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

U.S. Environmental Protection Agency

Mr. Greg Aldrich, Acting Administrator
Water Quality Division
Oregon Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204-1390

Dear Mr. Aldrich,

The Environmental Protection Agency (EPA) and the National Oceanic and Atmospheric Administration (NOAA) have enclosed our initial assessment of Oregon's Implementation Ready (IR) TMDL approach for the Mid-Coast sub-basin and its ability to achieve and maintain water quality standards and enable Oregon Department of Environmental Quality (ODEQ) to satisfy the condition on its Coastal Nonpoint Program for additional management measures for forestry. This letter responds to Paragraph 5 of the Final Settlement Agreement for Northwest Environmental Advocates v. Locke, et. al, Civil No. 09-0017-PK, in which EPA and NOAA agreed to provide the ODEQ with an initial written assessment by December 31, 2012 on:

- whether implementation of the Oregon Coastal TMDL approach (now referred to as the Implementation-Ready or IR-TMDL approach), in the Mid-Coast sub-basin, including safe-harbor best management practices (BMPs), is likely to result in actions that will achieve and maintain water quality standards (WQS); and
- whether ODEQ's plan for developing and updating TMDLs for all sub-basins in the Coastal Nonpoint Pollution Control Program (or Coastal Nonpoint Program) management area using the Implementation-Ready TMDL approach could satisfy the outstanding forestry condition on the state's Coastal Nonpoint Program.

EPA and NOAA recognize the complexities that Oregon will face in pursuing this IR-TMDL approach, but also recognize the extensive effort expended by ODEQ's staff and management to make this approach successful. Oregon has held numerous stakeholder advisory and technical workgroup meetings, analyzed and presented information to support the temperature, sediment and bacteria TMDLs, defined the geographic scope of these TMDLs, including Type N streams where appropriate, and developed sediment targets for 303(d) listings related to turbidity and biocriteria. These are all important steps for laying the groundwork for the next critical and essential element to meeting the Settlement Agreement - to determine the management measures that are necessary to meet water quality targets for sediment and temperature.

The agencies assumed that ODEQ would have completed the Mid-Coast TMDLs by June 30, 2012 in accordance with ODEQ's July 21, 2010 commitment letter when EPA and NOAA negotiated this milestone in the settlement agreement. During 2012, ODEQ notified EPA and NOAA that it needed to delay completion of the Mid-Coast TMDL (which would include required and enforceable BMPs that are likely to result in actions that will achieve and maintain

WQS) until June 30, 2013. As a result, EPA and NOAA were unable to review the TMDL itself. Instead, in a good faith effort to nonetheless fulfill this provision of the settlement agreement, EPA and NOAA have considered many documents in making our assessment, including comments from the plaintiff
Without a completed Mid-Coast TMDL that includes specific BMPs and a better understanding of how the TMDL process will address landslide-prone and forest road issues, EPA and NOAA do not have sufficient information to conclude whether the IR-TMDL approach would 1) enable Oregon to achieve and maintain applicable water quality standards, and 2) satisfy the additional management measures for forestry conditions in its Coastal Nonpoint Program. Based on what we have been presented to date, we have concerns whether the current approach would enable the state to achieve those goals.

Even though we understand that ODEQ has put a great deal of effort in developing key components of the Mid-Coast TMDL, the original deadlines have slipped significantly. In the July 21, 2010, letter, ODEQ committed interim benchmarks other than TMDL development. By January 31, 2011, ODEQ agreed to provide additional detail on the IR-TMDL process, including describing how the TMDL approach will address NOAA and EPA's concerns with landslide prone areas and road density and maintenance, and providing examples of the types of "safe harbor" BMPs Oregon would use to address our concerns about adequate protection of riparian and landslide-prone areas and management/maintenance of forestry roads and meet load allocations and surrogate targets. Yet, to date, Oregon has not met the dates for additional detail on the IR-TMDL process or for completion of the Mid-Coast TMDLs.

