “only” forest natural resource designated lands, or apply to all lands where ongoing forest management is maybe occurring regardless of the zoning district?
- c) When a land division and timber harvest is proposed on forestland, whose resource protection standards/critical area regulations should apply, state or county?
- d) When a building permit is sought and no land division is proposed should “only” the building pad or footprint area be subject to critical area regulations while the remaining parcel is subject to only Forest Practice natural resource protection standards?

---

<sup>16</sup> Forest Advisory Board, Rural Forestry Initiative Report (October 25, 2007), See Attachment B

<sup>17</sup> RCW 76.09.240(4)

<sup>18</sup> Forest Advisory Board Proposed Rural Forestry Initiative Code Amendments (circa July, 2008), See Attachment C

<sup>19</sup> Cutting and/or removal of less than 5,000 board feet of timber (including live, dead and down material) for personal use (i.e., firewood, fence posts, etc.) in any 12-month period (WAC 222-16 (3)(k)).

### 3. Rural Forestry Initiative (RFI) Issues & Jurisdictional (Whatcom, Snohomish & King) Approaches

Each issue is discussed below. In addition, three westside, Puget Sound counties (Whatcom, Snohomish and King) were contacted to learn more about how they address each issue. In summary, each county deals with these issues based on their unique local circumstances. While there are differences, there are also many similarities in their approaches to conserve forest land and to address and mitigate land conversion (development) to a non-forestry use.

#### a) Should there be a minimum parcel threshold size for RFI eligibility?

Pursuant to state law, a landowner who plans to harvest timber which has 20 acres or less, and not more than 80 acres of forested land, is not required to leave riparian buffers along Western Washington streams (WAC 222-30-023).<sup>20</sup> Landowners are nonetheless required to follow other applicable watershed analysis riparian prescriptions.

Whatcom, Snohomish and King Counties have not established minimum parcel threshold sizes. Currently, they apply county critical area regulations only to that portion of the forested parcel which is being converted to a non-forest use as identified in a Class IV General Forest Permit.

King County requires that a “forest stewardship plan” be developed and approved for those areas where timber management activities will continue. The County’s requirements for a forest stewardship plan are adopted in a public rule that focusses on improving multiple natural resource objectives including maintaining a healthy forest, conserving aquatic areas and wetlands, improving habitat and satisfying other conservation values.<sup>21</sup>

#### b) Should the RFI be limited to “only” forest natural resource designated lands, or apply to all lands where on-going forestry management is maybe occurring regardless of the zoning district?

Whatcom, Snohomish and King Counties regulate timber harvest based on long-term use of the land and not zoning districts.<sup>22</sup> Therefore, the continued use of the land (i.e., development vs. timber management) determines if state natural resource lands protection standards apply (Class II or III Forest Permits) or county critical area regulations (Class IV General Forest Permits).

---

<sup>20</sup> On parcels of 20 contiguous acres or less, landowners with total parcel ownership of less than 80 forested acres shall not be required to leave the riparian buffers described in WAC [222-30-021](#). ( Landowners in Western Washington are required to follow applicable watershed analysis riparian prescriptions in effect as of January 1, 1999, or if there are no watershed analysis riparian prescriptions in effect these landowners are required to follow the riparian management zone rules under WAC 222-30-021(1)(3) and (4).

<sup>21</sup> For more about King County Forest Stewardship Plans, see <http://www.kingcounty.gov/operations/policies/rules/utilities/put8191pr.aspx>

<sup>22</sup> There is one exception, urban growth areas. Timber management practices may continue when “forest practices classified as Class I, II, III, and IV that are within urban growth areas designated under RCW 36.70A.110, except for forest practices on ownerships of contiguous forest land equal to or greater than twenty acres where the forest landowner provides, to the department and the county, city, or town, a written statement of intent, signed by the forest landowner, not to convert to a use other than growing commercial timber for ten years.” RCW [76.09.240](#)



Snohomish County prohibits land divisions on land designated commercial forest, except under limited circumstances for the installation of communication and utility facilities.<sup>23</sup> Lands designated “local” forests are not divided into lots or parcels of less than 20 acres in size except through a rural cluster subdivision.<sup>24</sup>

**c) When a land division and timber harvest is proposed on forestland, whose resource protection standards/critical area regulations should apply, state or county?**

Whatcom, Snohomish and King Counties apply land use and management regulations based on the intended use of the land. Only that portion of the forested parcel which is slated to be converted to a non-forest use is regulated under the county critical area regulations.

King County allows for the establishment of combined resource/critical area tracts for land divisions where clustering is proposed. In such cases, a “forest stewardship plan” and and/or a “vegetation management plan” is required for a land division approval.<sup>25</sup>

**d) When a building permit is sought and no land division is proposed, should “only” the building pad or footprint area be subject to critical area regulations while the remaining parcel is subject to only Forest Practice natural resource protection standards?**

Whatcom, Snohomish and King Counties under this type of permit will apply critical area regulations only to that area which is proposed for development (i.e., converted) while allowing the remainder to managed under state natural resource land protection standards.

Whatcom County critical area regulations only apply to that portion of the property that is “disturbed,” altered, cleared, harvested or converted to a non-forest use, plus an area extending 300 feet beyond. King County also applies critical area regulations to the area proposed for “development,” plus an additional 300 feet, as does Snohomish County.<sup>26</sup> For example, a timber landowner wants to construct a single-family residence on a 20 acre parcel. An approximate 1 acre area will be disturbed for development and construction (for which a Class IV General Permit is applied for) and the remaining 19 acres will remain under a long-term timber management plan. Under this scenario, the counties “review” under their critical area regulations would extend 300 feet beyond the disturbed area. The critical area review is site specific, and protection and safety standards are based on the area’s unique environmental characteristics, functions and values.

###

---

<sup>23</sup> Snohomish County Code [Chapter 30.32A FOREST LANDS](#) (.100)

<sup>24</sup> Ibid

<sup>25</sup> King County Code [21A.24 CRITICAL AREAS \(Formerly Environmentally Sensitive Areas\)](#) (.180, and .185)

<sup>26</sup> Skagit County’s critical area review standards are the same

## Citations

WAC [222-16-010](#) General definitions

WAC [222-16-050](#) Class of forest practices

WAC [222-30-023](#) Riparian management zones for exempt 20-acre parcels

RCW [36.70A](#) Growth Management Act

RCW [36.70A.130](#) Comprehensive Plans – Review procedures and schedules – amendments

RCW [36.70A.570](#) Regulation of forest practices

RCW [76.09](#) Forest Practices

RCW [76.09.240](#) Forest practices – county, city or town to regulate – when....

[HB 1582 - 2011-12](#) Modifying RCW 76.09240(1)(a)(ii)

SCC [Chapter 14.18 LAND DIVISIONS](#)

SCC [Chapter 14.24 CRITICAL AREAS ORDINANCE](#)

## APPENDICIES