

Title 17

FOREST PRACTICES

Chapters:

17.20 Waiver of Six-Year Development Moratorium

Chapter 17.20

WAIVER OF SIX-YEAR DEVELOPMENT MORATORIUM

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17.20.010 Title.

The ordinance codified in this chapter shall be known and may be cited as the “Waiver of Six-Year Development Moratorium.” [Ord. 99-146, § 1, 8-30-99.]

17.20.020 Authority.

The 1997 Legislature adopted changes to the Washington State Forest Practices Act in Substitute Bill 5714. These changes became effective on July 27, 1997. The bill allows local governments to regulate conversions of forest land to nonforestry use. Local governments are required to adopt ordinances that equal or exceed the state forest practice’s resource protection rules and regulations by December 31, 2001. Chapter 76.09 RCW provides the authority and the requirements for local government involvement in state forest practice activities. A moratorium is put on the property at the time the applicant fills out a forest practice application through the Department of Natural Resources. [Ord. 99-146, § 2, 8-30-99.]

17.20.030 Purpose.

This chapter is intended to carry out the Legislature’s mandate to develop a process to waive moratoriums under the provisions of the Washington State Forest Practices Act codified as RCW 76.09.060(3)(b), (d) and (e), and the Cowlitz County Comprehensive Plan through the proper regula-

tion for forest lands and other nonforestry uses. [Ord. 99-146, § 3, 8-30-99.]

17.20.040 Definitions.

Except as provided otherwise in this section, this chapter will use existing definitions which are already in common use regarding the subject of forest practices. This shall include all the definitions contained in the Washington State Forest Practices Act (RCW 76.09.020), Rules for the Washington State Forest Practices Act (Chapter 222-16 WAC), and the Cowlitz County Codes.

“Aggrieved person” means one who is directly affected by the approval, denial or conditioning of a development permit, and has financial interest in the property upon which the development permit is requested.

“Conversion of forest lands or forest land conversion” includes any Class IV General Forest Practice as defined by RCW 76.09.050. Also included are Class I Forest Practices consisting of timber harvesting or road construction, and which are not directly associated with and supportive of commercial forest product production. In general terms, forest land conversion refers to the cutting and removal of trees for the purpose of converting forest land to nonforestry use.

“Conversion Option Harvest Plan (COHP)” means a plan developed by or on behalf of the landowner and approved by Cowlitz County indicating the limits and types of harvest areas, road locations, and open space. This approved plan, when submitted to the Department of Natural Resources as part of forest practice application and followed by the landowner, maintains the landowner’s option to convert the land to a use other than commercial forest production (releases the landowner from the six-year moratorium on future development) under Chapter 222-16 WAC.

“Developed property” means property which is used for purposes other than commercial forest production. Developed property includes land which has been graded, landscaped or built upon. Any portion of property which has been altered as described herein shall be considered to be “developed property” for purposes of this chapter.

“Development proposal” means any activity relating to the use and/or development of land requiring a permit or approval from the Cowlitz County Department of Building and Planning.

“Director” means the Cowlitz County Director of Building and Planning, or an authorized designee.

“Forest land” means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing.

“Hearing Examiner” means the Cowlitz County Hearing Examiner, appointed by the Cowlitz County Board of County Commissioners pursuant to CCC 18.10.370.

“Moratorium” means no other uses permitted on a parcel except any Class II, Class III and Class IV Special Forest Practices as defined by RCW 76.09.050. In general terms, the moratorium permits only the cutting and removal of trees after which the property is retained in commercial forest production for six years. The moratorium is not applicable to Class I Forest Practices.

A “qualified professional forester” means an individual with academic and field experience in forestry or urban forestry. This may include an arborist certified by the International Society of Arboriculture, a forester with a degree in forestry.

“Undeveloped property” means property which does not meet the definition of “developed property.” [Ord. 99-146, § 4, 8-30-99.]

