

Agenda Item No:	G
Title and # of Issue:	Forest Regulation - Issue #6
Objective # & Title:	Obj. 2 – Effective and Efficient Implementation of the Forest Practices Act Status – OAR 629-640-0210 Leaving Green Trees and Snags along Small Type N Streams Subject to Rapidly Moving Landslides
Date of Presentation:	April 29, 2008
Contact Information:	Peter Daugherty, Deputy Chief, Private Forests Division 503-945-7482 pdaugherty@odf.state.or.us

SUMMARY

Pursuant to the discussions at the September 2007 Board meeting, the purpose of this agenda item is to report on the status of OAR 629-640-0210 Leaving Green Trees and Snags along Small Type N Streams Subject to Rapidly Moving Landslides and to recommend July 1, 2008 as the date to begin to “direct” operators under OAR 629-640-0210(2) to retain green trees and snags required for harvest type 2 or type 3 units adjacent to small Type N streams subject to rapidly moving landslides likely to deliver wood to Type F streams.

CONTEXT

Objective 2 of the Forest Regulation Work Plan states that “When forest practice regulations are necessary, minimize the adverse financial effects of regulations that require private landowners to contribute forest resources to provide increased public benefits (*Forestry Program for Oregon Action A.5*).” This objective encompasses the completion of the revisions to the forest practice rules related to water protection.

At the September 2007 meeting, the Board directed the Department to complete the maps and guidance, and then report to the Board before directing retention pursuant to OAR 629-640-0210.

BACKGROUND

The Department and Board have been developing a revised set of water protection measures, including Rule Concept 4, Wood from Debris Flows and Landslides. At the November 2005 meeting, the Board directed the Department to begin formal rulemaking for Rule Concept 4. The Department issued public notice, and held public hearings in March 2006. The Board adopted rule language for Rule Concepts 4 at its September 6, 2006 meeting.

At the September 2006 meeting, the Board discussed the workload associated with and the resources necessary to implement these new rules. Based on the cumulative effect of additional tasks for staff, and the critical relationship with the landowners, rule implementation was set for October 1, 2007, allowing additional time to develop maps and guidance, and to incorporate the rules into private landowner planning processes.

At the September 2007 meeting, the Board directed the Department to complete the maps and guidance document before directing landowners to retain trees pursuant to OAR 629-640-0210.

The Board also directed the Department to report to the Board in January or March of 2008 and to recommend an effective date for directing landowners to follow tree retention requirements.

DISCUSSION

The Department has completed maps, guidance and training. The Department distributed maps and guidance to the Oregon Forest Industries Council, Oregon Department of Fish and Wildlife, and Oregon Department of Environmental Quality as draft on November 1, 2008. The Department completed staff training in September 2007. The Department also held training sessions for Associated Oregon Loggers, and are available should other groups request formal or informal training. The Department delayed this report to the Board to determine Ballot Measure 49 implications from a Board decision on implementing the rule.

Ballot Measure 49 implications. Under Ballot Measure 49 a person may file a claim for just compensation under sections 12 to 14 and ORS 197.352 if, among other requirements, the person's desired use of the property is restricted by one or more land use regulations enacted after January 1, 2007. Enacted is defined in section 2 as "enacted, adopted, or amended"

The date the rule was "adopted" is therefore the relevant date for the purpose of this discussion. In this context, the common meaning of the term adopted is "of a deliberative body: to endorse and assume official responsibility for (a resolution of a committee)" Webster's Third New International Dictionary, unabridged.

OAR 629-640-0210 was adopted at the September 6, 2006 Board meeting and filed with the Secretary of State on October 31, 2006. Based on the language and definitions of Ballot Measure 49, OAR 629-640-0210 is not subject to Ballot Measure 49 claims. This conclusion was reviewed and confirmed by Gary L. Vrooman, Assistant Attorney General, Oregon Department of Justice.

NEXT STEPS

The Department is prepared to implement this new rule effective July 1, 2008. The maps and guidance have received thorough review. As implementation occurs, the Department will monitor rule application and report any problems or concerns to the Board as necessary.

RECOMMENDATION

The Department requests Board approval to begin to "direct" operators to implement OAR 629-640-0210(2) Leaving Green Trees and Snags along Small Type N Streams Subject to Rapidly Moving Landslides, on July 1, 2008.

ATTACHMENTS

- (1) OAR 629-640-0210 Statewide map of the locations for implementing this rule. This has been distributed as "draft" pending final Board approval. Each red dot is a location of stream reach subject to this rule.
- (2) Division 640 629-640-210 Guidance – **ODF Internal Guidance Document** to assist stewardship foresters consistently administer the rules.
- (3) OAR 629-640-0210 Leaving Green Trees and Snags along Small Type N Streams Subject to Rapidly Moving Landslides