

APPENDIX A

AGENCY EFFORTS TO COMPLEMENT SENATE BILL 12 ACTIVITIES

The Departments of Geology and Mineral Industries, Land Conservation and Development, and Forestry have been involved in a number of efforts that will enhance efforts to understand and mitigate landslides in Oregon and help implement Senate Bill 12. The following are brief descriptions for a few of the most prominent of these activities.

DEPARTMENT OF GEOLOGY AND MINERAL INDUSTRIES

A. Inventory of 1996-97 Slope Failures

Slope failure inventories are critical for evaluating known hazards and applying the knowledge gained to reduce future risk. The Department of Geology received funds from the Federal Emergency Management Agency (FEMA) to lead an inventory project for the three major storms of February 1996, November 1996, and December 1996/January 1997. The inventory development consisted of a statewide consolidation of information that involved extensive state and federal interagency cooperation, as well as work with local governments and private parties. The Department of Geology developed a host of materials to efficiently collect statewide slope failure information including a project web site, a data collection form, group mail and e-mail lists, and descriptive fliers to reach the widest audience possible.

A large amount of valuable information was incorporated into the 1996-97 inventory. The final inventory product identifies 9582 total landslide locations. For each landslide, up to 15 descriptive items such as the failure mechanism, size, geometry, and associated damage are reported. The Department of Geology estimates that the actual number of landslides is many times the documented total. The database and an associated report text are available through the department's publications center. The digital files are available in both Geographic Information System (GIS) formats and common spreadsheet formats for non-GIS users.

The resulting inventory for the 1996-97 storms provides both technical and non-technical users with readily accessible data for exploring landslide issues. Particularly germane to the Senate Bill 12 project, the digital database is an outstanding resource and acts as a check and balance on the models used to develop the debris flow hazard maps. It is hoped that the inventory outputs will help lead to a greater understanding of regional landslide issues and assist in minimizing future negative landslide impacts on public safety and property.

B. Relationship Between Rainfall and Debris Flows in Western Oregon

In the March/April 2000 issue of Oregon Geology, the Department of Geology published a paper by Thomas Wiley on how rainfall relates to debris flows. This was not a requirement of Senate Bill 12, but the paper provides a better understanding of how landscapes and rock types respond to rainfall in western Oregon.

Records from the four major storms that hit western Oregon during 1996 and 1997 confirm that the occurrences of many landslides and debris flows can be related to rainfall intensity and duration. Three roughly equivalent methods of measuring rainfall intensity are discussed in the paper. Comparisons of landslide locations and rainfall records suggest that absolute thresholds vary widely from place to place but that there is a linear relationship between typical rainfall intensity and rainfall of sufficient intensity to cause sliding.

The relationships between rainfall intensity and debris flows described in the paper are useful in helping to determine areas where debris flow warning systems are appropriate.

C. Institute of Business and Home Safety (IBHS) Partnership

The IBHS of Tampa, FL, is a nonprofit organization, supported by the insurance industry, and dedicated to reducing deaths, injuries, property damage, economic losses and human suffering caused by natural disasters. To meet the IBHS mission of institutionalizing disaster loss reduction as a public value, its members and partners developed the "Showcase State Program." The program provides a framework for public and private entities to collaborate on natural disaster preparedness and protection.

IBHS and one of its member companies, SAFECO, have been in discussions with several Oregon state agencies about developing a partnership. "Showcase State" status for Oregon for natural disaster resistance would make us the second state in the nation to receive such status. It would serve to help reduce the devastation and loss that can occur from natural disasters by linking the state agencies already working toward this goal with insurers, other private businesses and nonprofit organizations that have a stake in loss reduction.

The Showcase State requires a formal, high-level commitment for government to work cooperatively among different agencies and with the private sector. This

coordination effort fosters comprehensive solutions to problems. It is a model to institutionalize disaster safety as a public value on a statewide basis.

IBHS members and partners are pursuing the opportunity with Oregon because the state meets the criteria necessary to make the Showcase State program work. These criteria include the state's significant exposure to multiple natural hazards, the existence of a statewide model building code, the ability to gain high-level, formal public commitment to disaster loss reduction activity, and the willingness of Oregon's partners to commit resources to monitor and evaluate the implementation of Showcase State activities.

While debris flows are not traditionally an insurable risk, the partnership will enhance agency ability to provide public education about the hazard. In addition to reducing the economic and social costs of natural disasters in Oregon, the Showcase State partnership will help achieve several goals:

1. Enhance the mission of the Governor's Interagency Hazard Mitigation Team
2. Establish measurable, cost-effective methods to reduce disaster impacts, in keeping with the Progress Board's Oregon Benchmarks, specifically Developmental Benchmark 2016.
3. Enhance and promote sustainable communities, in keeping with Executive Order EO-00-07 promoting sustainability, by helping to minimize damage to private property, the natural environment and public infrastructure,
4. Integrate disaster preparedness and safety into existing policies and local comprehensive plans in keeping with Statewide Planning Goal 7: Areas Subject to Natural Disasters and Hazards, and
5. Establish a working partnership with the insurance industry and other private sector and nonprofit organizations.

Working with the private sector and other stakeholders, agencies on the Governor's Interagency Hazard Mitigation Team can reach new audiences with the loss reduction message, and can leverage expertise and resources to accomplish their goals.

The Department of Geology has been instrumental in developing a draft Executive Order to state support for Showcase State status. This level of formal commitment is necessary for the partnership.

D. Salem Project: Landslide Mapping

The Department of Geology has been involved with landslide projects in addition to the Senate Bill 12 mapping activities. One such project was a partnership with the City of Salem as they prepared a hillside development ordinance. The Salem effort serves as a model to address landslide hazards in an urban area.

The Salem Hills (Marion County) and Eola Hills (Polk County) areas have been the sites of intensive residential development for many years. Land use and development pressures require ongoing strategies for proper hazard management. Development has generally avoided more steeply sloped lands, but with the increasing scarcity and desirability of view property within the Salem urban growth boundary, the value of the slope sites and the pressures for development have increased. After the heavy rains and flooding in 1996, there was significant landslide activity in south Salem. The landslides damaged several houses and a suit against the City and others was filed as a result.

As a result of this damage, the Federal Emergency Management Agency provided, through the Oregon Emergency Management office, a grant program to mitigate hazards. The City, as a condition of receiving federal funds, agreed to prepare a Hazard Mitigation Plan, which includes a landslide component. Salem and Marion County staff sought the grant to study landslide hazards in areas of the City and County and to produce Landslide Hazard Mitigation Ordinances for each jurisdiction. The Department of Geology was a partner in this study.

The mapping efforts involved a close public-private partnership. To assist in the hazard assessment, DOGAMI contracted with Squier Associates of Lake Oswego, adding significant local field experience to the project and allowing for a fast startup time. Landslide masses were characterized based on activity, hazard type, ground water and surface water conditions, and existing landslide features. Products from these investigations included two sets of published maps and texts addressing both rainfall-induced landslide hazards and seismic slope instability. Risk reduction options and potential mitigation strategies were presented, including managing water use and runoff.

