



One Community Around the Lake

Planning & Community Development Administrative Code Interpretation No. 2021-02

ADMINISTRATIVE CODE INTERPRETATION RELATED TO THE REMOVAL OF 10-YEAR FOREST MANAGEMENT PLAN

1. Authority

The Department of Planning and Community Development has established procedural policies and guidelines authorized under Lake Stevens Municipal Code (LSMC) 14.04.120(a), which allows city departments to administratively adopt guidelines, standards, reference materials, forms or other documents that aid the public, applicant, staff or decision-maker in interpreting the LSMC. LSMC 14.16C.035 outlines the process for administrative interpretations to clarify the provisions of this title. This code interpretation is initiated per the Director's initiative, pursuant to LSMC 14.16C.035(c). Code interpretations are intended to:

- (1) Clarify ambiguous provisions of the code applied to a specific project;
- (2) Determine nonconforming rights;
- (3) Determine whether a use is allowed in a particular zone; and
- (4) Interpret the meaning of terms.

2. Problem Statement

The city of Lake Stevens has been granted authority to administer forest practices within the city limits from the Department of Natural Resources (DNR) pursuant to Chapter 76.09 RCW. The city adopted regulations for the administration of Forest Practices as Chapter 14.50 LSMC – Part II.

The city has received an application for a Class IV Conversion, on recently annexed properties, held in common ownership. These properties are subject to a voluntary 10-Year Forest Management Plan from an earlier Class III Forest Practice Application approved by DNR prior to annexation. Logging and reforestation were completed, and no Class IV conversion occurred, as verified by DNR.

The city code provides a clear process for applying for land conversion permits and relief from six-year development moratoria, but it does not define a process to remove a 10-year Forest Management Plan for properties located within an Urban Growth Area. In review of chapters 76.09, 84.33 and 84.34 of the Revised Code of Washington, state law does not provide clear rules either.

3. Code Analysis

Chapter RCW 84.34, which is part of the state property tax code, deals specifically with open space, agricultural and timberlands tax assessments. RCW 84.34.070(1)(a) states,

(1)(a) When land has once been classified under this chapter, it must remain under such classification and must not be applied to other use except as provided by subsection (2) of this section for at least ten years from the date of classification. *It must continue under such classification until and unless withdrawn from classification after notice of request for withdrawal is made by the owner...* (emphasis added).

RCW 84.34.070 goes on to provide guidance on how to remove this classification by request of the applicant to the county assessor or request by change of ownership. Nowhere in this code does it identify a tax classification as being equivalent to a 10-Year Forest Management Plan.

RCW 76.09.040 lays out forest practice rules with an emphasis on protection of the habitat and critical areas.

RCW 76.09.050 describes rules for different classes of forest practices.

Of importance to this decision, Class IV permits are issued for properties within Urban Growth Areas that are not to be reforested because of the likelihood of future conversion to urban development, except when the forest landowner has agreed not to convert to a use other than commercial forest product operations for ten years. This agreement must be accompanied by either a written forest management plan acceptable to DNR or documentation that the land is enrolled under the provisions of Chapter 84.33 or 84.34 RCW. In this case, the forest landowner signed a forest management plan (DNR form) but has not enrolled for tax relief under Chapter 84.33 or 84.34 RCW and has not actively used the property for the stated purpose of a tree farm associated with the Class III approval. If a conversion is not likely to have a substantial impact on the environment, as defined in RCW 43.21C.037 (SEPA), the application must be processed within 30 days.

As previously mentioned, the city has adopted forest practice regulations and a process to remove a six-year development moratorium. LSMC 14.50.155, Forest Practices, states:

The Hearing Examiner may consider the removal of a six-year development moratorium established pursuant to Chapter 76.09 RCW when the applicant strictly meets the following requirements as outlined in Section 14.50.155(f)(1-5) pursuant to the City's approval criteria as follows.

- (i) The removal of the six-year development moratorium will not be detrimental to public health, safety, and general welfare.
- (ii) The removal of the six-year development moratorium will not be injurious to the property or improvements adjacent to the proposal.
- (iii) The removal of the six-year development moratorium will not result in significant adverse environmental impacts.
- (iv) The removal of the six-year development moratorium is consistent and compatible with the goals, objectives, and policies of the Comprehensive Plan and the provisions of this chapter and other applicable municipal codes.

City staff has consulted with Snohomish County staff about this issue. Staff has also reviewed Snohomish County Code Chapter 30.4.F SCC and an administrative policy (Exhibit A) related to best practices for processing different Forest Practices requests in the county. Under county authority, Forest Practices are an administrative action. Under Scenario 2 of the administrative policy, future conversions requested with an active/completed Class II or III permit can be processed as Class IV conversions provided the landowner has met the requirements of the

earlier permit, as confirmed by DNR, and can comply with city land use requirements including critical areas.

4. Interpretation:

The purpose of the state Forest Practices statute is to provide a clear framework for harvesting timber and managing forestry-related uses while protecting critical habitat and water resources. A six-year moratorium is put in place to rectify actions taken by individuals in a manner inconsistent with an allowed Forest Practice. The purpose of the city's Forest Practices ordinance is to manage the conversion of forest lands to an urban use in a systematic manner consistent with other elements of the city's land use code. Upon review of county standards, the city recognizes and gives deference to the fact that Snohomish County has developed a defined policy to process Forest Practices. This policy describes specific scenarios and has been used to administer different types of forest practices countywide.