17.20.050 Applicability.

This chapter applies to any forest land application that does not have an approved Conversion Option Harvest Plan (COHP) through Washington State Department of Natural Resources. [Ord. 99-146, § 5, 8-30-99.]

17.20.060 Recording of development moratorium.

The Director shall ensure that the applicant has recorded a six-year development moratorium with the Cowlitz County Auditor for all nonconversions where the Washington State Department of Natural Resources has approved a Class II, III or IV Special Forest Practices application and for all harvesting on a legally described parcel that takes place without a required forest practices application. [Ord. 99-146, § 6, 8-30-99.]

17.20.070 Rescission of moratorium.

Upon request of the property owner, the moratorium may be rescinded by the Director if an approved forest practices application has been either withdrawn or expired, and no harvest in reliance upon such approval has taken place under Chapter 76.09 RCW. [Ord. 99-146, § 7, 8-30-99.]

17.20.080 Application process and standards.

The Director may waive the six-year moratorium imposed pursuant to Chapter 76.09 RCW for the purpose of allowing an applicant to construct a single-family residence or outbuildings, or both, on a legal lot and building site, subject to the conditions imposed by the Director and the applicant’s compliance with all local regulations and ordinances. In developing the conditions, the Director shall consider comments of other agencies with expertise.

The procedure for an administrative waiver of the six-year moratorium for a single-family residence or outbuildings is as follows:

A. Only the owners and/or authorized representatives shall complete, sign, and submit an application packet, as required by the Department, to the Department of Building and Planning. The application packet shall include:

1. An application form provided by the county for such purposes;
2. An assessor’s map with property boundaries delineated;
3. A completed State Environmental Policy Act (SEPA) checklist if required;
4. A site map identifying and delineating:
 - a. Any critical area buffers,
 - b. Existing site vegetation proposed to be removed and retained,
 - c. Areas targeted for future timber harvests;
5. A vicinity map; and
6. A written description of the proposed development and a copy of the deed;
7. Payment of a nonrefundable fee, established by resolution by the Board of County Commissioners for processing the application.

B. The harvest and reforestation of the property shall have been conducted under an approved forest practices application in compliance with, the State Forest Practices Act.

C. The decision to waive the six-year moratorium may be appealed by any aggrieved person as defined by CCC 17.20.040. Any interpretation or decision made by the Director in the administration of this chapter is final and conclusive unless appealed to the Cowlitz County Hearing Examiner in accordance with CCC 19.15.190.

D. All forest conversions shall comply with the State Environmental Policy Act.

E. The area intended for development is one acre or less. If an on-site critical area has been disturbed, there shall be sufficient room to establish a

buffer that is twice the required buffer width as provided in CCC 18.10.501.

F. It must be clear that the person seeking the waiver complied with the county's critical areas regulations or that the application can be conditioned to ensure compliance with the county's critical areas regulations.

G. Critical areas and their buffers as set forth in Chapter 19.15 CCC were not damaged in the forest practice operation, or any such damage is repairable with restoration.

H. The Director may authorize, conditionally authorize, or deny an application to waive the six-year moratorium upon review of the application and subject to the provisions of this chapter. The waiver shall include any applicable conditions of approval. Failure to comply with any conditions of approval will result in rescission of the waiver and reinstatement of the moratorium for a total of six years from the time of the original forest practice application. [Ord. 99-146, § 8, 8-30-99.]

17.20.090 Restoration orders.

The Director may serve a restoration order for complete or partial restoration of the site by the person responsible for any violation of this chapter.

A. The restoration order shall include all of the following:

1. A description of the specific nature, extent, approximate time of the violation if known, and any damage or potential damage resulting from the violation;

2. A notice that the violation, cease and desist order, or, in appropriate cases, the specific corrective action is to be taken within a specified time;

3. A list of specific corrective measures to be taken to mitigate environmental damage or restore the site and a specific date by which such measures shall be accomplished.

B. The restoration order issued under this chapter shall become effective immediately upon service upon the person to whom the order is directed. [Ord. 99-146, § 9, 8-30-99.]