More importantly, there has been limited progress on developing and identifying the BMPs which are key to meeting both water quality standards and the outstanding Coastal Nonpoint Program conditions. In order to meet the Settlement Agreement conditions, it is important that Oregon begin as soon as possible the analyses and discussion with stakeholders on the management measures needed to meet applicable water quality standards. Specifically, EPA and NOAA will need the following information to assess whether DEQ has taken sufficient actions to address the additional forestry management measures in the Coastal Nonpoint Program:

- Additional detail on the IR-TMDL process;
- Approach to address landslide prone areas and road density and maintenance;
- Examples of "safe harbor" BMPs Oregon would use to address
    - protection of riparian areas
    - protection of landslide-prone areas
    - management/maintenance of forestry roads; and
- Load allocations and surrogate targets

The enclosed assessment document provides additional information, based on the limited information available, on what EPA and NOAA feel are positive aspects of the IR-TMDL process, current shortcomings, and what Oregon needs to do to satisfy its remaining additional management measures for forestry condition and achieve and maintain applicable water quality standards. We have also included feedback on Oregon's approach for satisfying the other two conditions on its Coastal Nonpoint Program related to new development and onsite sewage disposal systems.

According to the settlement agreement, EPA and NOAA must announce in the Federal Register our intent to fully approve or disapprove Oregon's Coastal Nonpoint Program by November 15, 2013. As we have shared with Oregon in the past, we must receive all information from Oregon satisfying its three remaining conditions and update the rationales for conditions receiving interim approval by June 30, 2013, in order to meet this deadline. EPA and NOAA are very concerned that we will not be able to announce our intent to fully approve Oregon's program by November 15, 2013. If we must disapprove the state's program, the Coastal Zone Act Reauthorization Amendments requires NOAA and EPA to withhold 30 percent of Oregon's Coastal Zone Management Act Section 306 funding and Clean Water Act Section 319 program.

As EPA and NOAA do not want to see the state lose critical funding that supports water quality and habitat protection, working with Oregon to achieve full approval of its Coastal Nonpoint Program continues to be a priority for NOAA and EPA. Both agencies will continue to work closely with ODEQ to expeditiously move its IR-TMDL effort forward and to enable the state to meet the other remaining conditions on its Coastal Nonpoint Program.

Sincerely,

Margaret Davidson, Acting Director
Office of Ocean and Coastal Resource Management
National Oceanic and Atmospheric Administration

Daniel D. Opalski, Director
Office of Water and Watersheds
Environmental Protection Agency, Region 10

cc: Dick Pedersen, Director, ODEQ
Gene Foster, Watershed Management Manager, ODEQ
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Bill Blosser, Chair, Oregon Environmental Quality Commission
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Allison LaPlante, Pacific Environmental Advocacy Center, Lewis and Clark Law School

Enclosure

Enclosure

EPA and NOAA's Assessment of Oregon's Implementation-Ready TMDL Approach and the State's Progress in Addressing the Remaining Conditions on its Coastal Nonpoint Pollution Control Program

1) ***Will the Implementation of the Implementation-Ready TMDL, in the Mid-Coast Sub-basins, Likely Result in Actions to Achieve and Maintain Water Quality Standards (WQS)?***

ODEQ has not yet begun to evaluate the management measures (MMs) needed to achieve and maintain water quality standards. Absent these MMs, EPA and NOAA do not believe the implementation-ready (IR)TMDL approach is likely to result in actions that achieve and maintain WQS. ODEQ has made good progress to establish the geographic scope of the sediment TMDL and the water quality targets for the TMDL to address turbidity and biocriteria listings. First, ODEQ used PREDATOR and Stressor ID methodology to assess the biocriteria impairments caused by sediment to determine the scope of sediment problems in the Mid-Coast. Second, ODEQ determined percent fine sediment targets associated with biological impairments to set sediment water quality targets for biocriteria listings. The determination of fine sediment water quality targets is an important step for establishing a benchmark by which to assess the effectiveness of management measures to improve water quality. EPA and NOAA believe the methodology that ODEQ has set forth is credible and establishes an important link between the aquatic life use and water quality.