The City of Salem has subsequently developed a hillside development ordinance and a model process for ordinance development for use by other communities. The ordinance was adopted by the City Council in November 2000. It included a very innovative system of scoring a proposed site to determine the level of geologic and engineering scrutiny to be received before development approval. The City used a Landslide Hazards Advisory Committee for guidance and the public hearings process en route to adoption of an implementation strategy. The Department of Geology contributed to the Technical Advisory Committee for the overall project plan, advised the city and county on the pros and cons of various

mitigation strategies, provided general technical assistance, and produced a guidebook at the conclusion of the project to be used by Salem, Marion County, and other jurisdictions.

E. Coastal Landslide Hazards: Assistance to Tillamook County and Oregon Department of Transportation

Above average rainfall in recent winters has required many on-the-ground responses to landslide problems related to Senate Bill 12. Areas along Oregon's coast have suffered particularly heavy damage. The Arizona Slide (Curry County), Spencer Creek Bridge (Lincoln County), Cape Foulweather (Lincoln County) and Cape Cove (Lane County) are all sites along Highway 101 that have had significant landslide impacts in the past few years.

At the request of the Governor, the Department of Geology worked closely with Tillamook County to examine a landslide at "The Capes" development. Several homes were in danger and residents evacuated. Department of Geology staff worked with the County and private sector geologists to determine the likely cause of the slide.

The Department has also provided valuable technical assistance regarding a major landslide damage corridor along Highway 101. The Cape Foulweather landslide is part of a broader pattern of problems for an aging transportation system on the coast that is seeing increased attack by the ocean and severe weather. At Cape Cove, the highway has also had slope failures requiring long closures for repair. The Department of Geology examined rock types and weathering, road fill construction, rainfall patterns, surface runoff and diversions, groundwater and springs, vegetation patterns, culvert location and capacity, and highway fill characteristics at these sites. Department of Geology staff also worked closely with the Departments of Transportation and Forestry. This partnership has generated a closer working relationship among agencies and has brought about a better understanding of the causes of highway failure along the coast. The Department of Geology continues to work with state and local agencies in other areas of the coast to better understand the geology and its impacts on land use operations.

F. Public Education

The Department of Geology and Mineral Industries is known for its extensive publication output and a very active Public Education Team. The Department of Geology is working to address requests by local government for more technical

assistance to deal with natural hazards. In response to local requests, the department has produced earthquake hazard maps with a landslide component for over sixty communities in western Oregon. In addition, the Department of Geology has produced landslide-specific maps for several of the larger cities including Portland, Salem, Eugene, Springfield and Corvallis. In the future, the Department of Geology expects to expand outreach efforts by holding workshops for planners, emergency managers, city managers, fire and police forces, and others at the community and county level to better deal with geohazards. The Department has plans to partner with other agencies including Oregon Emergency Management and Department of Land Conservation and Development as well as the Oregon Natural Hazards Workshop at the University of Oregon.

DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT EFFORTS THAT SUPPORT IMPLEMENTATION OF SENATE BILL 12

A. NOTICE TO LOCAL GOVERNMENTS

The Department of Land Conservation and Development provided public notice of the newly enacted Senate Bill 12 in September 1999 as required by Ballot Measure 56, originally enacted as HB 2515 by the 1997 legislature and referred to the voters. The measure went into effect in November 1998 and requires notice to property owners when a state statute, Land Conservation and Development goal or administrative rule or local ordinance is adopted or amended that limits or prohibits a land use previously allowed in a zone.

B. INFORMATION TO LOCAL GOVERNMENT REGARDING MAPPING OF LANDSLIDE HAZARD AREAS

The Department of Land Conservation and Development in conjunction with the Oregon Department of Forestry, notified local governments about the availability of ODF's debris flow maps in December 1999. The notice was provided so that local governments could begin using maps to review development applications in potentially hazardous areas and to give local governments notice that the Department of Geology mapping would begin in spring 2000.

C. GOAL 7

Statewide Planning Goal 7 requires local comprehensive plans "To protect life and property from natural disasters and hazards." Local governments implement the goal through their comprehensive plan inventories, policies and land use regulations. The Land Conservation and Development Commission (LCDC) is

considering amendments to Goal 7. (Both the existing Goal 7 language and the proposed changes can be found at the department website: www.lcd.state.or.us).

Goal 7 was adopted by the Land Conservation and Development Commission over twenty-five years ago and has never been amended. Since then, federal, state and local agencies have gained a better understanding of the nature and extent of natural hazards and their impact on community livability. For example, in response to recent disasters, state and local governments have mapped landslide hazards and generated more accurate information on flood hazards.

Governor Kitzhaber directed the Land Conservation and Development Commission to review the effectiveness of Statewide Planning Goal 7 in reducing risks from natural hazards after the flood and landslide events of 1996 and 1997. The commission's Goal 7 review has involved several phases. The Department of Land Conservation and Development first surveyed local planning officials, state agency specialists and other experts regarding how well Goal 7 has worked to protect people and development from natural hazards. The initial survey found that the goal has been generally effective. However, as a result of subsequent meetings with state hazard officials and local planners, it was concluded that Goal 7, as currently written, is not adequate to plan for natural hazards in the future.

Based upon these findings, the Land Conservation and Development Commission in June 1999 directed the Department of Land Conservation and Development to employ a dual track approach to hazards: 1) enhancing technical assistance to local governments and 2) revising Goal 7. After publication of the Technical Resource Guide (see below), the department worked with a group of state and local government representatives and members of interested organizations (e.g., the Association of Realtors, League of Cities and others) to draft revisions to Goal 7. Twelve public hearings have been held on the proposed amendments and the commission has scheduled another public hearing in March 2001.

D. TECHNICAL RESOURCE GUIDES

In order to provide greater technical assistance to local governments on how they can use land use planning to help avoid or mitigate risks associated with landslides and other natural hazards, the Department of Land Conservation and Development recently issued a document titled "Planning for Natural Hazards: Oregon Technical Resource Guide." The guide, developed with the assistance of students for the University of Oregon's Community Planning Workshop and a team of local and state government experts (including the Departments of Geology and Forestry), provides tools for local governments to better address

natural hazards through their comprehensive land use plans. The guides provide information on how to identify and plan for natural hazards. The guide also directs local governments to additional resources and information. The guide is being distributed to Oregon counties and cities and is available on the department's website at www.lcd.state.or.us/hazards.html.

DEPARTMENT OF FORESTRY ACTIONS THAT ADDRESS LANDSLIDES AND PUBLIC SAFETY

A. Implementation of the Governor's Debris Avalanche Action Plan

As mentioned previously, Governor Kitzhaber issued a plan on March 4, 1997, outlining recommendations and actions to be taken by state and local governments to address the risk to the public that rapidly moving landslides pose. The plan's recommendations to the department are listed first, followed by the actions completed to date (*in italics*).

1. Recommend that the Board of Forestry require written plans for all harvest and road building activities on high risk sites. Written plans would delineate measures to be used to mitigate the risk of debris flows. Ensure that financial resources are available for identification of high risk sites.

