

## **FRPA Note #06-02** **Land Use Conversions**

April 5, 2006

Updated May 24, 2016 re EO 114 (Habitat returned to ADF&G)

### *How is the conversion of forest land to another land use addressed under the FRPA?*

The conversion of forest land to another land use may involve the harvesting and sale of merchantable timber off the parcel being converted. When is this harvest activity subject to the FRPA and what standards apply?

To answer this question, first refer to FRPA Note #06-01 covering the applicability standards contained in 11 AAC 95.190(a). The note addresses the criteria that have to be satisfied before the FRPA is applicable to a harvest operation. If the proposed harvest activity does not meet all the criteria, the FRPA is not applicable, and the landowner is not required to notify the division. This determination must be made within five days of submission of a DPO. If the harvest activity is not subject to the FRPA, the forest practice forester shall notify the landowner that the FRPA does not apply to their proposed harvest activity and return the DPO.

If the determination is made prior to submission of a DPO, also notify the landowner that the FRPA does not apply. Do not accept a DPO unless all the criteria contained in 11 AAC 95.190(a) are satisfied. As a courtesy, advise them their project is still subject to AS 41.14.840 & .870, and to contact the ADF&G Habitat Division about any applicable requirements or permits they may have.

If a proposed harvest activity satisfies all the criteria contained in 11 AAC 95.190(a) necessary to be considered an operation under the FRPA, and the landowner indicates their intent to convert the forest land to another use within five years of harvest, one of the two alternative standards in 11 AAC 95.200(c) apply.

(c)(1) If the harvest operation is within a borough or municipality, and on forest land covered by an approved plat, or is subject to a building, special use, or other permit issued by a local borough or municipality, the landowner is not required to notify the division. This determination must be made within five days of the submission of a DPO. If the landowner is not required to notify the division, the forest practices forester shall notify the landowner and return the DPO. If made prior to submission of a DPO, the forest practices forester shall notify the landowner that no notification is required.

For purposes of the FRPA an approved plat is considered that portion of a survey that has been subdivided into lots or parcels for the purposes of development, approved by the local platting authority, and recorded with the state. Zoning of forest land does not constitute an authorization, and lots or parcels 40 acres or greater are not initially

presumed to be subdivided. Until their status can be verified the standard contained in (c)(2) will apply.

- (c)(2) If the land conversion has not been authorized by a borough or municipality, the operator is required to submit a DPO for processing to the division, providing details of their proposed harvest operation and intent to convert the land to another use, before beginning the operation.

Under both alternatives the landowner is not required to comply with the riparian, road construction, timber harvesting, or reforestation standards contained in Article #'s 2, 3, 4, & 5 of the regulations. However, if five years after timber harvest occurs and the land is not converted, or actively in the process of conversion, the reforestation requirements of Article #5 become applicable and the landowner must satisfy them within three years.

In addition, the landowner must comply with FRPA requirements that are not waived. This includes the slash disposal requirements contained in 11 AAC 95.195, and the forest fire protection standards contained in Article #6. If the landowner is a state agency, municipality, borough, or public utility, merchantable timber must also be salvaged and utilized as specified in AS 41.17.083. A decision on merchantability is made on a case by case basis depending on site specific conditions, operating constraints, and local markets for the salvaged timber. The preceding requirements apply even if the landowner is not required to submit a DPO under 11 AAC 95.200(c)(1).

The landowner shall be notified of these latter requirements when informing them of the applicability of the FRPA to their harvest activity. As a courtesy, advised them their project is still subject to AS 41.14.840 & .870, and to contact the ADF&G Division of Habitat about any applicable requirements or permits they may have. All notices to the landowners about the applicability of the FRPA to their harvest activity should be done in writing, and a copy retained in a file created to track future compliance with 11 AAC 95.200(b) for waiver of the reforestation requirement.

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Relevant citations:

AS 41.17.083

AS 41.17.110

11 AAC 95.190 (a)

11 AAC 95.195

11 AAC 95.200 (b), (c)

11 AAC 95.375 (b)(1)

11 AAC 95.900 (13)