However, as previously stated, the MMs remain the most important part of meeting the conditions for approval of the CNPCP. ODEQ needs to develop mandatory and enforceable MMs in the TMDLs that, if implemented, would result in attainment of applicable WQS. If ODEQ chooses to allow the Designated Management Agencies (DMAs) to develop the MMs, then ODEQ needs to determine whether the MMs submitted by the DMAs are adequate and require additional MMs if DMA actions alone are not adequate to meet applicable WQS .

2) ***Will Oregon's Plan Developing Implementation-Ready TMDLs throughout the Coastal Nonpoint Program Management Area using Satisfy the Outstanding Additional Management Measure for Forestry Condition on the State's Coastal Nonpoint Program?***

Based on what EPA and NOAA have been presented to date, we do not believe the IR TMDL approach is likely to satisfy outstanding forestry conditions. Although a conceptual forest road strategy that ODEQ has discussed with EPA has good potential, to date ODEQ has not provided a road strategy that is sufficiently specific and contains the required elements. Key elements of a viable forestroad strategy that could address outstanding concerns include, but are not limited to:

- A road inventory/assessment to identify where road-related impacts to water quality exist;
- A reasonable timeline for fixing these problems;

- A requirement to track and report on progress made to fix identified road problems. Implementation principles for the road program would include addressing the worst road problems or highest risk categories of road problems earlier in the overall timeline as well as "even flow" or milestone-based targets to ensure steady progress on identified road work.

- The required application of effective road siting, construction, operation and maintenance BMPs. The BMPs should ensure road stability and drainage of road runoff back onto the forest floor. Periodic monitoring or inspections would insure the implementation and effectiveness of BMPs.
- Since avoiding the direct discharge of sediment-laden road runoff into streams and other waterbodies should be a primary focus of a viable forest road program, targets for the maximum percentage of a road network allowed to discharge directly to streams and other waterbodies, or other similar targets, should be part of a viable roads program. Monitoring should be included to track progress towards meeting those targets. Road program requirements for vacating, abandoning, and closing roads, including storm proofing BMPs, are key.

A comprehensive roads program that requires the above elements has good potential to address legacy roads, cumulative impacts, and road density problems. The inclusion and specificity of the above elements will be considered in the NOAA/EPA determination of whether outstanding forestry conditions have been addressed.

EPA and NOAA are concerned about the lack of Oregon's progress on additional MMs for riparian and landslide prone area protection. Oregon Department of Forestry (ODF) is not considering requirements for protection of riparian areas around nonfish streams in their current riparian rulemaking effort. It is not clear that ODF will have developed requirements for protection of riparian areas around small and medium fish bearing streams via the rulemaking process within the timeline in which EPA and NOAA must make a final decision on the adequacy of Oregon's CNPCP. ODEQ has not developed additional management measures for small and medium fish bearing streams or nonfish streams in the IR-TMDL effort. There is a significant body of science supporting increased protection of riparian areas around small and medium streams in Oregon. Increased no cut buffers, higher tree retention targets, minimum canopy retention targets, and/or higher basal area targets are currently required on private forest lands, for similar forest types to Oregon's forest types, in the two adjacent coastal states.

Buffering of key segments of nonfish streams that effect downstream water quality, such as riparian areas above confluences of nonfish streams and fish streams; buffering of hollows, inner gorges, headwalls, unstable landforms, and stream initiation points; and buffering of special aquatic sites such as seeps, springs, wetlands and beaver ponds could help address sediment, large wood and stream temperature issues and additional MMs for riparian protection. NOAA and EPA strongly recommend that Oregon consider riparian protection approaches similar to those that have addressed CNPCP requirements in Washington and Oregon.

