

## FRPA Note #06-01<sup>1</sup>

### How do you determine when the FRPA is applicable to a proposed land use that includes timber harvesting as an activity?

*Note: The answers to many questions about interpretation of the FRPA can be found in the definition sections of the Act and regulations. They should be your first source of reference when questions regarding interpretation of the FRPA arise.*

The FRPA applies to private, state, and other public lands. For the purposes of the FRPA Mental Health Trust land is considered “**private land**”. “**State land**” is state owned land managed by the Department of Natural Resources. Land owned by the boroughs, municipalities, the University of Alaska, or other state agencies are “**other public lands**”. The Act and regulations apply to proposed timber harvest on land belonging to one of these three classes of ownership. On “**federal land**” the FRPA requires the management agency to “meet or exceed” the standards for state land, except for riparian standards where the standards for other public land apply.

“**Operations**” is defined in section AS 41.17.950(13)<sup>2</sup> of the statutes (Yellow Book) as:

“timber harvesting or activities associated with timber harvesting or forest development...”

This means any land use activity directly or indirectly related to timber harvesting may be considered a harvest operation. The proposed land use does not have to be solely for the purpose of timber harvest.

A harvest operation is subject to the FRPA if the criteria in section 11 AAC 95.190(a) of the regulations (Green Book) are satisfied. If the harvest operation does not meet any one of the criteria, then the FRPA does not apply to the proposed timber harvest activity.

The criteria follow.

1. The first criterion requires a harvest operation to be on forest land. The statutes define “**forest land**” as:

“land stocked or having been stocked with forest trees of any size and not currently developed for nonforest use, regardless of whether presently available or accessible for commercial purposes, and includes any such land under state, municipal, or private ownership.” (AS 41.17.950(7))

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<sup>1</sup> These notes are being written to provide guidance to forest practices foresters and others in the division on interpreting and implementing the Forest Resources and Practices Act, and the standards contained in Article #'s 1 to 5 of the regulations.

<sup>2</sup> All references to statutes and regulations in the following discussion are to those found in the Yellow and Green Books dated September 1, 2003 and June 2004 respectively. These numbers may change in subsequent revisions of the Act and regulations.

Any land use that includes timber harvesting implies some level of stocking and satisfies this criterion. This criterion also applies to activities where reforestation of formerly forested land is the management objective.

2. The next criterion requires a harvest operation to be a commercial operation. The regulations define “**commercial operation**” as:

- A. in Region I or II, an operation or harvest with an annual production in excess of 10,000 board feet of wood products for sale; and
- B. in Region III, an operation or harvest with an annual production in excess of 30,000 board feet of wood products for sale.” (11 AAC 95.900(9))

3. A third criterion requires the commercial harvest operation to either:

- a. intersect, encompass, or border on surface waters. “**Surface waters**”<sup>3</sup> include any “**lakes or ponds**”<sup>4</sup>, or fresh water “**streams**”<sup>5</sup> and “**springs**”<sup>6</sup>. These terms are defined in sections 11 AAC 95.900(84), (39), (82), & (79) of the regulations respectively. The water body does not have to have a designated riparian area to be considered a surface water,

or;

equal or exceed the acreage threshold for the applicable region in section 11 AAC 95.190(a)(3) of the regulations. The thresholds are:

- i. 10 acres in Region I;
- ii. 40 acres in Region II;
- iii. 40 acres in Region III for land owners who own more than 160 acres in total; if a landowner has a total ownership of 160 acres or less, then an operation on any of those 160 or less acres is not a commercial forest operation.

4. Finally, the operation must include one or more of the timber harvest-related activities listed in section 11 AAC 95.190(a)(2) of the regulations for the FRPA to apply. The harvest-related activities are:

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<sup>3</sup> “**surface waters**” means fresh water springs, lakes, ponds, or a freshwater stream, the designated uses of which are protected under 18 AAC 70 (State Water Quality Standards), regardless if those waters are classified under AS 41.17.950(31)-(41). [\(11 AAC 95.900 \(84\)\)](#)

<sup>4</sup> “**lake or pond**” means, in Region I, II, and III, a confined fresh water body with perennial water, defined shorelines, and an identifiable inlet and outlet, except that in Region III, “lake or pond” also means a confined fresh water body with perennial standing water and defined shorelines, and without an identifiable inlet or outlet, if the water body contains a population of anadromous or high value resident fish. [\(11 AAC 95.900 \(39\)\)](#)

<sup>5</sup> “**stream**” means a perennial flow of water along a defined channel, or an intermittent flow of water along a defined channel that is significant for protection of downstream water quality. [\(11 AAC 95.900 \(82\)\)](#)

<sup>6</sup> “**spring**” means a place where subterranean water naturally flows from a rock or soil upon the land or into a body of surface water. [\(11 AAC 95.900\(79\)\)](#)

- harvesting, including felling, bucking, yarding, decking, hauling, log dumping, log transfer, log rafting,
- harvest-related road construction, reconstruction, improvement, or maintenance;
- road construction or reconstruction,
- material source development,
- maintenance of an existing road or bridge not within the operation area, but connected with the harvesting operation;
- site preparation;
- pre-commercial thinning;
- slash treatment; or
- any other activity leading to, or connected with commercial timber harvest.

Activities that meet the criteria can include harvest activities not only within but outside the timber harvest area. It includes construction and maintenance of a road accessing but outside the immediate harvest area. How far the authority of the FRPA should be exerted outside the harvest area is determined by the forest practices forester on a case by case basis. Base the determination on the landowner's agreements with other landowners, or agencies, for use of the road or easement accessing their harvest area, location of gravel sources, previous harvest activity in the vicinity, or other pertinent site specific factors.

Timber harvest resulting from land clearing, development of right-of-ways, or other land development activities may be subject to the requirements of the FRPA. Activities that do not currently include timber harvest can also satisfy the criteria. Site preparation, pre-commercial thinning, or other silvicultural treatments on a scale exceeding the criterion contained in 3.b. are considered activities leading to a commercial operation. How the FRPA applies to these development activities will be addressed in following FRPA Notes.

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Relevant citations:

AS 41.17.900

AS 41.17.950(13)

11 AAC.95.190 (a)

11 AAC 95.900 (39), (79), (82), (84)