Actions to date: The Board of Forestry directed the department to revise rule guidance for operations on high risk sites. Written plans are now required by policy for all harvesting and road construction operations on high risk sites (not just public safety sites). Guidance for identification of high risk sites was made clear and very specific. The screening process used to identify high risk sites does not take a great deal of resources. If forest practices foresters cannot conduct a site visit, operators can be required to use Department of Forestry guidance and locate high risk sites on their properties.

2. Recommend that the Board of Forestry require notice to landowners downslope and within a certain distance of harvest or road building operations on high risk sites.

Actions to date: Prior to the effective date of Senate Bill 1211, the Department of Forestry notified all homeowners below, and close to, operations on high risk sites. Since these operations are now prohibited, notification is only necessary for those infrequent cases where exceptions to the deferral are approved (i.e., high blow-down hazard above house or road). In addition, when Department of Forestry personnel find evidence of extreme landslide hazards, whether or not in a recent operation area, homeowners are notified. This has, at times, resulted in severe distress to the homeowner.

3. Defer clearcuts and road building in areas with a high risk of debris flows that threaten human lives until appropriate statutory and administrative changes have been made.

Actions to date: Since Senate Bill 1211 became effective, the department has not approved written plans on sites meeting the public safety criteria.

4. Coordinate with Department of Geology and the National Weather Service on an improved warning system. Consolidate weather, hazard, and situation information and make it accessible by all agencies in a timely manner.

Actions to date: Department of Forestry geotechnical specialists developed a warning system criteria. Department of Forestry meteorologists do the storm forecasting. Advisories or warnings are issued based on threshold precipitation criteria and by consultation with geotechnical specialists. Warnings are transmitted to the National Weather Service and to Oregon Emergency Management, who in turn disseminate the information. The Department of Geology provides technical information in response to media or public questions. Implementation of the debris flow warning system will continue, typically on a seasonal basis between October and April.

5. Undertake hazard mapping designed to inform local governments, landowners, and homeowners of the presence of factors that may contribute to debris flow avalanches. Among these could be precipitation, lithology, landform, land-use classification, and slope.

Actions to date: Maps have been completed for all of western Oregon and have been placed on the department's web site. These maps show the relative potential for impact by debris flows (rapidly moving landslides) at a relatively coarse scale

B. State and Local Government Coordination

The department continues to work closely with other agencies and local governments on actions designed to reduce serious injuries associated with rapidly moving landslides. These actions include:

- Sharing technical information with Douglas County in their development of a model ordinance;
- Working with Douglas County and other local governments to evaluate risk associated with certain home site developments;

- Notification of cities and counties with high and extreme hazards on preliminary debris flow hazard maps;
- Providing specific recommendations to the Department of Land Conservation and Development and the Land Conservation and Development Commission on goal 7 revisions;
- Helping Oregon Emergency Management draft the landslides chapter for the hazard mitigation plan; and
- Informing Oregon Department of Transportation of the highways at greatest risk from rapidly moving landslides.

C. Storms of 1996 Study

The department completed and published a comprehensive "Storm Impacts and Landslides of 1996" report in June of 1999. This study included the most comprehensive analysis of the effects of forest practices on landslide occurrence ever conducted on forest lands in the Pacific Northwest. It reflects current forest management practices on different land ownerships in Oregon, and is the only study to collect detailed information on stands of intermediate age (20 to 100 years). It is also the only forest landslide inventory to quantitatively compare aerial photo inventories with ground-based inventories. As such, its findings will be the basis for much of the landslide policy-making process.

D. Technical Guidance

The department has developed administrative guidance and a technical note to help forest practices foresters, landowners, and operators screen forestlands prior to road construction or harvesting operations to identify locations subject to the interim prohibition of operations. This guidance is based in part on the storm impacts study, which identified a "Tyee Core Area" that has a higher susceptibility to rapidly moving landslides (Robison and others, 1999). It includes thick sandstone beds with few fractures. These sandstones weather rapidly and concentrate water in the shallow soils, thus the higher landslide hazard. The Tyee Core Area is found in parts of Coos, Western Lane, and Douglas Districts. It includes coastal watersheds beginning with the Siuslaw watershed south to, and including, the Coquille watershed, and also includes that portion of the Umpqua watershed north of Highway 42 and west of Interstate 5.

APPENDIX B

ORS 527.714 (1)(c) – Findings required by the Board of Forestry in Adopting Rules Related to Rapidly Moving Landslides

1. Monitoring or research evidence documenting that there is a substantial risk of serious bodily injury or death if practices are continued under current regulations.
2. Documentation that the proposed rule reflects available scientific information, the results of relevant monitoring and, as appropriate, adequate field evaluation at representative locations in Oregon.
3. Documentation that the objectives of the proposed rule are clearly defined.
4. Documentation that the restrictions placed on forest practices as a result of adoption of the proposed rule are to reduce the risk of serious bodily injury or death, and are directly related to the objective of the proposed rule and substantially advance its purpose.
5. Consideration of the availability, effectiveness, and feasibility of alternatives to the proposed rule, including non-regulatory alternatives, and justification that the alternative chosen is the least burdensome to landowners and timber owners, in the aggregate, while still achieving the desired level of protection.
6. Documentation that the benefits in reduction of risk of serious bodily injury or death that would be achieved by adopting the rule are in proportion to the degree that existing practices of the landowners and timber owners, in the aggregate, are contributing to the overall resource concern that the proposed rule is intended to address.

APPENDIX C

Guiding Principles Approved by the Board of Forestry

Guiding Principle #1: Protection of the public can only be achieved through the shared responsibilities of homeowners, road users, forestland owners, and state and local governments.

Guiding Principle #2: Shallow-rapid landslides (the type that present the greatest risk to human life) pose the principal public safety threat that might be affected by forest operations. The regulation of certain forest practices, combined with other actions, can result in limited protection of the public. However, it is important not to mislead the public into thinking that such regulations will prevent all, or even a majority of, landslides in locations prone to rapidly moving landslides.

Guiding Principle #3: Public safety regulations should be risk-based, i.e. the greater the risk of physical injury to the public, the higher the appropriate standards for review of hazard and risk and also for control of practices which might affect the occurrence of, or impacts from, rapidly moving landslides.

Guiding Principle #4: Public safety regulations should minimize economic impacts on private landowners consistent with providing a risk-based level of public protection.

Guiding Principle #5: Where protection of public safety can be achieved more efficiently through means other than forest practice regulations, the department should facilitate these measures as resources permit.

Guiding Principle #6: Planning for land-management activities in landslide-prone locations should address two key questions: What is the inherent hazard at the site? Can the risk of damage to natural resources and the threat of personal injury be mitigated?