As state and city regulations lack a clear process to remove a 10-Year Forest Management Plan, but Snohomish County has a defined administrative policy to process Forest Practices, the city hereby concludes that the policy used by Snohomish County provides tested guidance and offers a clear framework to remove a 10-Year Forest Management Plan. Such requests shall be processed as a Class IV conversion, subject to the requirements of LSMC 14.50.155(d).



November 17, 2021

Russell Wright
Community Development Director

Date of Administrative Policy Determination

This code interpretation is a Type I Review and is issued pursuant to LSMC 14.16C.035 and may be appealed to the Hearing Examiner pursuant to LSMC 14.16A.210(b)(1). Appeals must be filed within 14 days after the date of this interpretation and must be filed with a written description of the specific aspect being appealed, any supporting evidence and filing fee pursuant to LSMC 14.16B.115.

Exhibit A

Purpose: To provide PDS staff with guidance for scenarios where the customer has an active DNR harvesting permit, but instead wishes to convert and seeks a Class IV-General Forest Practices Permit from the County.

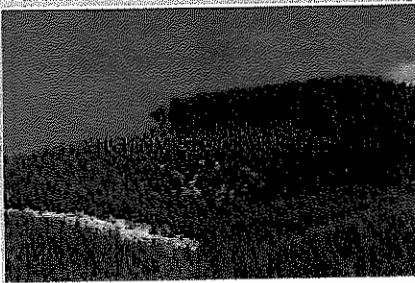


Scenario 1:

- An applicant has an active Class II or III from DNR, but has NOT logged at all.
- The applicant has changed his/her mind and now wants to convert and build homes.
- The applicant comes to PDS and requests a Class IV-General Forest Practices Permit from the County.

PDS handles this scenario in the following manner:

- PDS staff informs the applicant that he/she will first have to “close-out” the active Class II/III with DNR before PDS can issue a Class IV-General Forest Practices Permit / LDA Permit. At this time PDS should provide the applicant with Assistance Bulletin Nos. 93 (Forest Practices) and 87 (LDA Permit) and remind the applicant that the subject site will need to be in compliance with County code including Critical Areas, stormwater regulations (drainage, grading), and go through SEPA review.
- DNR issues a letter/email to PDS staff confirming that it has closed-out the DNR permit (usually just withdrawn as logging never occurred).
- The applicant can now apply for a Class IV-General Forest Practices Permit / LDA Permit from the County and go through SEPA review.

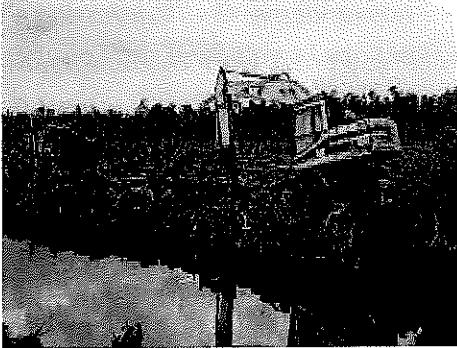


Scenario 2:

- An applicant has an active Class II or III from DNR, and HAS logged.
- The applicant has changed his/her mind and now wants to convert and build homes.
- The applicant comes to PDS and requests a Class IV-General Forest Practices Permit from the County.

PDS handles this scenario in the following manner:

- PDS staff informs the applicant that he/she will first have to “close-out” the active Class II/III with DNR before PDS can issue a Class IV-General Forest Practices Permit / LDA Permit. At this time PDS should provide the applicant with Assistance Bulletin Nos. 93 (Forest Practices) and 87 (LDA Permit) and remind the applicant that the subject site will need to be in compliance with County code including Critical Areas, stormwater regulations (drainage, grading), and go through SEPA review.
- DNR issues a letter/email to PDS staff confirming that it has closed-out the DNR permit, and the applicant has satisfied all necessary permit conditions/requirements, such as reforestation.
- The applicant can now apply for a Class IV-General Forest Practices Permit / LDA Permit from the County and go through SEPA review.



Scenario 3:

- An applicant has an active Class II or III from DNR, HAS logged and HAS done some conversion activity.
- He or she wants to continue the conversion process and build homes.
- The applicant comes to PDS and requests a Class IV-General Forest Practices Permit from the County.

PDS handles this scenario in the following manner:

- PDS staff informs the applicant that he/she will have to address any issues with DNR. PDS should also inform the applicant that if conversion activity (clearing, pulling stumps) has been done, it may be violations of the active Class II/III DNR permit, and that the applicant needs to check in with DNR.
- Because the landowner told PDS about the “conversion” activity PDS staff is required by RCW 76.09.470 (2) to inform and request from DNR the status of any applicable forest practices applications, notifications (e.g. NCNU), or final orders or decisions; and
- Require that the landowner be in full compliance with SEPA (chapter 43.21C RCW), if applicable; and
- Receive notification from DNR that the landowner has resolved any outstanding final orders or decisions; and
- Make a determination as to whether or not the condition of the land in question is in full compliance with County regulations. If full compliance is not found, a mitigation plan to address violations of the County's regulations must be required for the parcel in question by the County.
- However, if based on the second bullet above, DNR issued a Notice of Conversion to Nonforestry Use (NCNU) for the subject site, then PDS is required to notify the landowner that it is imposing the six-year development moratorium, meaning the County must deny all permits and approvals (e.g. BLA, variances) for a period of six years or until the applicant lifts the moratorium or brings the land into compliance with County code and any requirements by DNR.