Oregon has not provided information regarding additional MMs for landslide prone areas. ODF already has required management measures for protection of landslide prone areas that pose a risk to humans. A similar approach could be applied on high risk landslide prone areas to protect water quality and fisheries. Oregon should consider adopting requirements similar to those of Washington for protection of landslide prone areas.

A viable program for protection of Oregon's landslide prone areas would include a process for identifying and designating high risk landslide prone areas. Factors such as slope and landform, sediment and wood delivery potential, and geologic factors could be used in the designation. Landscape scale tools such as LiDAR and DEMs could focus identification and designation efforts. An array of MMs, including no harvest and thinning at various levels, could be required in high risk areas based on predetermined factors such as delivery potential, the sensitivity of the aquatic resources, existing instream conditions, or other parameters. Oregon also could provide an option to utilize a certified geologist or engineers to develop viable options to a predetermined set of MMs.

In order to satisfy outstanding forestry conditions for protection of riparian and landslide prone areas, Oregon would need to require additional riparian MMs for both small and medium streams, for nonfish streams and for landslide prone areas.

3) *Feedback on the State's Progress in Meeting the New Development Condition on its Coastal Nonpoint Program*

To address its remaining condition for new development, ODEQ has proposed to:

- develop guidance, consistence with the new development 6217 (g) management measure, for TMDL Implementation Plan Development for urban and rural residential areas within the Coastal Nonpoint Program management area boundary; and
- provide a strategy and schedule for completing and updating TMDL Implementation Plans to be consistent with that new guidance.

In its July 2010 letter to EPA and NOAA, ODEQ committed to completing a final draft of the guidance by December 31, 2010, releasing the final guidance by June 30, 2011, and beginning to hold workshops for Designated Management Areas (DMAs) by June/July 2011. However, ODEQ has yet to complete the guidance; although ODEQ provided EPA and NOAA with a "final" draft in July 2012 entitled *Guidance for TMDL Implementation Plan Development for Urban/Rural Residential Land Uses within the Coastal Nonpoint Management Area*, it still needed significant work.

While EPA and NOAA have been supportive of the potential for this approach to address the new development management measure requirements, we are very concerned that the deadlines have slipped significantly. In addition, based on EPA and NOAA's review of the July 2012 "final" draft, it is still unclear whether the TMDL Implementation Plans developed would include practices consistent with the 6217(g) management measure for new development and whether ODEQ has the authority to require implementation of the new

development management measure, as needed (see comments EPA and NOAA provided to ODEQ by email on July 23, 2012). This gives us concern that this TMDL Implementation Plan Guidance for urban areas may not enable Oregon to satisfy its new development condition.

As ODEQ finalizes this guidance, it needs to make sure the guidance provides clear instruction to the DMAs that practices consistent with the new development management measure need to be incorporated into their Implementation Plans (i.e., practices that will reduce post-development total suspended solid (TSS) loadings by 80% or reduce TSS loadings so that the average annual TSS loads are no greater than predevelopment loadings, and maintain post-development peak runoff rate and average volume to pre-development levels). The guidance also needs to clearly indicate that ODEQ can ensure implementation of the new development management measure, as needed.

It was EPA and NOAA's understanding that the Implementation Guidance would require Urban DMAs to include practices consistent with the new development measure within their TMDL Implementation Plans or, at a minimum, that ODEQ would have the ability to require implementation of the recommended new development management measure. While states can use voluntary approaches backed by enforceable authorities to meet their Coastal Nonpoint Program requirements (see EPA and NOAA's 1998 *Final Administrative Changes Memo*), statements in Oregon's July 2012 "final" draft appear to contradict Oregon's September 23, 2005, legal opinion asserting that ODEQ does have authority to require implementation of the 6217(g) measures as necessary to control nonpoint source pollution.

