

# Oregon Update

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## News from the State

Jon Chandler

### FEMA / NMFS UPDATE

As we've discussed before, we are facing a significant threat to our industry, presented by a recent Biological Opinion ("BiOp") issued by the National Marine Fisheries Service ("NMFS") on floodplain development and flood insurance. Since we are moving beyond the talking stage, it seems appropriate to provide all of you with an update.

A broad coalition has formed, including not only OHBA but also the Oregon Association of Realtors, BOMA Oregon, the Association of Oregon Industries, the Oregon Farm Bureau, and the Oregon Concrete and Aggregate Producers Association. In addition, we anticipate that we'll be joined by the Oregon Forest Industries Council, Oregonians in Action and the Portland Business Alliance, as well as by individual Oregon businesses and property owners who will be negatively affected should the issue go unchallenged. Our national association, NAHB, is also involved and is helping fund our efforts.

In a nutshell, we are deeply concerned by the efforts of the Federal Emergency Management Agency ("FEMA") and NMFS to require more restrictive regulations to floodplain areas, because we believe they will unnecessarily restrict development and up-end years of land use planning in Oregon.

Here's the background. It's a little complicated, but the issue is very complicated, so bear with me:

On April 14, 2016, as a result of litigation brought by environmental activists, NMFS issued the BiOp, which concluded that FEMA's operation of the NFIP violated the Endangered Species Act ("ESA") by encouraging floodplain development that jeopardizes the

continued existence of 16 ESA-listed anadromous fish species and Southern Resident killer whales, and which results in the destruction or adverse modification of critical habitat for the fish species.

Based on that conclusion, NMFS directed FEMA to change its floodplain mapping protocols and minimum floodplain regulatory criteria and to enforce these new standards against local governments in Oregon. In particular, NMFS directed FEMA to expand its mapped floodplains, including mapping entirely new areas that have never previously been considered part of the floodplain, and to prohibit nearly all development in these areas (except open space, low intensity recreational activities, habitat restoration projects, and very limited water dependent uses). In all other floodplain areas, NMFS directed FEMA to prohibit all development unless it will have no adverse effect or a net beneficial effect on floodplain habitat.

While FEMA is working on the new floodplain maps, the BiOp says that development should be restricted or prohibited within 170 feet of either side of all streams in the affected area of Oregon (basically, the entire state other than the area in southeast Oregon that drains into the Great Basin), including seasonal or ephemeral streams. In other words, almost every city in Oregon will have 340-foot no-build swaths cut through them.

In response, FEMA sent a letter on June 13, 2016, to more than 200 jurisdictions in Oregon explaining the BiOp and NMFS's recommended program changes. Unfortunately, FEMA's letter confuses FEMA's Section 7 obligation under the ESA with local jurisdictions' Section 9 obligations under the ESA, purporting to shift FEMA's ESA burden to Oregon communities and ultimately Oregon land owners. Although FEMA has not expressly stated that it intends to require each jurisdiction to comply with the Oregon BiOp's recommendations to

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maintain eligibility to participate in the NFIP, NMFS has recommended that to FEMA and it appears that is FEMA's intention moving forward.

NMFS set a preliminary "deadline" of March 15, 2018, for local jurisdictions to adopt the first round of regulatory changes, known in the BiOp as "Interim Measures." The Interim Measures amount to "one size fits all" restrictions aimed at halting all development within the floodplain without reference to the actual effects of the development on listed species or their habitat, existing conditions, or existing regulations and programs that already protect endangered species and their habitat in Oregon.

That's worth restating: the effect of the measures that would be required under the BiOp would amount to a nearly total prohibition of all development within 170 feet of any stream.

Our Coalition believes this is intolerable, and we organized ourselves to invalidate the BiOp and to halt FEMA's efforts to force local jurisdictions to implement it. Last month, we sent letters to FEMA and NMFS outlining our plans to challenge the BiOp, and we plan to file suit early next year unless FEMA and NMFS withdraw the BiOp and return to the drawing board regarding this consultation. In particular, the Coalition requested that FEMA and NMFS step back and provide the following:

- (1) A thorough evaluation of the scope of FEMA's authority under the NFIP to limit development in floodplains for reasons other than public safety;
- (2) A complete and accurate analysis of the effects of floodplain development caused by the NFIP on ESA-listed species in light of existing floodplain conditions and existing Oregon laws and regulations;
- (3) A thorough evaluation of how the BiOp's recommended changes relate to and impact existing Oregon laws and regulations, particularly local comprehensive planning; and
- (4) An open and complete public review process in which communities and the public are provided notice and an opportunity to weigh in before FEMA imposes the recommendations from the

BiOp on Oregon communities.