APPENDIX D
LANDSLIDES AND PUBLIC SAFETY PROJECT TEAM

1. Keith Mills, Oregon Department of Forestry (ODF), Salem, Team Leader
2. Dr. Arne Skaugset, Oregon State University
3. Dr. Scott Burns, Portland State University
4. Dr. George Ice, National Council for Air and Stream Improvement, Corvallis (NCASI)
5. Tally Patton, Boise Cascade, Monmouth, Northwest Regional Forest Practices Committee
6. Jim Clarke, Weyerhaeuser, North Bend, Southwest Regional Forest Practices Committee
7. Sara Leiman, Coast Range Conifers, Oregon Small Woodlands Association (OSWA), Monroe
8. Penny Lind, Umpqua Watersheds, Roseburg
9. Marilyn Heiken, Johnson, Clifton, Larson and Corson, P.C., Eugene
10. Matt Spangler, Lincoln County Planning Department, Newport
11. Wayne Stinson, Douglas County Emergency Manager, Roseburg
12. Dennis Olmstead, Department of Geology and Mineral Industries (DOGAMI), Portland
13. Ann Beier, Department of Land Conservation and Development, Salem
14. Rose Gentry, Department of Transportation (ODOT), Salem
15. Dennis Sigrist, Office of Emergency Management (OEM), Salem
16. Luke Rogers, Douglas County property owner living in Portland
17. Jason Hinkle, Department of Forestry (ODF), Salem
18. Jon Hofmeister, Department of Geology and Mineral Industries (DOGAMI), Portland
19. Rick Rodgers, Department of Forestry (ODF), Veneta
20. John Seward, Department of Forestry (ODF), Roseburg

70th OREGON LEGISLATIVE ASSEMBLY--1999 Regular Session

NOTE: Matter within { + braces and plus signs + } in an amended section is new. Matter within { - braces and minus signs - } is existing law to be omitted. New sections are within { + braces and plus signs + } .

LC 1451

D-Engrossed

Senate Bill 12

Ordered by the House July 22

Including Senate Amendments dated May 13, June 29 and July 17 and Senate Amendments dated July 22

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with presession filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Joint Interim Task Force on Landslides and Public Safety)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Establishes policy for protection of public from landslide hazards. Directs agencies to implement specific responsibilities related to protecting public from landslides. Authorizes local governments to impose conditions on development rights in certain areas. Prohibits local governments from imposing conditions under certain circumstances. Directs Department of Land Conservation and Development to award grants to local governments for model programs of hazard mitigation and development rights transfer. Appropriates moneys to State Forestry Department, Department of Land and Conservation Development and State Department of Geology and Mineral Industries to implement responsibilities related to landslides.

Appropriates moneys from General Fund to Emergency Board for further allocation to Department of Land Conservation and Development.

A BILL FOR AN ACT

Relating to protection of public from landslide hazards; creating new provisions; amending ORS 215.130, 527.630, 527.710 and 527.714 and section 8, chapter 565, Oregon Laws 1997; and appropriating money.

Be It Enacted by the People of the State of Oregon:

SECTION 1. { + As used in sections 1 to 9 of this 1999 Act:

(1) 'Further review area' means an area of land within which further site specific review should occur before land management or building activities begin because either the State Department of Geology and Mineral Industries or the State Forestry Department determines that the area reasonably could be expected

to include sites that experience rapidly moving landslides as a result of excessive rainfall.

(2) 'Landslide' means any detached mass of soil, rock or debris that is of sufficient size to cause damage and that moves down a slope or a stream channel.

(3) 'Rapidly moving landslide' means a landslide that is difficult for people to outrun or escape. + }

SECTION 2. { + The Legislative Assembly declares that it is the policy of the State of Oregon that:

(1) Each property owner, each highway user and all federal, state and local governments share the responsibility for making sound decisions regarding activities that may affect landslide hazards and the associated risks of property damage or personal injury.

(2) In keeping with the concept of shared responsibility where individuals are primarily responsible for making sound decisions to protect personal interests, regulation applied pursuant to sections 1 to 7 of this 1999 Act shall be restricted to reducing the risk of serious bodily injury or death that may result from rapidly moving landslides.

(3) In recognition of the need for consistent treatment and coordination of actions relating to rapidly moving landslides and because of the potential for serious bodily injury or death as a result of rapidly moving landslides and the effect of rapidly moving landslides on the ability of people to use their property, sections 1 to 7 of this 1999 Act shall be regarded as the controlling policy of this state for rapidly moving landslides. + }

SECTION 3. { + The Legislative Assembly finds that:

(1) Many locations in Oregon are subject to naturally occurring landslide hazards, and some human activities may accelerate the incidence or increase the adverse effects of those hazards.

(2) Rapidly moving landslides present the greatest risk to human life, and persons living in or traveling through areas prone to rapidly moving landslides are at increased risk of serious bodily injury or death.

(3) Although some risk from rapidly moving landslides can be mitigated through proper siting and construction techniques, sites that are vulnerable to impact from rapidly moving landslides are generally unsuitable for permanent habitation.

(4) Activities that require sound decisions to mitigate rapidly moving landslide hazards and risks include but are not limited to:

(a) Siting or constructing homes or other structures in areas prone to rapidly moving landslides;

(b) Occupying existing homes or other structures in areas prone to rapidly moving landslides during periods of high risk due to heavy or extended rainfall;

(c) Conducting land management activities that may adversely alter the susceptibility of land to rapidly moving landslides; and

(d) Operating motor vehicles in areas known to be subject to rapidly moving landslides. + }

SECTION 4. { + (1) In order to reduce the risk of serious bodily injury or death resulting from rapidly moving landslides, a local government:

(a) Shall exercise all available authority to protect the public during emergencies, consistent with ORS 401.015.

(b) May require a geotechnical report and, if a report is required, shall provide for a coordinated review of the geotechnical report by the State Department of Geology and

Mineral Industries or the State Forestry Department, as appropriate, before issuing a building permit for a site in a further review area.

(c) Except those structures exempt from building codes under ORS 455.310 and 455.315, shall regulate through mitigation measures and site development standards the siting of dwellings and other structures designed for human occupancy, including those being restored under ORS 215.130 (6), in further review areas where there is evidence of substantial risk for rapidly moving landslides. All final decisions under this paragraph and paragraph (b) of this subsection are the responsibility of the local government with jurisdiction over the site. A local government may not delegate such final decisions to any state agency.

(d) Shall maintain a record, available to the public, of properties for which a geotechnical report has been prepared within the jurisdiction of the local government.

(2) A landowner allowed a building permit under subsection (1)(c) of this section shall sign a statement that shall:

(a) Be recorded with the county clerk of the county in which the property is located, in which the landowner acknowledges that the landowner may not in the future bring any action against an adjacent landowner about the effects of rapidly moving landslides on or adjacent to the landowner's property; and

(b) Record in the deed records for the county where the lot or parcel is located a nonrevocable deed restriction that the landowner signs and acknowledges, that contains a legal description complying with ORS 93.600 and that prohibits any present or future owner of the property from bringing any action against an adjacent landowner about the effects of rapidly moving landslides on or adjacent to the property.

(3) Forest practice rules adopted under ORS 527.710 (11) shall not apply to risk situations arising solely from the construction of a building permitted under subsection (1)(c) of this section after the effective date of this 1999 Act.