EPA and NOAA hope ODEQ can expeditiously complete the *Guidance for TMDL Implementation Plan Development for Urban/Rural Residential Land Uses within the Coastal Nonpoint Management Area* and ensure that it clearly states that Urban DMAs need to include practices consistent with the new development measure and that ODEQ has the ability to ensure implementation of these practices, as needed. We strongly encourage ODEQ to share a revised final draft of the guidance with EPA and NOAA for review so we can confirm that these requirements are met or provide recommendations for how the draft can be improved further.

4) Feedback on the Oregon's Progress in Meeting the Onsite Sewage Disposal System (OSDS) Condition on its Coastal Nonpoint Program

To address its remaining condition for OSDS, ODEQ has proposed to develop rules to require point of sale inspections for systems within the Coastal Nonpoint Program boundary. EPA and NOAA applaud Oregon's progress on rule development and the fact that it was on target for meeting benchmarks in its July 2012 commitment letter. The proposed rules require all OSDS within the Coastal Nonpoint Program management area to be inspected by a professional engineer, registered environmental health specialist, wastewater specialist or certified inspector at the time of property transfer and that the results of the inspection be reported to ODEQ. The state has also provided a sample inspection form that provides a detailed examination of the system beyond a simple visual inspection. The proposed rules requiring point of sale inspections and reliance on qualified inspectors, combined with the

state's detailed inspection form, should enable the state to satisfy its OSDS condition when adopted.

EPA and NOAA are aware that ODEQ has decided to delay presenting the proposed rules to the Oregon EQC for adoption until March 2013 to give ODEQ more time to discuss the proposed rules with several state legislatures. We recognize some additional time may be needed to address potential concerns. However, we strongly hope that the adoption of the proposed rules will not be delayed beyond March 2013. In addition, EPA and NOAA expect ODEQ to ensure that significant changes to the proposed rules do not occur such that the rules would no longer enable Oregon to satisfy its remaining OSDS condition.

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The agencies assumed that ODEQ would have completed the Mid-Coast TMDLs by June 30, 2012 in accordance with ODEQ's July 21, 2010 commitment letter w~~W~~hen EPA and NOAA negotiated this milestone in the settlement agreement.~~,~~ ~~the agencies assumed that ODEQ would have completed the Mid-Coast TMDLs by June 30, 2012 in accordance with ODEQ's July 21, 2010 commitment letter.~~ During -2012, ODEQ notified EPA and NOAA that it needed to delay

~~expected~~ ~~to~~ completion of ~~e~~ the Mid-Coast TMDL (which would include required and enforceable BMPs that are likely to result in actions that will achieve and maintain WQS) ~~to be completed~~ until~~by~~ June 30, 2013. As a result, EPA and NOAA were unable to review the TMDL itself. Instead, in a good faith effort to nonetheless fulfill this provision of the settlement agreement, EPA and NOAA have considered many documents in making our assessment, including comments from the plaintiff ~~(see enclosed list).~~

Without a completed Mid-Coast TMDL that includes specific BMPs and a better understanding of how the TMDL process will address landslide-prone and forest road issues, EPA and NOAA do not have sufficient information to conclude whether the IR-TMDL approach would 1) enable Oregon to achieve and maintain applicable water quality standards, and 2) satisfy the additional management measures for forestry conditions in its Coastal Nonpoint Program. Based on what we have been presented to date, we have concerns whether the current approach would enable the state to achieve those goals.

Even though we understand that ODEQ has put a great deal of effort in developing key components of the Mid-Coast TMDL, the original deadlines have slipped significantly. In the July 21, 2010, letter, ODEQ committed interim benchmarks other than TMDL development. By January 31, 2011, ODEQ agreed to provide additional detail on the IR-TMDL process, including describing how the TMDL approach will address NOAA and EPA's concerns with landslide prone areas and road density and maintenance, and providing examples of the types of "safe harbor" BMPs Oregon would use to address our concerns about adequate protection of riparian and landslide-prone areas and management/maintenance of forestry roads and meet load allocations and surrogate targets. Yet, to date, Oregon has not met the dates for additional detail on the IR-TMDL process or for completion of the Mid-Coast TMDLs.