We frankly do not anticipate that the agencies will stand down, so we fully expect that we'll have to sue. When we do, we anticipate being joined by cities and counties throughout Oregon, all of whom will be affected by the BiOp, may be exposed to legal liability for reducing property values, and will see their land use and infrastructure plans thrown out.

We'll keep you posted, of course, and if you have any questions, please let me know.

## Green Building

Howard Asch

### How About A SIP?

Structural Insulated Panels (SIPs) have some real advantages for building energy efficient houses. If you haven't looked in to using them recently it may be well worth your time to do so.

A SIP is an engineered panel that can be used to create exterior walls and roofs and is made up of a high-density foam core sandwiched between two pieces of oriented strand board. Dimensional lumber is used at the panel edges to provide a solid means to attach panels together. The panels are made with high-tech machinery that assures quality control. Raceways for electrical wiring are cut during manufacture, and window and door openings are already provided. The panels go together and make a complete structural wall or roof and do not need much on-site adjustment. Panels are hauled directly from the factory for setup at the job site.

There are three main reasons contractors are using SIPs. We'll look at them one at a time.

First, SIP construction is very energy efficient. Not only is the high-density foam a good insulator, but thermal bridging is greatly reduced. In ordinary construction with studs 16" on center thermal bridging occurs every 16 inches and about 23% of the traditional wall is taken up by wood thermal bridges. With SIPs, bridging only occurs at the panel joints which are ordinarily spaced at least 4' apart.

Also when installed correctly SIPs allow very little air leakage. SIP houses have been tested to less than 1 ACH at 50 Pascals.

Second, SIPs can make the exterior framing go much faster. Since all the panels are ready to install as they come off the truck it is only necessary to caulk the joints, fasten them together and tape the seams and the wall is complete. Holes are drilled through the bottom plate at the location where the wiring raceway is located in the panel.

Third, because the panels are made in a factory under ideal conditions the assembled product exhibits quality and strength difficult to obtain with field cut and assembled materials. The Oriented Strand Board skins create a very rigid strong wall.

SIPs require different construction techniques than traditional methods so it is important for everyone on the assembly crew to understand and use installation details the manufacturer provides as well as to make sure other trades involved in the project understand the unique characteristics so they don't inadvertently do something that damages the panels.

So next time a client wants a quality house with a new flavor of efficient construction, perhaps offer them a SIP.

The key changes in Oregon OSHA's Division 1 rule – 437-001-0700, Recording Workplace Injuries and Illnesses – become effective May 1, 2017, and require employers to:

- Establish a procedure for employees to report work-related injuries and illnesses promptly and accurately.
- Inform employees about the procedure and tell them how they can report injuries and illnesses.
- Inform employees that they have the right to report work-related injuries and illnesses free from retaliation.
- Electronically submit injury and illness records to federal OSHA annually if they are in one of the following categories:
  1. They had 250 or more employees at any time during the previous calendar year and are required to maintain an OSHA 300 log.
  2. They are in an industry listed in the rule and had 20 or more employees but fewer than 250 employees at any time during the previous calendar year.

#### **Informing employees about their rights**

Informing employees about their rights to report workplace injuries and illnesses free from retaliation is easy. Meet the requirement by posting the current version of Oregon OSHA's [It's the Law!](#) poster or by telling the employees they have a right to report work-related injuries and illnesses free from retaliation – a written notice to each employee or an email will do.

**WE'VE MOVED!!!**

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## **Safety Update**

David Davidson

### **Oregon OSHA Recording Workplace Injuries and Illnesses Changes**

On Nov. 10, Oregon OSHA [adopted changes to its Division 1 requirements](#) for reporting workplace injuries and illnesses to align them with the requirements in federal OSHA's unusually titled final rule, Improve Tracking of Workplace Injuries and Illnesses. (As part of its state plan agreement with federal OSHA, Oregon OSHA's rules must be at least as effective as OSHA's.)