

Concise Explanatory Statement
In Compliance with RCW 34.05.325(6)
Forest Practices Board

Conversion Activities Rule Making
August 2008

REASONS FOR ADOPTING THE RULE

In 2007 the Legislature passed Second Substitute Senate Bill 5883. The bill changed the administrative procedures that the Department of Natural Resources (DNR) and local governmental entities (LGE) must follow when they become aware of conversion activities of forest land to a use other than commercial timber operation. It changed the process in which landowners notify the DNR and LGE of their intent to convert forest land, and the process in which DNR notifies the LGE that conversion activities are occurring on forest land.

Landowners are no longer required to file a development moratorium form with each forest practices application or notification. Instead, the law requires DNR to send a notice of conversion activities to the LGE when conversion activities are observed on forest land during or after forest practices activities.

The law does not define “conversion activities”; therefore the Board has added a definition in rule to clarify for DNR field staff, landowners and operators the types of activities that may indicate a landowner is converting forest land to another use unlawfully, and to clarify instances in which DNR must send notices of conversion activities to the LGEs for appropriate regulation.

ADOPTION DATE OF THE RULE

The Forest Practices Board adopted the rule on August 13, 2008; the rule will be effective in late September 2008.

DIFFERENCES BETWEEN PROPOSED RULE AND ADOPTED RULE

There are no differences between the proposed rule and the final rule.

RULE MAKING TIMELINE

11/7/07	Pre-proposal Statement of Inquiry (CR-101) published in the Washington State Register.
11/15/07- 12/19/07	Thirty-day review of draft language by counties, WDFW (per RCW 76.09.040(2)), and tribes.
5/7/08	Proposed Rule Making (CR-102) published in Washington State Register.
4/25/08 – 5/9/08	Distribution of the SEPA checklist and threshold determination
6/17/08	Public hearing, Ellensburg

6/24/08	Public hearing, Tukwila
6/26/08	Public hearing, Spokane
6/27/08	Due date for public comments
8/13/08	Rule language adopted by the Forest Practices Board

SUMMARY OF PUBLIC COMMENT AND RESPONSES BY SUBJECT MATTER

The Board received one written comment regarding the definition of conversion activities. No oral comments were received.

Comments in support of the proposals

The Washington Department of Ecology commented in support of developing a working definition of activities that are indicative of conversion of forest land to uses other than commercial forestry.

COMMENT: It is important for all stakeholders involved in the conversion of forest lands to understand the types of activities that take place in preparation of converting from forest land to other uses. This allows landowners to understand what conversion activities are and provides a clear path for the reporting of conversion activities to the correct local or state agencies for appropriate permitting or approval.

RESPONSE: The Board's definition describes the most common land preparation and construction activities found in conversions of forest land. Defining conversion activities in rule is intended to help landowners understand which activities are not forest practices. It also gives foresters a rule to reference when issuing notices of conversion activities to local governmental entities.

COMMENT: A site where forest practices activities takes place is considered a non-point source of pollution. However, when the site is in the process of conversion to a non-forestry use, it is considered a construction site or a potential point source of pollution if more than one acre of soil is disturbed and/or there is a direct discharge to a water of the state. Construction sites may require an NPDES permit which can be issued simultaneously with the forest practices application, or if there is a significant delay between the forest practices activities and the start of conversion activities, the NPDES permit needs to be in place before the start of conversion activities. Ecology is interested in assuring a smooth handoff of jurisdiction between state and local government.

RESPONSE: The notification to Ecology of the need for a NPDES permit is made through the SEPA process. A landowner is required to complete SEPA whenever forest practices activities are performed in preparation for the conversion of forest land to a use other than commercial timber management. The SEPA document either accompanies a DNR Class IV-general forest practices application, or an application for local governmental approval when the local government has assumed jurisdictional authority over forest conversions. Defining conversion activities will help identify those activities requiring SEPA and either a DNR forest practices application or an application for local governmental approval.

COMMENT: Make changes to the proposed rule language to include stumping with grading and filling as land preparation work for non-forestry use of the land.

RESPONSE: In response to this comment, stump removal has been added to the list of possible activities that may indicate intent to convert.

COMMENT: The proposed rule needs to be interpreted broadly by DNR.

RESPONSE: The proposed definition of conversion activities identifies the most common land preparation and construction activities found in conversions of forest land. It was written to indicate to the reader that the list of examples is not exhaustive.

Comments in opposition to the proposal

There were no oral or written comments in opposition to the proposal.

Economic Analysis

There were no oral or written comments regarding the economic analysis.