More importantly, there has been limited progress on developing and identifying the BMPs which are key to meeting both water quality standards and the outstanding Coastal Nonpoint Program conditions. In order to meet the Settlement Agreement conditions, it is important that Oregon begin as soon as possible the analyses and discussion with stakeholders on the management measures needed to meet applicable water quality standards. Specifically, EPA and NOAA will need the following information to assess whether DEQ has taken sufficient actions to address the additional forestry management measures in the Coastal Nonpoint Program:

- Additional detail on the IR-TMDL process;
- Approach to address landslide prone areas and road density and maintenance;
- Examples of "safe harbor" BMPs Oregon would use to address
    - protection of riparian areas
    - protection of landslide-prone areas
    - management/maintenance of forestry roads; and
- Load allocations and surrogate targets

The enclosed assessment document provides additional information, based on the limited information available, on what EPA and NOAA feel are positive aspects of the IR-TMDL process, current shortcomings, and what Oregon needs to do to satisfy its remaining additional management measures for forestry condition and achieve and maintain applicable water quality standards. We have also included feedback on Oregon's approach for satisfying the other two

conditions on its Coastal Nonpoint Program related to new development and onsite sewage disposal systems.

According to the settlement agreement, EPA and NOAA must announce in the Federal Register our intent to fully approve or disapprove Oregon's Coastal Nonpoint Program by November 15, 2013. As we have shared with Oregon in the past, we must receive all information from Oregon satisfying its three remaining conditions and update the rationales for conditions receiving interim approval by June 30, 2013, in order to meet this deadline. EPA and NOAA are very concerned that we will not be able to announce our intent to fully approve Oregon's program by November 15, 2013. If we must disapprove the state's program, the Coastal Zone Act Reauthorization Amendments requires NOAA and EPA to withhold 30 percent of Oregon's Coastal Zone Management Act Section 306 funding and Clean Water Act Section 319 program.

As EPA and NOAA do not want to see the state lose critical funding that supports water quality and habitat protection, working with Oregon to achieve full approval of its Coastal Nonpoint Program continues to be a priority for NOAA and EPA. Both agencies will continue to work closely with ODEQ to expeditiously move its IR-TMDL effort forward and to enable the state to meet the other remaining conditions on its Coastal Nonpoint Program.

Sincerely,

Margaret Davidson, Acting Director
Office of Ocean and Coastal Resource Management
National Oceanic and Atmospheric Administration

Daniel D. Opalski, Director
Office of Water and Watersheds
Environmental Protection Agency, Region 10

cc: Dick Pedersen, Director, ODEQ
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Enclosure

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EPA and NOAA's Assessment of Oregon's Implementation-Ready TMDL Approach and the State's Progress in Addressing the Remaining Conditions on its Coastal Nonpoint Pollution Control Program

1) ***Will the Implementation of the Implementation-Ready TMDL, in the Mid-Coast Sub-basins, Likely Result in Actions to Achieve and Maintain Water Quality Standards (WQS)?***

Comment [kg1]: Plural?

ODEQ has not yet begun to evaluate the management measures (MMs) needed to achieve and maintain water quality standards. Absent these MMs, -EPA and NOAA -do not believe the implementation-ready (IR)TMDL approach is likely to result in actions that achieve and maintain WQS. ODEQ has made good progress to establish the geographic scope of the sediment TMDL and the water quality targets for the TMDL to address turbidity and biocriteria listings. First, ODEQ used PREDATOR and Stressor ID methodology to assess the biocriteria impairments caused by sediment to determine the scope of sediment problems in the Mid-Coast. Second, ODEQ determined percent fine sediment targets associated with biological impairments to set sediment water quality targets for biocriteria listings. The determination of fine sediment water quality targets is an important step for establishing a benchmark by which to assess the effectiveness of management measures to improve water quality. EPA and NOAA believe the methodology that ODEQ has set forth is credible and establishes an important link between the aquatic life use and water quality.

