U.S. Department of Commerce
National Oceanic and Atmospheric Administration

U.S. Environmental Protection Agency

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By

25 JUN 2008

Neil Mullane
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Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204

Bob Bailey
Administrator
Coastal Division
Department of Land, Conservation and Development
635 Capitol Street, NE, Suite 150
Salem, Oregon 97301

Dear Mr. Mullane and Mr. Bailey:

The National Oceanic and Atmospheric Administration (NOAA) and the U.S. Environmental Protection Agency (EPA) Headquarters and Region 10 have completed their review of Oregon's comprehensive Coastal Nonpoint Pollution Control Program (CNPCP) submittal received November 15, 2007 as well as subsequent supporting information, including the April 25, 2008 letter. Based on the information provided, NOAA and EPA have concluded that Oregon has fully met five of the remaining eight management measures: site development; roads, highways and bridges; marinas; wetlands, riparian areas and vegetative treatment systems; and monitoring. We appreciate the progress Oregon has made on the other three conditions. However, additional work is still needed to fully satisfy the conditions for new development, operating onsite disposal systems and additional management measures for forestry.

The attached interim decision document addresses each outstanding condition, conveys NOAA/EPA findings, and presents a rationale for our decisions. For the few measures where conditions still remain, the rationale also recommends actions the State can take to achieve full approval.

Please note that NOAA and EPA's final decision on these conditions is contingent upon a public notice and opportunity to comment on our intent to fully approve Oregon's CNPCP. This process will occur once NOAA and EPA conclude that Oregon has met all of the conditions under Section 6217. The final decisions may also be subject to Tribal and ESA consultation.

We recognize the significant challenges posed by the sensitive beneficial uses Oregon's water quality standards are designed to protect and the inherent sensitivity of Oregon's coastal watersheds. NOAA and EPA congratulate Oregon on its progress towards program approval and recognize the state's continued efforts to address the remaining CNPCP conditions. At your earliest convenience, we would like to schedule a conference call with you to discuss this interim decision document. This will provide us an opportunity to

discuss our decisions and possible steps the State could take to gain full approval and to clarify any questions you may have.

Please contact either Allison Castellan of NOAA at (301) 563-1125, or Mary Lou Soscia of EPA Region 10 at (503) 326-5873 to arrange the conference call or if you have any questions.

Sincerely,

John King, Chief
Coastal Programs Division
Office of Ocean and Coastal Resource Management
National Oceanic and Atmospheric Administration

Mike Gearheard, Director
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Enclosure

cc: Don Yon, OR DEQ
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June 12, 2008

NOAA and EPA Preliminary Decisions on Information Submitted by Oregon to Meet Coastal Nonpoint Program Conditions of Approval

I. URBAN

A. NEW DEVELOPMENT and SITE DEVELOPMENT

CONDITION: Within two years, Oregon will include in its program management measures in conformity with the 6217(g) guidance and enforceable policies and mechanisms to ensure implementation throughout the 6217 management area.

2004 FINDING:

- *Outside of Phase I or II designated areas, Oregon has not satisfied the management measure and enforceable policy components of the New Development management measure.*
- *The State has not demonstrated it has enforceable policies and mechanisms in place to ensure implementation of the site development measure throughout the 6217 boundary.*

FINDING:

- Outside of Phase I or II designated areas, Oregon has not satisfied the management measure component of the New Development management measure.
- Oregon has demonstrated it has enforceable policies and mechanisms in place to ensure implementation of the new and site development measures throughout the 6217 boundary.

RATIONALE: To address the new development measure outside of designated NPDES Phase I and II stormwater areas, Oregon has proposed relying on its TMDL implementation strategy. NOAA and EPA had previously agreed this could be a plausible approach given that TMDLs have wide geographic coverage in Oregon and that almost all communities within the 6217 management area must meet load allocations for sediment. However, the state needed to finalize the TMDL Implementation Plan Guidance so that it would include specific recommendations consistent with the (g) guidance for new development. The outline of the guidance document that EPA and NOAA reviewed in 2003 was very promising, including references to "no net increases of off-site run off."