17.20.100 Appeals to Hearing Examiner – Authority to waive moratorium.

An appeal of a decision of the Director in the administration of this chapter shall be made to the Cowlitz County Hearing Examiner. Each appeal must be filed in writing with the Department within 20 working days from the date on which the decision was issued, with the first day being the day after the decision is issued.

A. The written appeal shall include a detailed explanation stating the reasons for the appeal. The decision of the Hearing Examiner shall be final unless appealed to Superior Court in accordance with the rules of the Court.

B. Standing to appeal is limited to:

1. The applicant or owner of the property on which the moratorium is residing; and

2. Any property owner who deems him/herself aggrieved and will thereby suffer a direct and substantial impact from waiving the moratorium.

C. Upon filing of an appeal with appropriate fee, the Director shall set a public hearing before the Hearing Examiner, with findings and documentation relating to the application or other administrative actions. The Director may prepare a separate staff report and recommendation for presentation to the Hearing Examiner.

D. Such appeal shall be heard at a public hearing. The Director shall cause notices, containing information about the appeal, the location of the property, and the date, time, and place of the public hearing, to be published in a newspaper of general circulation, and the subject property shall be posted at least 10 days prior to the hearing.

E. Following the public hearing, the Hearing Examiner shall determine if the appeal should be upheld or denied, based on a record of findings to support that decision. All findings shall be available to the public upon request no more than 10 days after the hearing. The decision of the Hearing Examiner on an appeal, once received by the Department shall be mailed to the applicant within five working days, and such decision is final unless appealed to Superior Court in accordance with the rules of the Court. [Ord. 99-146, § 10, 8-30-99.]

17.20.110 Enforcement authority.

A. The Director shall have authority to enforce this chapter, any rule or regulation adopted, and any permit, order, or approval issued pursuant to this chapter, against any violation. If any person engages in any land use violation, the Director may seek a cease and desist order.

B. Enforcement actions may include civil infractions, cease and desist orders, restoration orders, and judicial enforcement actions. Recourse to any single remedy shall not preclude recourse to any other remedy.

C. Each violation of this chapter, or any rule or regulation adopted pursuant thereto, or any permit, permit condition, approval, or order issued pursuant to this chapter, shall be a separate offense. Each day's continuance of a violation shall be deemed to

be a separate and distinct offense. Each tree cut in violation of this chapter shall constitute a separate offense.

D. All costs, fees, and expenses in connection with all enforcement action may be recovered from the violator. [Ord. 99-146, § 11, 8-30-99.]

17.20.120 Cease and desist orders.

The Director may serve a cease and desist order when any person engages in any use of land, development or any activity in violation of this chapter.

A. The cease and desist order shall include the following:

1. A description of the specific nature, extent, approximate time of the violation if known, and any damage or potential damage resulting from the violation;

2. A notice that the violation or the potential cease and desist or, in appropriate cases, the specific correctable action to be taken within a given time.

B. The cease and desist order issued under this chapter shall become effective immediately upon service on the person to whom the order is directed or upon posting of the order in a conspicuous manner on the property. [Ord. 99-146, § 12, 8-30-99.]

17.20.130 Civil infractions.

In addition to any other remedy provided herein, the Director may issue a civil infraction. Any violation of this chapter shall constitute a Class II civil infraction. Except where trees are removed without a required permit, such civil infraction shall be given only after the owner of the subject property has been given prior notice with an opportunity to cure the violation. [Ord. 99-146, § 13, 8-30-99.]

17.20.140 Conflict with other regulations.

Where other Cowlitz County ordinances, resolutions, or regulations are in conflict with this chapter the more restrictive regulation shall apply and such application shall extend to those specific provisions which are more restrictive. [Ord. 99-146, § 14, 8-30-99.]

17.20.150 Effective date.

The ordinance codified in this chapter shall become effective immediately upon its adoption. [Ord. 99-146, § 15, 8-30-99.]