(4) The following state agencies shall implement the following specific responsibilities to reduce the risk of serious bodily injury or death resulting from rapidly moving landslides:

(a) The State Department of Geology and Mineral Industries shall:

(A) Identify and map further review areas selected in cooperation with local governments and in coordination with the State Forestry Department, and provide technical assistance to local governments to facilitate the use and application of this information pursuant to subsection (1)(b) of this section; and

(B) Provide public education regarding landslide hazards.

(b) The State Forestry Department shall regulate forest operations to reduce the risk of serious bodily injury or death from rapidly moving landslides directly related to forest operations, and assist local governments in the siting review of permanent dwellings on and adjacent to forestlands in further review areas pursuant to subsection (1)(b) of this section.

(c) The Land Conservation and Development Commission may take steps under its existing authority to assist local governments to appropriately apply the requirements of subsection (1)(c) of this section.

(d) The Department of Transportation shall provide warnings to motorists during periods determined to be of highest risk of rapidly moving landslides along areas on state highways with a history of being most vulnerable to rapidly moving landslides.

(e) The Office of Emergency Management of the Department of

State Police shall coordinate state resources for rapid and effective response to landslide-related emergencies.

(5) Notwithstanding any other provision of law, any state or local agency adopting rules related to the risk of serious bodily injury or death from rapidly moving landslides shall do so only in conformance with the policies and provisions of sections 1 to 7 of this 1999 Act.

(6) No state or local agency may adopt or enact any rule or ordinance for the purpose of reducing risk of serious bodily injury or death from rapidly moving landslides that limits the use of land that is in addition to land identified as a further review area by the State Department of Geology and Mineral Industries or the State Forestry Department pursuant to subsection (4) of this section.

(7) Except as provided in ORS 527.710 or in Oregon's ocean and coastal land use planning goals, no state agency may adopt criteria regulating activities for the purpose of reducing risk of serious bodily injury or death from rapidly moving landslides on lands subject to the provisions of sections 1 to 7 of this 1999 Act that are more restrictive than the criteria adopted by a local government pursuant to subsection (1)(c) of this section. + }

SECTION 5. { + (1) Regulations adopted by a local government to regulate the siting of dwellings and other structures designed for human occupancy through mitigation measures and site development standards as required under section 4 (1)(c) of this 1999 Act shall include the following decision process:

(a) A determination that the dwelling or other structure is allowed under applicable land use regulations and whether the proposed site for the dwelling or other structure is located within a portion of the further review area that poses a risk of serious bodily injury or death resulting from a rapidly moving landslide.

(b) If an alternative site on the same lot or parcel that does not require mitigation is available:

(A) The local government first shall require the property owner to site the dwelling or other structure at the alternative site, so long as the cost of relocating does not exceed \$20,000.

(B) If the cost of relocating exceeds \$20,000, and the local government has adopted a transfer of development rights program that complies with sections 6 and 7 of this 1999 Act, the local government shall allow the property owner either to:

(i) Participate in the local government's transfer of development rights program; or

(ii) Construct the dwelling or other structure on the alternative site even though the cost of relocating exceeds \$20,000.

(C) If the cost of relocating exceeds \$20,000, and the local government has not adopted a transfer of development rights program, the local government shall allow the property owner either to:

(i) Construct the dwelling or other structure at the alternative site; or

(ii) Pursue mitigation available under paragraph (c) of this subsection.

(c) If an alternative site on the same lot or parcel that does not require mitigation is not available and if development of the site complies with all other applicable requirements:

(A) If the cost of adequate mitigation is less than \$10,000, the local government shall allow construction of the dwelling or

other structure if the property owner completes the mitigation measures.

(B) If the cost of adequate mitigation exceeds \$10,000, and the local government has adopted a transfer of development rights program, the local government shall allow the property owner to:

- (i) Participate in the local government's transfer of development rights program; or
- (ii) Construct the dwelling or other structure on the proposed site and complete adequate mitigation even though the cost of mitigation exceeds \$10,000.

(C) If the cost of adequate mitigation exceeds \$10,000, and the local government has not adopted a transfer of development rights program, the local government shall allow the property owner to take either of the following actions:

(i) Site the dwelling or other structure at an alternative site in the further review area and implement mitigation measures. The local government may not require the property owner to incur a combined relocation and mitigation cost of more than \$20,000 if the property owner proceeds with this option.

(ii) Site the dwelling or other structure at the original proposed site and implement mitigation measures. The local government may not require the property owner to incur more than \$10,000 in costs for implementing mitigation measures if the property owner proceeds with this option.

(2) Nothing in this section prohibits a property owner from constructing a dwelling or other structure on the lot or parcel and agreeing to pay mitigation costs that exceed the amount established under subsection (1) of this section. +)

SECTION 6. { + (1) For a further review area, a local government may not impose mitigation requirements under section 4 (1)(c) of this 1999 Act that require a property owner to implement mitigation measures for which the cost exceeds \$10,000 or require the property owner to expend more than \$20,000 in site development costs resulting from changing the site of a dwelling or other structure unless the local government has adopted a transfer of development rights program.

(2) A transfer of development rights program established pursuant to this section shall:

(a) Allow a development right to be transferred from a lot or parcel that is located within a further review area to another area within the city or county and that is not otherwise eligible for an additional dwelling under existing comprehensive plan and zoning designations.

(b) Provide that the transfer opportunity is available to a property owner only after:

(A) An application for a dwelling or other structure on a lot or parcel located within a further review area establishes that the dwelling or structure would be authorized under applicable local ordinances in effect on January 1, 1999, and under statutes and administrative rules;

(B) The local government determines that there are no alternative building sites on the same lot or parcel where mitigation would not be required or where site development costs resulting from changing the site exceed the limit established under section 5 (1)(b) of this 1999 Act; and

(C) The local government determines that the cost of mitigation requirements will exceed \$10,000 or the site development costs resulting from changing the site will exceed \$20,000.

(3) In adopting a transfer of development rights program, the local government shall identify one or more areas on plan and

zoning maps as receiving areas for transferred development rights. Receiving areas shall authorize new dwelling opportunities that are not otherwise eligible for an additional dwelling under existing comprehensive plan and zoning designations transferred in accordance with this section. New dwelling opportunities shall include but need not be limited to a second dwelling opportunity on the same lot or parcel and the creation of additional parcels or lots, provided such new dwelling opportunities and land divisions are allowed under ORS chapters 197, 215 and 227, and goals and rules adopted thereunder, but were not allowed by state law or local land use regulations prior to the effective date of this 1999 Act.

(4) The local government shall adopt findings demonstrating that the number of dwelling opportunities provided exceeds the projected number of transferred rights based on the further review areas that are inside the boundaries of the local government.

(5) A local government shall monitor the transfer of development rights program and make adjustments as necessary to ensure an adequate supply of financially equitable transfer opportunities in designated receiving areas.

(6) A person who transfers or conveys the development rights to a lot or parcel under a transfer of development rights program established pursuant to this section shall record in the deed records for the county where the lot or parcel is located a nonrevocable deed restriction prohibiting future development of the lot or parcel.

(7) The governing body of a city or county may establish a system to facilitate the transfer of development rights by purchasing any number of such rights and subsequently offering them for sale.