NOAA and EPA were discouraged to find that the final TMDL Implementation Plan Guidance provided in the recent submittal does not contain any specific recommendations that are consistent with the (g) guidance for new development. The guidance document does not even recommend plan developers consult the 6217(g) guidance when developing TMDL Implementation Plans within the 6217 boundary. Since specific recommendations to incorporate the new development measure are not included in the guidance, there is no guarantee that Implementation Plans developed would reduce TSS by 80% or maintain post-development peak runoff rates to pre-development levels to the maximum extent practicable as per the new development measure. Based on the two completed implementation plans Oregon provided, all plans are not being developed to a level consistent with the (g) guidance for new development. The Curry County Plan does reference its new stormwater ordinance, which requires reducing

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the amount of post-development runoff consistent with the (g) guidance as well as provides best management practice standards that could reduce total suspended solids per (g) guidance requirements. However, the Jackson County Plan merely mentions "evaluating the potential for requiring erosion control permits and inspections for construction activities < 1 acre of soil disturbance," which does not address the new development requirements. While initially promising, it does not appear that the State's current TMDL approach will enable Oregon to satisfy the new development requirements for the 6217 (g) measures.

NOAA and EPA are encouraged to hear that DEQ is in the process of drafting new TMDL Implementation Guidance specifically for coastal urban areas, which will include specific recommendations consistent with the (g) guidance for new development. We strongly encourage the state to move forward with this revision and would be happy to review drafts of the guidance to ensure that it would meet new development requirements for the Coastal Nonpoint Program.

While we understand the updated TMDL Implementation guidance may take a couple of years to finalize, Oregon may be able to peruse other avenues for meeting the new development condition in a shorter timeframe. Developing a voluntary program based on its Water Quality Model Code and Guidebook (see discussion below) could be one option. Another option could be to show that a significant number of counties/local governments within the 6217 boundary have developed stormwater ordinances that are consistent with the (g) guidance. Although Portland is not in the 6217 boundary, the Low Impact Development (LID), stormwater, CSO control policies and approaches the City has implemented provide a good model for policies that could be adopted within the boundary area to meet the new development management measure. NOAA and EPA encourage Oregon to use the Portland experience to speed adoption of LID throughout its 6217 management area.

The State may also want to explore opportunities to require any projects that receive state funding to be consistent with the new development management measure. Federal agencies are already required to implement Section 438 of the Energy Independence and Security Act of 2007, which stipulates that, "The sponsor of any development redevelopment project involving a Federal facility with a footprint that exceeds 5,000 square feet shall use site planning, design, construction, and maintenance strategies for the property to maintain or restore, to the maximum extent technically feasible, the predevelopment hydrology of the property with regard to the temperature, rate, volume, and duration of flow." State adoption and implementation of this provision or a similar policy would help the state further implement the new development measure when state funding is involved.

Regarding the site development measure, Oregon has described a number of programs that, when combined, enable the state to satisfy this condition including its NPDES General Permit for Construction Activities, State Land Use Goals, and Water Quality Model Code and Guidebook.

All activities that disturb more then an acre of land must receive a NPDES General Permit for Construction Activities. The General Permit includes, as additional control practices which must be developed if appropriate to the site, recommendations to minimize the area of disturbance and requires the permittee to describe practices that will protect existing vegetation.

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State Land Use Goals 5, 6, and 7 can also protect areas that provide water quality benefits, limit disturbance of natural drainage features, minimize impervious surfaces, and limit clearing and grading within identified significant natural resource areas. State law requires reach city and county to adopt a comprehensive plan and the zoning and land-division ordinances needed to put the plan into effect. The local comprehensive plans must be consistent with the statewide planning goals.