Comment [JW2]: Let me know if you would like me to include more detail on how the fine sediment targets were developed, what they are, and/or why we believe they're scientifically credible. This is an area that ODEQ has gotten a lot of pushback on, but I believe is the right approach to moving to MMs. **We should explain what information we reviewed in making our determination that it is credible.**

However, as previously stated, the MMs remain the most important part of meeting the conditions for approval of the CNPCP. ODEQ needs to develop mandatory and enforceable MMs in the TMDLs that, if implemented, would result in attainment of applicable WQS. If ODEQ chooses to allow the Designated Management Agencies (DMAs) to develop the MMs, then ODEQ needs to determine whether the MMs submitted by the DMAs are adequate and require additional MMs if DMA actions alone are not adequate to meet applicable WQS.

Comment [JW3]: This is what they're doing in the TMDL and why having a target is important, so they can show assess how far DMA plans go towards meeting those targets and how much further they need to go.

2) ***Will Oregon's Plan Developing Implementation-Ready TMDLs throughout the Coastal Nonpoint Program Management Area using Satisfy the Outstanding Additional Management Measure for Forestry Condition on the State's Coastal Nonpoint Program?***

Comment [JC4]: From Alan: It should be clear that if DMAs are identifying the MMs that will be implemented, those MMs need to be identified and included in the TMDL that gets submitted to EPA for review and approval. If the MMs identified by the DMAs are not included in the TMDL, the TMDL would be more representative of a traditional TMDL vs. an IR-TMDL.

Based on what EPA and NOAA have been presented to date, we do not believe the IR TMDL approach is likely to satisfy outstanding forestry conditions. Although a conceptual forest road strategy that ODEQ has discussed with EPA has good potential, to date ODEQ has not provided a road strategy that is sufficiently specific and contains the required elements. Key elements of a viable forest-road strategy that could address outstanding concerns include, but are not limited to:

Comment [kg5]: I added "forest" in a few places but I'm not sure this is correct. Is it?

- A road inventory/assessment to identify where road--related impacts to water quality exist;
- A reasonable timeline for fixing these problems;

Comment [kg6]: Which problems?

- A requirement to track and report on progress made to fix identified road problems. Implementation principles for the road program would include addressing the worst road problems or highest risk categories of road problems earlier in the overall timeline as well as "even flow" or milestone-based targets to ensure steady progress on identified road work.

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- The required application of effective road siting, construction, operation and maintenance BMPs. The BMPs should ensure road stability and drainage of road runoff back onto the forest floor. Periodic monitoring or inspections would insure the implementation and effectiveness of BMPs.

Comment [kg7]: Is it a program or a strategy?

- Since avoiding the direct discharge of sediment--laden road runoff into streams and other waterbodies should be a primary focus of a viable forest road program, targets for the maximum percentage of a road network allowed to discharge directly to streams and other waterbodies, or other similar targets, should be part of a viable roads program. Monitoring should be included to track progress towards meeting those targets. Road program requirements for vacating, abandoning, and closing roads, including storm proofing BMPs, are key.

A comprehensive roads program that requires the above elements has good potential to address legacy roads, cumulative impacts, and road density problems. The inclusion and specificity of the above elements will be considered in the NOAA/EPA determination of whether outstanding forestry conditions have been addressed.