(8) A city or county with a transfer of development rights program established pursuant to this section shall maintain a registry of all lots or parcels from which rights have been transferred, the lots or parcels to which rights have been transferred and the allowable development level for each lot or parcel following transfer. + }

SECTION 7. { + In establishing a transfer of development rights program under section 6 of this 1999 Act, a local government may enter into an intergovernmental agreement with another local government to allow for transferred development rights that are outside the boundaries of the local government. + }

SECTION 8. { + The Department of Land Conservation and Development shall award a grant to a local government for the purpose of developing a model program for the mitigation of hazards and transfer of development rights that may be adopted by other local governments in order to satisfy the requirements of sections 5 to 7 of this 1999 Act. The pilot program shall include the development of model ordinances, regulations and procedures for mitigation of hazards and for allowing the transfer of development rights under sections 5 to 7 of this 1999 Act. + }

SECTION 9. { + (1) The Legislative Assembly finds that it is in the public interest to limit the siting in further review areas of dwellings and other structures designed for human occupancy. In order to further this public interest, it is necessary to postpone the siting of dwellings and other structures in further review areas until local governments have an opportunity to enact regulations as required under section 4 (1)(c) of this 1999 Act and if the local government chooses, a transfer of development rights program pursuant to sections 5 to

7 of this 1999 Act.

(2) The Legislative Assembly declares that, notwithstanding the provisions of section 5 of this 1999 Act, for the 10-month period following the date the State Department of Geology and Mineral Industries notifies the local government that all identification and mapping of further review areas under section 4 (4)(a) of this 1999 Act are prepared for the local government, that local government shall not allow the siting of a dwelling or other structure in a further review area without adequate mitigation unless the local government has adopted the regulations required under section 4 (1)(c) of this 1999 Act and a transfer of development rights program that satisfies the requirements of sections 5 to 7 of this 1999 Act.

(3) Within 10 months after a local government receives notification under subsection (2) of this section, the local government shall adopt the regulations required under section 5 to 7 of this 1999 Act. + }

SECTION 10. ORS 215.130 is amended to read:

215.130. (1) Any legislative ordinance relating to land use planning or zoning shall be a local law within the meaning of, and subject to, ORS 250.155 to 250.235.

(2) An ordinance designed to carry out a county comprehensive plan and a county comprehensive plan shall apply to:

(a) The area within the county also within the boundaries of a city as a result of extending the boundaries of the city or creating a new city unless, or until the city has by ordinance or other provision provided otherwise; and

(b) The area within the county also within the boundaries of a city if the governing body of such city adopts an ordinance declaring the area within its boundaries subject to the county's land use planning and regulatory ordinances, officers and procedures and the county governing body consents to the conferral of jurisdiction.

(3) An area within the jurisdiction of city land use planning and regulatory provisions that is withdrawn from the city or an area within a city that disincorporates shall remain subject to such plans and regulations which shall be administered by the county until the county provides otherwise.

(4) County ordinances designed to implement a county comprehensive plan shall apply to publicly owned property.

(5) The lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance or regulation may be continued. Alteration of any such use may be permitted subject to subsection (9) of this section. Alteration of any such use shall be permitted when necessary to comply with any lawful requirement for alteration in the use. Except as provided in ORS 215.215, a county shall not place conditions upon the continuation or alteration of a use described under this subsection when necessary to comply with state or local health or safety requirements, or to maintain in good repair the existing structures associated with the use. A change of ownership or occupancy shall be permitted.

(6) Restoration or replacement of any use described in subsection (5) of this section may be permitted when the restoration is made necessary by fire, other casualty or natural disaster. Restoration or replacement shall be commenced within one year from the occurrence of the fire, casualty or natural disaster. { + If restoration or replacement is necessary under this subsection, restoration or replacement shall be done in compliance with section 4 (1)(c) of this 1999 Act. + }

(7) Any use described in subsection (5) of this section may not

be resumed after a period of interruption or abandonment unless the resumed use conforms with the requirements of zoning ordinances or regulations applicable at the time of the proposed resumption.

(8) Any proposal for the verification or alteration of a use under subsection (5) of this section, except an alteration necessary to comply with a lawful requirement, for the restoration or replacement of a use under subsection (6) of this section or for the resumption of a use under subsection (7) of this section shall be subject to the provisions of ORS 215.416. An initial decision by the county or its designate on a proposal for the alteration of a use described in subsection (5) of this section shall be made as an administrative decision without public hearing in the manner provided in ORS 215.416 (11).

(9) As used in this section, 'alteration' of a nonconforming use includes:

(a) A change in the use of no greater adverse impact to the neighborhood; and

(b) A change in the structure or physical improvements of no greater adverse impact to the neighborhood.

(10) A local government may adopt standards and procedures to implement the provisions of this section. The standards and procedures may include but are not limited to the following:

(a) For purposes of verification of a use under subsection (5) of this section, a county may adopt procedures that allow an applicant for verification to prove the existence, continuity, nature and extent of the use only for the 10-year period immediately preceding the date of application. Evidence proving the existence, continuity, nature and extent of the use for the 10-year period preceding application creates a rebuttable presumption that the use, as proven, lawfully existed at the time the applicable zoning ordinance or regulation was adopted and has continued uninterrupted until the date of application;

(b) Establishing criteria to determine when a use has been interrupted or abandoned under subsection (7) of this section; or

(c) Conditioning approval of the alteration of a use in a manner calculated to ensure mitigation of adverse impacts as described in subsection (9) of this section.

SECTION 11. ORS 527.630 is amended to read:

527.630. (1) Forests make a vital contribution to Oregon by providing jobs, products, tax base and other social and economic benefits, by helping to maintain forest tree species, soil, air and water resources and by providing a habitat for wildlife and aquatic life. Therefore, it is declared to be the public policy of the State of Oregon to encourage economically efficient forest practices that { - assure - } { + ensure + } the continuous growing and harvesting of forest tree species and the maintenance of forestland for such purposes as the leading use on privately owned land, consistent with sound management of soil, air, water, fish and wildlife resources and scenic resources within visually sensitive corridors as provided in ORS 527.755 { - that assures - } { + and to ensure + } the continuous benefits of those resources for future generations of Oregonians.

(2) It is recognized that operations on forestland are already subject to other laws and to regulations of other agencies which deal primarily with consequences of such operations rather than the manner in which operations are conducted. It is further recognized that it is essential to avoid uncertainty and confusion in enforcement and implementation of such laws and regulations and in planning and carrying out operations on forestlands.

(3) To encourage forest practices implementing the policy of ORS 527.610 to 527.770 and 527.990 and 527.992, it is declared to be in the public interest to vest in the State Board of Forestry exclusive authority to develop and enforce statewide and regional rules pursuant to ORS 527.710 and to coordinate with other state agencies and local governments which are concerned with the forest environment.

(4) The board may adopt and enforce rules addressing scenic considerations only in accordance with ORS 527.755.