The Water Quality Model Code and Guidebook, a voluntary guidance manual, includes guidelines and examples that are consistent with the (g) guidance for site development such as limiting impervious surface, retaining natural vegetation, protecting areas that provide important water quality benefits, and limiting disturbance of natural drainage features. According to a January 2001 hardcopy edition that NOAA and EPA reviewed, the guidebook also includes many practices that are consistent with the (g) guidance for new development. However, the October 2001 version that is available online is missing the critical stormwater plan section that establishes guidelines and best management practices that should be incorporated into a stormwater plan to reduce total suspended solids. While Oregon did actively promote the guidebook to local planners when it was first released in 2001, the federal partners are unclear if the state continues to work with planners to make sure they are aware of and using the guidebook as designed, especially since critical information that is needed to help satisfy the new development measure is missing from the online version. Without additional information about how the state is actively promoting and tracking its use, NOAA and EPA do not feel that the voluntary guidebook would be acceptable for meeting the new development condition by itself.

NOAA and EPA understand that the state is currently updating the Model Code and Guidebook. The state anticipates distributing it to city and county planning directors via CD and the web this spring/summer. NOAA and EPA look forward to reviewing the updated document. In addition to distributing the document to local planners and announcing the new release at a statewide planning conference, we strongly encourage the state to take a more proactive approach to educating and training local planners and other decision makers about the guidebook.

Per the *1998 Final Administration Changes Memo,* states can use voluntary approaches such as the guidebook to satisfy the (g) measures if they provide: (1) a legal opinion; (2) a description of the voluntary programs the state will use to encourage management measure implementation, including methods for tracking and evaluating those programs; and (3) a description of the mechanism or process that links the implementing agency with the enforcement agency. The state has submitted a legal opinion from its Attorney General demonstrating Oregon has the necessary back-up authority through its Water Quality Statutes (ORS 468B et. seq.) to require implementation of both the new and site development management measures. The legal opinion also describes the link between the implementing and enforcing agencies. The updated voluntary Water Quality Model Code and Guidebook, coupled with an active outreach/training program, perhaps through partnerships with Sea Grant or the South Slough National Estuarine Research Reserve's Coastal Training Program, and a tracking component to ensure adequate implementation of model code adoption across the coastal nonpoint management area would satisfy the second element. To ensure adequate implementation of model code adoption, Oregon should establish targets for the number of communities or percent of population in the 6217

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management area consistent with this goal. Of course, this assumes the updated guidebook is still consistent with the (g) guidance for new development.

C. NEW and OPERATING ONSITE DISPOSAL SYSTEMS

CONDITION: Within two years, Oregon will finalize its proposal to inspect operating OSDS, as proposed on page 143 of its program submittal.

2004 FINDING:

- *Develop a voluntary inspection program for existing OSDS throughout the 6217 boundary; and*
- *Submit a legal opinion and supporting documents stating that the state has back-up authority to ensure implementation of the existing OSDS management measure, specifically regular inspections.*

FINDING: Oregon has not satisfied this condition.

RATIONALE: Oregon has demonstrated that it has an adequate and very strong inspection program for alternative treatment systems and has a viable inspection system for responding to complaints, although NOAA and EPA would like clarification on how the State determines what constitutes a "high priority complaint." However, Oregon still lacks an adequate inspection program to proactively inspect conventional septic systems throughout its coastal nonpoint management area.

NOAA and EPA note that DEQ may still pursue rule changes to require regular inspections of existing OSDS. While we encourage the state to continue to seek a rule change, we also recognize that this may take a long time and can be politically challenging to achieve.

Outside of a rule change, NOAA and EPA appreciate the state's focus on encouraging point-of-sale inspections and the effort it has put into the program so far. For the voluntary approach to be approved, the following deficiencies need to be addressed:

1) The 85% goal is "tentative" and tracking is not sufficiently robust. There should be a solid back-up plan that kicks into place if early tracking efforts reveal that the 85% goal is not attainable under the proposed strategy. NOAA and EPA recommend that a statistically valid survey of real estate agents, brokers, and/or lenders be conducted at a maximum of 5-year intervals, in keeping with the program's three 5-year plans over the 15-year implementation period. Interim milestones for each surveyed interval should be established.
2) Sufficient resources should be in place to ensure that the interim milestones and final 85% goal are realistic and attainable during each 5-year plan period and 15-year program implementation period. NOAA and EPA recommend that a minimum of $100,000 be set aside each year to address this condition, under the State's section 319 allocation bundled into its performance partnership grant.
3) NOAA and EPA encourage Oregon to have OSDS inspections be conducted by inspectors who are certified through a nationally recognized inspector-training program

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that relies on standardized criteria and protocol. While NOAA and EPA recommend this as a required element of Oregon's voluntary inspections strategy, short of this, a robust incentive-based approach toward using certified inspectors is also acceptable.

D. ROADS, HIGHWAYS, and BRIDGES

CONDITION: Within two years, Oregon will (1) develop management measures in conformity with the 6217 (g) guidance for construction site chemical control; (2) develop enforceable policies and mechanisms to implement the roads, highways and bridges measures on all federal and State highways throughout the 6217 management area; (3) develop management measures in conformity with the 6217 (g) guidance and enforceable policies and mechanisms for local roads, highways, and bridges throughout the 6217 management area; and (4) provide a strategy (in accordance with section XII, pages 19-20) for use of the State's water quality law (ORS 468B) as a back-up enforceable mechanism to ensure implementation of the management measures for operation and maintenance and for runoff systems, as proposed on pages 155 and 157 of the State's program submittal.

2004 FINDING: *Oregon has not demonstrated they have adequate programs or enforceable mechanisms and policies to implement the road, highway and bridge measures for planning, siting, and developing roads and highways, operation and maintenance, and runoff systems for local roads throughout the 6217 boundary.*

FINDING: Oregon has satisfied these conditions.

RATIONALE: Effective December 20, 2002, NOAA and EPA have determined that designated MS4 areas are no longer subject to the Road, Highway and Bridge requirements of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) Section 6217 Coastal Nonpoint Pollution Control Program due to their coverage in the National Pollution Discharge Elimination System (NPDES) stormwater permit program (Phase I and II). In addition, state coastal nonpoint control programs are no longer required to include the Construction Projects and Construction Site Chemical Control Management Measures throughout the 6217 boundary because the NPDES stormwater regulations for industrial activities on construction sites apply nationwide and therefore throughout the coastal management areas of states and territories.

Outside of MS4 areas, ODOT's Phase I Stormwater NPDES MS4 General Permit enables the state to satisfy the remaining roads, highways and bridges conditions for state and federal roadways. For local roads, Oregon uses a voluntary approach backed by enforceable authorities. The state encourages local governments to follow ODOT's maintenance and construction manuals which are consistent with the (g) guidance and holds training sessions that many local government road crews attend to learn about best management practices for road construction and maintenance. For example, in February 2001, ODOT sent a letter to all local governments, recommending they use the department's manuals.

The DEQ's TMDL Implementation Plan guidance further promotes ODOT's manuals for use by local governments as a way of addressing water quality impairments (see sample Management Plan and Existing Plan Checklists for Willamette). Completed TMDL Implementation Plans for

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Jackson and Curry Counties demonstrate that counties are adopting ODOT's manuals to reduce polluted runoff from road siting and maintenance activities.

The Oregon Watershed Enhancement Board provides funding for a variety of watershed enhancement activities, including improvements to existing roads, highways and bridges to reduce polluted runoff. In the most recent summary report, nearly $30M of OWEB funds went to road improvements statewide during FY 2002 and 2003. The state estimates that one third of those funds were spent within the 6217 management area.

Oregon has submitted a legal opinion from its Attorney General pursuant to the *1998 Final Administration Changes Memo* to demonstrate it has the necessary back-up authority through its Water Quality Statutes (ORS 468B et. seq.) to require implementation of the voluntary elements of the road, highway and bridges management measures.

II. MARINAS

A. MARINA FLUSHING, WATER QUALITY, and HABITAT ASSESSMENT

CONDITION: Within three years, Oregon will include in its program enforceable policies and mechanisms to implement the marina flushing and habitat assessment management measures throughout the 6217 management area.

