

STAFF REPORT

Agenda Item No:	5
Title and Issue #:	Forest Regulation – Issue #6, Obj. 4 – Effective and Efficient Implementation of the Forest Practices Act Landslides and Public Safety - Intermediate Risk Sites
Date Presented to Board:	April 29, 2008
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SUMMARY

The purpose of this agenda item is to provide the Board of Forestry with an update on the landslide and public safety rule development process, and a recommendation for development of a temporary rule to address Intermediate Risk Sites.

BACKGROUND/CONTEXT

Shallow, rapidly moving landslides are a natural process that can be affected by timber harvest. An issue paper submitted to the Board of Forestry in 2001 titled “Forestry, Landslides and Public Safety” examines this relationship in detail. Forest Practices Technical Report No. 4 “Storm Impacts and Landslides of 1996: Final Report” provides additional information. These reports are available online at

http://egov.oregon.gov/ODF/PRIVATE_FORESTS/docs/fp/LandslidesPublicSafety.pdf and http://egov.oregon.gov/ODF/PRIVATE_FORESTS/docs/fp/StormImpactsFinal.pdf, respectively.

1999 Senate Bill 12

Senate Bill 12 (1999) required the Board of Forestry to adopt rules that reduce the risk to public safety from rapidly moving landslides directly related to forest practices. The following are noteworthy excerpts from the bill:

- Section (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.”
- Section (3) (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...”
- Section (11) “...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...”

For high landslide hazard locations with “intermediate risk” to public safety, OAR 629-623-0500 allows either a clearcut harvest on half the affected area or a thinning harvest on the entire area.

At the November 2006 Board meeting, staff presented an issue paper (Attachment 1) to the Board describing how these intermediate risk rules were not meeting their intent. At that meeting, the Board directed staff to develop draft amendments to the rules in Division 623 (Shallow, Rapidly Moving Landslides and Public Safety) to improve the intermediate risk rules and to improve the overall clarity, efficiency and effectiveness of the whole rule package.

DISCUSSION

The Department has not yet completed this work. Further investigation confirms the earlier findings of inadequacy of the intermediate risk rules. The analysis also has revealed even more complexity in the relationship between landslides, storms, and public risk than discussed in the 2006 issue paper. Staff have been analyzing different options for rule improvements and are prepared to start the rule development process.

The current rule configuration, with substantial, intermediate and low risk categories, is applied across the continuum of natural resource sites. Each category then has standard practices that may be applied. The intermediate category is used in those cases where a substantial or low risk rating cannot be prescribed with certainty. This uncertainty in the intermediate risk category presents challenges to rule development and application. An intermediate risk site often contains sub areas that may pose substantial risk as well as low risk areas, and the distribution of these sub areas are site specific.

Because of this complexity, practices allowed under the current rules do not necessarily reduce the level of risk in intermediate sites, and may increase the risks in some cases. Staff are working on options to better address practices on intermediate sites; however, existing science does not support a standard prescription that reduces risks on all intermediate sites. A detailed, site-specific geotechnical analysis provides the best option for determining whether proposed operations maintain an acceptable level of risk. A geotechnical specialist can examine areas initially classed as intermediate and further determine areas of low and substantial risk, based on the physical properties of the site. The geotechnical reports can provide the landowner with increased certainty that areas of substantial risk have been identified appropriately, and that remaining areas can be operated in safely with respect to public protection.

This alternative provides a much sounder regulatory approach than the existing one-size-fits-all rule, as well as greater regulatory certainty for the landowner. This approach also incurs higher costs to the landowner. Site-specific geotechnical reports can cost several hundred to several thousand dollars, depending on the size and physical complexity of the site. In addition, site-specific geotechnical analysis of intermediate sites may increase the area of substantial risk and defer harvest from that area. It may also determine that much or the entire site is low risk, which could increase the short-term harvest over the current rules.

Developing these alternative approaches, to more appropriately address the range of sites and achieve the policy goals of SB 12, has taken longer than expected. The delay is due to workload,

the complexity of the issue, and turnover in all levels of staff. Staff are now prepared to work with the communities of interest to evaluate different alternatives, including this approach of site-specific plans for areas of intermediate risk.

Currently, field staff works to protect public safety while adhering to the existing rules. They have done this by calling sites as either substantial or low when possible, and by educating landowners about the problems with the intermediate rules when the land is clearly in the intermediate risk category. Field staff are concerned that the longer we operate under the current rule, the greater the chance that we will have a failure in protecting public safety.

A realistic timeframe for rule development is approximately a year. This will include regional committee work, draft proposed rules, and formal rule making procedures, probably finishing in February or March. During this time landowners and field staff will continue to work with the existing rules.

An alternative is to adopt a temporary rule. A temporary rule can last up to 180 days and can be adopted with less process and public involvement. Staff could develop a temporary rule to present at the June Board meeting. This temporary rule would remove the existing language for OAR 629-623-0500 and include the intermediate sites in the OAR 629-623-0400 language for sites with substantial risk. This approach would prohibit harvesting on slopes with intermediate risk. Landowners would have the option to use site-specific geotechnical reports to evaluate these sites to determine areas of low risk where management activities could occur. Authority for exercising this option already exists in the rules under OAR 629-623-0250.

This temporary rule would remain in place for 180 days while staff complete work on the permanent rule.

RECOMMENDATIONS

Staff recommends that the Board direct the Department to develop a temporary rule to address Intermediate Risk Sites for consideration at the June Board meeting.

ATTACHMENTS

- (1) Landslide and Public Safety - Intermediate Risk Issue Paper
- (2) OAR Division 623 – Shallow, Rapidly Moving Landslides and Public Safety