{ + (5) The board shall adopt and enforce forest practice rules to reduce the risk of serious bodily injury or death from a rapidly moving landslide only in accordance with ORS 527.710 (1). As used in this subsection, 'rapidly moving landslide' has the meaning given in section 1 of this 1999 Act. + }

{ - (5) - } { + (6) + } The State of Oregon should provide a stable regulatory environment to encourage investment in private forestlands.

SECTION 12. ORS 527.710 is amended to read:

527.710. (1) In carrying out the purposes of ORS 527.610 to 527.770, 527.990 (1) and 527.992, the State Board of Forestry shall adopt, in accordance with applicable provisions of ORS 183.310 to 183.550, rules to be administered by the State Forester establishing standards for forest practices in each region or subregion.

(2) The rules shall { - assure - } { + ensure + } the continuous growing and harvesting of forest tree species. Consistent with ORS 527.630, the rules shall provide for the overall maintenance of the following resources:

(a) Air quality;

(b) Water resources, including but not limited to sources of domestic drinking water;

(c) Soil productivity; and

(d) Fish and wildlife.

(3)(a) In addition to its rulemaking responsibilities under subsection (2) of this section, the board shall collect and analyze the best available information and establish inventories of the following resource sites needing protection:

(A) Threatened and endangered fish and wildlife species identified on lists that are adopted, by rule, by the State Fish

and Wildlife Commission or are federally listed under the Endangered Species Act of 1973 as amended;

(B) Sensitive bird nesting, roosting and watering sites;

(C) Biological sites that are ecologically and scientifically significant; and

(D) Significant wetlands.

(b) The board shall determine whether forest practices would conflict with resource sites in the inventories required by paragraph (a) of this subsection. If the board determines that one or more forest practices would conflict with resource sites in the inventory, the board shall consider the consequences of the conflicting uses and determine appropriate levels of protection.

(c) Based upon the analysis required by paragraph (b) of this subsection, and consistent with the policies of ORS 527.630, the board shall adopt rules appropriate to protect resource sites in the inventories required by paragraph (a) of this subsection.

(4) Before adopting rules under subsection (1) of this section, the board shall consult with other agencies of this state or any of its political subdivisions that have functions with respect to the purposes specified in ORS 527.630 or programs affected by

forest operations. Agencies and programs subject to consultation under this subsection include, but are not limited to:

(a) Air and water pollution programs administered by the Department of Environmental Quality under ORS chapters 468A and 468B and ORS 477.013 and 477.515 to 477.532;

(b) Mining operation programs administered by the Department of Geology and Mineral Industries under ORS 516.010 to 516.130 and ORS chapter 517;

(c) Game fish and wildlife, commercial fishing, licensing, wildlife and bird refuge and fish habitat improvement tax incentive programs administered by the State Department of Fish and Wildlife under ORS 272.060, 315.134, 501.005 to 501.540 and ORS chapters 496, 498, 506 and 509;

(d) Park land, Willamette River Greenway, scenic waterway and recreation trail programs administered by the State Parks and Recreation Department under ORS 358.475 to 358.565, 390.310 to 390.368, 390.805 to 390.925, 390.950 to 390.989 and 390.121;

(e) The programs administered by the Columbia River Gorge Commission under Public Law 99-663 and ORS 196.110 and 196.150;

(f) Removal and fill, natural heritage conservation and natural heritage conservation tax incentive programs administered by the State Land Board and the Division of State Lands under ORS 196.800 to 196.900, 273.553 to 273.591, 307.550, 307.560 and 541.700 to 541.990;

(g) Federal Safe Drinking Water Act programs administered by the Health Division under ORS 448.273 to 448.990;

(h) Natural heritage conservation programs administered by the Natural Heritage Advisory Council under ORS 273.553 to 273.591, 307.550 and 307.560;

(i) Open space land tax incentive programs administered by cities and counties under ORS 308.740 to 308.790;

(j) Water resources programs administered by the Water Resources Department under ORS 536.220 to 536.540; and

(k) Pesticide control programs administered by the State Department of Agriculture under ORS chapter 634.

(5) In carrying out the provisions of subsection (4) of this section, the board shall consider and accommodate the rules and programs of other agencies to the extent deemed by the board to be appropriate and consistent with the purposes of ORS 527.630.

(6) The board shall adopt rules to meet the purposes of another agency's regulatory program where it is the intent of the board to administer the other agency's program on forestland and where the other agency concurs by rule. An operation performed in compliance with the board's rules shall be deemed to comply with the other agency's program.

(7)(a) The board may enter into cooperative agreements or contracts necessary in carrying out the purposes specified in ORS 527.630, including but not limited to stewardship agreements as described in ORS 527.662.

(b) The State Forestry Department shall enter into agreements with appropriate state agencies for joint monitoring of the effectiveness of forest practice rules in protecting forest resources and water quality.

(8) If based upon the analysis required in section 15 (2)(f), chapter 919, Oregon Laws 1991, and as the results become available, the board determines that additional rules are necessary to protect forest resources pursuant to ORS 527.630, the board shall adopt forest practice rules that reduce to the degree practicable the adverse impacts of cumulative effects of forest practices on air and water quality, soil productivity, fish and wildlife resources and watersheds. Such rules shall

include a process for determining areas where adverse impacts from cumulative effects have occurred or are likely to occur, and may require that a written plan be submitted for harvests in such areas.

(9)(a) The State Forester, in cooperation with the State Department of Fish and Wildlife, shall identify streams for which restoration of habitat would be environmentally beneficial. The State Forester shall select as a priority those streams where restoration efforts will provide the greatest benefits to fish and wildlife, and to streambank and streambed stability.

(b) For those streams identified in paragraph (a) of this subsection, the State Forester shall encourage landowners to enter into cooperative agreements with appropriate state agencies for conduct of restoration activities.

(c) The board, in consultation with appropriate state agencies, shall study and identify methods for restoring or enhancing fish and wildlife populations through restoration and rehabilitation of sites beneficial to fish and wildlife.

(d) The board shall adopt rules to implement the findings of this subsection.

(10) The board shall adopt rules that provide the State Forester with authority to condition the approval of plans required under ORS 527.670 (2) and (3) when the State Forester makes a determination that there is evidence of a potential threat to resources protected under this section by controlling method, timing and extent of harvest when the forester determines such limitations are necessary to achieve the objectives of ORS 527.630.

{ + (11) In addition to its responsibilities under subsections (1) to (3) of this section, the board shall adopt rules to reduce the risk of serious bodily injury or death caused by a rapidly moving landslide directly related to forest practices. The rules shall consider the exposure of the public to these safety risks and shall include appropriate practices designed to reduce the occurrence, timing or effects of rapidly moving landslides. As used in this subsection, 'rapidly moving landslide' has the meaning given that term in section 1 of this 1999 Act. + }

SECTION 13. ORS 527.714 is amended to read:

527.714. (1) The rulemaking authority of the State Board of Forestry under ORS 527.610 to 527.770 consists generally of the following three types of rules:

(a) Rules adopted to implement administration, procedures or enforcement of ORS 527.610 to 527.770 that support but do not directly regulate standards of forest practices.

(b) Rules adopted to provide definitions or procedures for forest practices where the standards are set in statute.