2004 FINDING: *Oregon has not fully satisfied the conditions for marina flushing or habitat assessment.*

DECISION: Oregon has fully satisfied these conditions.

RATIONALE: New or expanded marinas require a removal-fill permit from the Division of State Lands (DSL). The review process for these permits enables DSL to implement both the marina flushing and habitat assessment management measures. DSL developed a permit review checklist in 2004, to guide permit reviewers in what they should be looking for when reviewing marina permit applications. The checklist includes marina flushing and recommends (g) guidance best management practices for flushing to achieve adequate water quality. To address habitat issues, DSL permit reviewers must condition the permits to "avoid or minimize impacts to fish and wildlife resources" when conducting in-water or shoreline work (141-085-0029(7)(c)).

In addition to DSL's direct review, Oregon's Department of Fish and Wildlife (ODFW) also reviews marina applications under the removal-fill law (ORS 196.795-990) to advise DSL on its permit decisions. ODFW has three policy standards (#14304, #14309, and #14310) consistent with the (g) guidance for flushing to guide their permit evaluations.

In estuarine areas, the habitat assessment measure is also supported by the State's Land Use Goal 16 (OAR 660-015-0010(1)) which provides the State with enforceable policies and mechanisms to implement the habitat assessment measure in the estuarine areas of the 6217 boundary. Goal 16 requires all local jurisdictions in the coastal zone to evaluate estuaries and identify appropriate

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locations for water dependent uses, including marinas. The existing natural condition and function of the estuary must be considered during the evaluation process. Specifically marinas are prohibited in areas with "natural" designations. Natural areas, at a minimum, must contain all major tracts of saltmarsh, tideflats and seagrass beds.

III. WETLANDS, RIPARIAN AREAS, AND VEGETATED TREATMENT SYSTEMS

CONDITION: Within two years, Oregon will include in its program management measures in conformity with the 6217 (g) guidance to assure the protection of riparian areas. The State will also develop a process to promote the restoration of riparian areas in conformity with the 6217 (g) guidance.

2004 FINDING: *Oregon has not fully satisfied the condition to include management measures to assure the protection of riparian areas.*

FINDING: Oregon has satisfied this condition.

RATIONALE: Oregon preserves riparian areas under State Land Use Goal 5. The goal requires local governments to inventory natural resources, including riparian areas, and adopt programs that will preserve significant riparian areas. Local governments can elect to use the "safe harbor" criteria (a streamlined designation process) or the more detailed standard Goal 5 process to identify significant riparian areas. Under the "safe harbor" process, all riparian corridors adjacent to fish bearing streams and lakes are considered significant riparian resources. Local governments must pass ordinances to establish either a 75 or 50 foot riparian protection zone depending on the size of the waterbody. Development, vegetation removal and impervious surfaces are generally prohibited within these protection zones. Exemptions are only granted if equal or better protection for riparian resources is provided through riparian restoration or enhanced buffer treatment.

Under the standard Goal 5 process, local governments are required to conduct a comprehensive inventory of their riparian areas to identify significant riparian resources. The significance of each riparian area must be justifiable based on findings derived from the inventory. The DLCD reviews the inventories to determine they are adequate. The standard process acknowledges that local governments do have to manage other priority land uses that may conflict with riparian protection. Nonetheless, they are still required to establish an effective management strategy for riparian resource protection.

All cities with a population greater than 2,500 and all counties with a population greater then 15,000 must also periodically update their comprehensive plans. All counties within the 6217 management area are required to undergo these periodic reviews. At this time, they must conduct new inventories of significant riparian resources and ensure they have programs in place to protect Goal 5 resources.

Oregon has also supported riparian protection through OWEB funded projects. According to the 2007 Report to Congress on the Pacific Coastal Salmon Recovery Funds, over $5 million in OWEB funding has helped acquire and permanently protect water quality and fisheries habitat

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on over 2,300 acres of critical, ecologically significant areas within Oregon's coastal basins.

Agriculture and forestry activities are exempt from Goal 5 requirements; however, riparian protection involving these activities is addressed directly through SB1010 plans (agriculture) and the Forest Practices Act (FPA) (forestry). For example, as described earlier under the Agriculture Management Measures section, agriculture water quality management areas (AWQMAs) have developed management plans (SB1010 plans) and administrative rules consistent with the (g) guidance for the agricultural measures which includes practices to protect sensitive areas such as riparian zones. The administrative rules also state that riparian management should be conducted to allow for the establishment, growth and maintenance of riparian vegetation.

Oregon's TMDL program can also play an important role in riparian protection. All the basins within the 6217 boundary have water quality impairments for temperature. To address this impairment, each designated management agency (DMA) within the listed sub-basins must develop TMDL Implementation Plans for temperature. Riparian protection and restoration are important components for reducing temperature impairments as riparian areas provide needed shading to waterways. Several TMDL Implementation Plans that have been completed are consist with the (g) guidance for riparian protection. However, since the TMDL Implementation Plan guidance does not recommend specific riparian protection practices to address temperature impairments or even reference the (g) guidance, there is no guarantee that all subsequent TMDL Implementation Plans would be consistent with the (g) guidance for riparian protection. NOAA and EPA strongly encourage Oregon to consider revising the TMDL Implementation Plan guidance to, at a minimum, require DMAs within the 6217 management area to consult the (g) guidance and incorporate practices consistent with the (g) guidance as appropriate, when developing Implementation Plans.

In the conditional findings on Oregon's Coastal Nonpoint Program, NOAA and EPA stated concern that forest land riparian areas were not being protected when the land was converted to another use under existing programs. In 2006, Oregon finalized a Memorandum of Agreement (MOA) between the Departments of Forestry, Agriculture, State Lands, Fish and Wildlife, Parks and Recreation, Land Conservation and Development, and Environmental Quality to address this issue. The MOA clearly establishes a process for notifying all signatory agencies when forest land is converted to other uses so that each agency can ensure that its responsibilities in protecting water quality and riparian areas will be carried out. The landowner/operator must submit a Plan for an Alternative Practice to ODF that addresses potential water quality or natural resource impacts of the proposed alternative practice. ODF then shares the plan with the other agencies for review. No conversion activity will be approved unless it complies with the resource protection rules of the appropriate state agency(ies) that have jurisdiction over the new activity.

IV. MONITORING

CONDITION: Within one year, Oregon will include in its program a plan that enables the State to assess over time the extent to which implementation of management measures is reducing pollution loads and improving water quality.

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2004 FINDING: *Oregon has not fully satisfied this condition.*

DECISION: Oregon has satisfied this condition.

RATIONALE: Oregon has developed a general monitoring plan that enables the State to assess over time the extent to which the management measures are being implemented and improving water quality. The monitoring program has established a statewide rotating schedule for monitoring set reference sites and randomly selected sites for compliance with the State's water quality standards. Every year, the State samples 20% of both their reference and random sites for various parameters, including temperature, sediment, dissolved oxygen, biological criteria, pH, stream fertility, and some toxics. Depending upon the parameter sampled, Oregon has 50 or 75 established reference sites within the 6217 management area and an additional 50 or 150 random sites across the rest of the State. In addition, the State also conducts an estuarine monitoring program that specifically samples for temperature, salinity and bacteria in shellfishing areas. The State uses this monitoring information to develop 305(b) reports and TMDL Watershed Management Plans which may require additional management measures.

Senate Bill 945 also directs the Oregon Watershed Enhancement Board (OWEB) to develop and implement a statewide Monitoring Program in coordination with state natural resource agencies for activities conducted under the Oregon Plan for Salmon and Watersheds, many of which are relevant to the (g) measures. *A Monitoring Strategy for the Oregon Plan for Salmon and Watersheds* describes the framework for the OWEB monitoring strategy. The Strategy includes assessing general status and trends for physical habitat and biotic conditions in selected sub-watersheds; documenting implementation of OWEB restoration projects; and evaluating the local effectiveness of restoration efforts by monitoring representative samples of specific project, activity and program types. Finally, the State will integrate information from multiple sources to produce data products and reports that assess restoration efforts and evaluate progress towards recovery goals.