(c) Rules adopted to implement the provisions of ORS 527.710 (2), (3), (6), (8), (9) { + , + } { - and - } (10) { + and (11) + } that grant broad discretion to the board and that set standards for forest practices not specifically addressed in statute.

(2) When considering the adoption of a rule, and prior to the notice required pursuant to ORS 183.335, the board shall determine which type of rule described in subsection (1) of this section is being considered.

(3) If the board determines that a proposed rule is of the type described in subsection (1)(a) or (b) of this section, or if the proposed rule is designed only to clarify the meaning of rules already adopted or to make minor adjustments to rules already adopted that are of the type described in subsection (1)(c) of

this section, rulemaking may proceed in accordance with ORS 183.325 to 183.410 and is not subject to the provisions of this section.

(4) If the board determines that a proposed rule is of the type described in subsection (1)(c) of this section, and the proposed rule would change the standards for forest practices, the board shall describe in its rule the purpose of the rule and the level of protection that is desired.

(5) If the board determines that a proposed rule is of the type described in subsection (1)(c) of this section, including a proposed amendment to an existing rule not qualifying under subsection (3) of this section, and the proposed rule would provide new or increased standards for forest practices, the board may adopt such a rule only after determining that the following facts exist and standards are met:

(a) If forest practices continue to be conducted under existing regulations, there is monitoring or research evidence that documents that degradation of resources maintained under ORS 527.710 (2) or (3) is likely { + , or in the case of rules proposed under ORS 527.710 (11), that there is a substantial risk of serious bodily injury or death + };

(b) If the resource to be protected is a wildlife species, the scientific or biological status of a species or resource site to be protected by the proposed rule has been documented using best available information;

(c) The proposed rule reflects available scientific information, the results of relevant monitoring and, as appropriate, adequate field evaluation at representative locations in Oregon;

(d) The objectives of the proposed rule are clearly defined, and the restrictions placed on forest practices as a result of adoption of the proposed rule:

(A) Are to prevent harm or provide benefits to the resource or resource site for which protection is sought { + , or in the case of rules proposed under ORS 527.710 (11), to reduce risk of serious bodily injury or death + }; and

(B) Are directly related to the objective of the proposed rule and substantially advance its purpose;

(e) The availability, effectiveness and feasibility of alternatives to the proposed rule, including nonregulatory alternatives, were considered, and the alternative chosen is the least burdensome to landowners and timber owners, in the aggregate, while still achieving the desired level of protection; and

(f) The benefits to the resource { + , or in the case of rules proposed under ORS 527.710 (11), the benefits in reduction of risk of serious bodily injury or death, + } that would be achieved by adopting the rule are in proportion to the degree that existing practices of the landowners and timber owners, in the aggregate, are contributing to the overall resource concern that the proposed rule is intended to address.

(6) Nothing in subsection (5) of this section:

(a) Requires the board to call witnesses;

(b) Requires the board to allow cross-examination of witnesses;

(c) Restricts ex parte communications with the board or requires the board to place statements of such communications on the record;

(d) Requires verbatim transcripts of records of proceedings; or

(e) Requires depositions, discovery or subpoenas.

(7) If the board determines that a proposed rule is of the type

described in subsection (1)(c) of this section, and the proposed rule would require new or increased standards for forest practices, as part of or in addition to the economic and fiscal impact statement required by ORS 183.335 (2)(b)(E), the board shall, prior to the close of the public comment period, prepare and make available to the public a comprehensive analysis of the economic impact of the proposed rule. The analysis shall include, but is not limited to:

(a) An estimate of the potential change in timber harvest as a result of the rule;

(b) An estimate of the overall statewide economic impact, including a change in output, employment and income;

(c) An estimate of the total economic impact on the forest products industry and common school and county forest trust land revenues, both regionally and statewide; and

(d) Information derived from consultation with potentially affected landowners and timber owners and an assessment of the economic impact of the proposed rule under a wide variety of circumstances, including varying ownership sizes and the geographic location and terrain of a diverse subset of potentially affected forestland parcels.

(8) The provisions of this section do not apply to temporary rules adopted by the board.

SECTION 14. Section 8, chapter 565, Oregon Laws 1997, is amended to read:

{ + Sec. 8. + } { + (1) + } Sections { - 1 - } { + 3 + } to 6 { + , chapter 565, Oregon Laws 1997, + } { - of this Act - } are repealed on January 1, 2000. { +

(2) Sections 1 and 2, chapter 565, Oregon Laws 1997, are repealed when the State Board of Forestry adopts permanent rules implementing section 4 (4)(b) of this 1999 Act and the amendments to ORS 527.630 and 527.710 by sections 11 and 12 of this 1999 Act, or on January 1, 2000, whichever is later. + }

SECTION 15. { + On or before January 1, 2001, the State Department of Geology and Mineral Industries, State Forestry Department and the Department of Land Conservation and Development shall report to the Seventy-first Legislative Assembly on the implementation of sections 1 to 9 of this 1999 Act. The report shall include at a minimum:

(1) The results of the work of the State Department of Geology and Mineral Industries to identify and map further review areas under section 4 (4)(a) of this 1999 Act;

(2) Information about the pilot program to develop a model program for the mitigation of hazards and transfer of development rights pursuant to section 8 of this 1999 Act; and

(3) Recommendations for any specific changes necessary to the programs established pursuant to sections 1 to 7 of this 1999 Act. + }

SECTION 16. { + (1) Notwithstanding any other provision of law, in addition to any other amounts appropriated to the State Forestry Department, for the biennium beginning July 1, 1999, there is appropriated out of the General Fund \$224,000 to the State Forestry Department for the purpose of carrying out the responsibilities of the State Forestry Department under section 4 of this 1999 Act and the amendments to ORS 527.630 and 527.710 by sections 11 and 12 of this 1999 Act.

(2) Notwithstanding any other provision of law, in addition to any other amounts appropriated to the State Department of Geology and Mineral Industries, for the biennium beginning July 1, 1999, there is appropriated out of the General Fund \$247,745 to the State Department of Geology and Mineral Industries for the

purpose of carrying out the responsibilities of the State Department of Geology and Mineral Industries under section 4 of this 1999 Act. + }

SECTION 17. { + In addition to and not in lieu of any other appropriation, there is appropriated to the Department of Land Conservation and Development, for the biennium beginning July 1, 1999, out of the General Fund, the amount of \$50,000 for the purpose of carrying out the provisions of section 8 of this 1999 Act. + }

SECTION 18. { + (1) In addition to and not in lieu of any other appropriation, there is appropriated to the Emergency Board, for the biennium beginning July 1, 1999, out of the General Fund, the sum of \$50,000 for allocation to the Department of Land Conservation and Development for the purpose of carrying out the provisions of this 1999 Act.

(2) If any of the moneys appropriated in subsection (1) of this section are not allocated by the Emergency Board prior to November 1, 2000, the remaining moneys on that date become available for any other purpose for which the Emergency Board lawfully may allocate funds. + }

SECTION 19. { + Section 8 of this 1999 Act is repealed on June 30, 2001. + }