In addition to these general monitoring programs, each TMDL Implementation Plan is also required to include a monitoring and assessment component to describe how the designated management agencies will routinely evaluate the effectiveness of the implementation plan and to determine if additional actions are needed to sufficiently improved impaired water bodies.

Forestry is the dominant land use within the 6217 boundary. Therefore, to better assess the implementation and effectiveness of the Forestry Practices Act (FPA), which is consistent with the (g) guidance, the Oregon Department of Forestry (ODF) carries out the Forest Practices Monitoring Program. The ODF's monitoring program described in the December 2002 *Forest Practices Monitoring Program Strategic Plan*, involves both BMP implementation and effectiveness monitoring. All monitoring data is available in a central database as part of the State of Forests Integrated Information System and ODF analyzes and reports on the information collected annually. The ODF has already released several monitoring studies including the effectiveness of forest road sediment and drainage control practices, harvest effects on riparian areas, effectiveness of the FPA at obtaining temperature standards, and a comprehensive study on BMP implementation. Based on the monitoring conducted, each report recommends changes

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to the FPA to the Board of Forestry in order to improve the forestry program.

NOAA and EPA encourage Oregon to continue to implement and improve upon the various monitoring programs that comprise their Coastal Nonpoint Control Program monitoring network. The State should continue to dedicate sufficient staff and resources to carry out the monitoring programs. In addition, Oregon should strongly consider developing a tracking/assessment program similar to the Forest Practices Monitoring Program for other select measures that address significant land uses within the 6217 boundary, such as key urban or agricultural measures. The ODF should also ensure that they continue to conduct comprehensive BMP implementation studies on a regular basis and work towards implementing recommendations from past monitoring studies in a timely manner.

V. CRITICAL COASTAL AREAS, ADDITIONAL MANAGEMENT MEASURES AND TECHNICAL ASSISTANCE

CONDITION: Within two years, Oregon will identify and begin applying additional management measures where water quality impairments and degradation of beneficial uses attributable to forestry exist despite implementation of the (g) measures.

2004 FINDING: Oregon has not satisfied the condition for additional management measures for forestry.

FINDING: Oregon has not satisfied the condition for additional management measures for forestry.

RATIONALE: Based on Oregon's recent submittal and our understanding of Oregon's Forestry Program, EPA and NOAA still believe that Oregon lacks adequate management measures under the Oregon Forest Practices Act (FPA) rules for protecting water quality and the degradation of beneficial uses from forestry activities. EPA and NOAA's primary concerns, stated in the 1998 conditional findings and reiterated in the 2004 interim decision document, remain. Oregon still lacks adequate measures for protecting riparian areas of medium, small and non-fish bearing streams, high risk landslide areas, and for addressing the impacts of legacy roads. A broad body of science continues to demonstrate that the FPA rules do not adequately protect water quality.

NOAA and EPA support Board of Forestry (BOF) improvements to general road maintenance measures that require a better drainage network for water quality purposes (OAR 629-625-0330) and establish wet weather use requirements/restrictions (OAR 629-625-0700). These two measures, as well as the other improvements described in the submittal, should help reduce road related sedimentation. However, we remain concerned that a significant percentage of the road network on forest lands in Oregon continues to deliver sediment directly into streams, and that new drainage requirements are triggered only when road construction or reconstruction takes place. It is not clear how the rules address water quality impairment associated with legacy roads and a large portion of the existing road network where construction/reconstruction is not proposed. We recommend adoption of a road mapping and abandonment program that creates a requirement and timeline for addressing all active and legacy roads to ensure that water quality is

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protected. The road provisions in the Washington Forests and Fish Rules are examples that EPA and NOAA believe adequately address roads related water quality protection.

NOAA and EPA also support several recent FPA management measures adopted by the Oregon Board of Forestry (BOF) related to riparian management area requirements. Additional FPA management measures have been adopted to require increased riparian protection upstream from man-made fish barriers (OAR 629-635-0200(13)) and for substituting upland leave trees in riparian management areas along landslide prone non-fish streams (OAR 629-640-0210) likely to deliver wood to fish bearing streams. While these additional measures are an improvement over existing rules, they are not adequate to meet water quality standards or to ensure that beneficial uses such as domestic water supply and salmonid spawning and rearing will be protected. There is a substantial body of assessment and research that have identified the need for increased riparian protection beyond levels provided by the Oregon FPA.

Finally, NOAA and EPA note that there have been amendments to the Oregon Administrative Rules (OAR 629-623-0000 to 08000) to require identification of landslide hazard areas in stewardship plans, and during road construction and maintenance. Timber harvest and road construction are not allowed on sites with "substantial downslope public safety risk." While this rule change is a step in the right direction and helps to protect a subset of high risk landslide areas, hazards are defined only as they relate to risk for loss of life and property. The majority of small streams and landslide prone areas on private forest lands in Oregon still do not receive adequate protection under the FPA rules. In order to protect water quality, NOAA and EPA strongly encourage Oregon to expand timber harvest and road construction management measures to apply to the high risk landslide areas that can deliver sediment to streams, lakes, and wetlands, not just to areas where property or human life are threatened.

The Oregon Forest Practice Rules and Statutes include best management practices to maintain water quality (ORS 527.765). Part (2) of this section requires the Board of Forestry (BOF) to consult with the Environmental Quality Commission, which is responsible for establishing the policies for the operation of the Department of Environmental Quality, including its water quality programs, as they adopt and review BMPs to address nonpoint source discharges from forest operations. The EQC can petition the Board of Forestry to initiate a "Basin Rule" change review to address inadequacies in the FPA management measures that are contributing to violations of water quality standards (ORS 527.765(3)(d)). The BOF cannot terminate the Basin Rule change review without the concurrence of the EQC. The Basin Rule change provisions that have been in place since 1994 have not been utilized by the EQC. We encourage the EQC to begin utilizing the Basin Rule change provisions where inadequacies in the Oregon FPA contribute to water quality impairment.

EPA and NOAA recognize the extensive voluntary protection and restoration efforts on forestry lands to improve water quality and protect riparian areas. NOAA and EPA continue to strongly support these voluntary efforts. However, the lack of adequate forestry management measures for riparian and landslide prone areas affects a substantial portion of the coastal zone, where 50% to 80% of the stream network in steep, forested watersheds consists of small streams that receive very limited protection. In addition to having direct adverse impacts to water quality, existing forestry practices have indirect adverse effects on the voluntary conservation and restoration

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efforts of local watershed groups. For example, the benefits of voluntary efforts to remove barriers to fish to allow access to upstream spawning and rearing habitats are offset when forestry practices along upstream reaches degrade riparian habitats and water quality.

While we acknowledge Oregon's extensive voluntary efforts, and its incremental progress on the regulatory front, NOAA and EPA do not believe the progress made is adequate to address the additional management measures for forestry condition on Oregon's Coastal Nonpoint Program. Both Federal agencies continue to believe that additional revisions to Oregon's FPA rules are needed to fully protect water quality and beneficial uses. NOAA and EPA urge the State to move forward expeditiously to adopt and implement additional management measures, either through application of basin specific rules or statewide changes to the FPA and OARs. By adequately addressing our riparian, road and land slide concerns throughout coastal watersheds, Oregon will have sufficient measures in place to address cumulative impacts from forestry as well. If Oregon still wishes to pursue a voluntary approach, backed by enforceable authorities, to address this condition, it must provide more specific information related to funding and project accomplishments on forestry lands within the 6217 management boundary and associated enforceable authorities.

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