EPA and NOAA are concerned about the lack of Oregon's progress on additional MMs for riparian and landslide prone area protection. Oregon Department of Forestry (ODF) is not considering requirements for protection of riparian areas around nonfish streams in their current riparian rulemaking effort. It is not clear that ODF will have developed requirements for protection of riparian areas around small and medium fish bearing streams via the rulemaking process within the timeline in which EPA and NOAA must make a final decision on the adequacy of Oregon's CNPCP. ODEQ has not developed additional management measures for small and medium fish bearing streams or nonfish streams in the IR-TMDL effort. There is a significant body of science supporting increased protection of riparian areas around small and medium streams in Oregon. Increased no cut buffers, higher tree retention targets, minimum canopy retention targets, and/or higher basal area targets are currently required on private forest lands, for similar forest types to Oregon's forest types, in the two adjacent coastal states.

Buffering of key segments of nonfish streams that effect downstream water quality, such as riparian areas above confluences of nonfish streams and fish streams; buffering of hollows, inner gorges, headwalls, unstable landforms, and stream initiation points; and buffering of special aquatic sites such as seeps, springs, wetlands and beaver ponds could help address sediment, large wood and stream temperature issues and additional MMs for riparian protection. NOAA and EPA strongly recommend that Oregon consider riparian protection approaches similar to those that have addressed CNPCP requirements in Washington and Oregon.

Comment [kg8]: Do we mean some other state?

Oregon has not provided information regarding additional MMs for landslide prone areas. ODF already has required management measures for protection of landslide prone areas that pose a risk to humans. A similar approach could be applied on high risk landslide prone areas to protect water quality and fisheries. Oregon should consider adopting requirements similar to those of Washington for protection of landslide prone areas.

A viable program for protection of Oregon's landslide prone areas would include a process for identifying and designating high risk landslide prone areas. Factors such as slope and landform, sediment and wood delivery potential, and geologic factors could be used in the designation. Landscape scale tools such as LiDAR and DEMs could focus identification and designation efforts. An array of MMs, including no harvest and thinning at various levels, could be required in high risk areas based on predetermined factors such as delivery potential, the sensitivity of the aquatic resources, existing instream conditions, or other parameters. Oregon also could provide an option to utilize a certified geologist or engineers to develop viable options to a predetermined set of MMs.

Comment [kg9]: What are these?

In order to satisfy outstanding forestry conditions for protection of riparian and landslide prone areas, Oregon would need to require additional riparian MMs for both small and medium streams, for nonfish streams and for landslide prone areas.

3) *Feedback on the State's Progress in Meeting the New Development Condition on its Coastal Nonpoint Program*

To address its remaining condition for new development, ODEQ has proposed to:

- develop guidance, consistence with the new development 6217 (g) management measure, for TMDL Implementation Plan Development for urban and rural residential areas within the Coastal Nonpoint Program management area boundary; and
- provide a strategy and schedule for completing and updating TMDL Implementation Plans to be consistent with that new guidance.

In its July 2010 letter to EPA and NOAA, ODEQ committed to completing a final draft of the guidance by December 31, 2010, releasing the final guidance by June 30, 2011, and beginning to hold workshops for Designated Management Areas (DMAs) by June/July 2011. However, ODEQ has yet to complete the guidance; although ODEQ provided EPA and NOAA with a "final" draft in July 2012 entitled *Guidance for TMDL Implementation Plan Development for Urban/Rural Residential Land Uses within the Coastal Nonpoint Management Area*, it still needed significant work.

While EPA and NOAA have been supportive of the potential for this approach to address the new development management measure requirements, we are very concerned that the deadlines have slipped significantly. In addition, based on EPA and NOAA's review of the July 2012 "final" draft, it is still unclear whether the TMDL Implementation Plans developed would include practices consistent with the 6217(g) management measure for new development and whether ODEQ has the authority to require implementation of the new

Comment [AC10]: Add something about extent of TMDLs and types?

development management measure, as needed (see comments EPA and NOAA provided to ODEQ by email on July 23, 2012). This gives us concern that this TMDL Implementation Plan Guidance for urban areas may not enable Oregon to satisfy its new development condition.

As ODEQ finalizes this guidance, it needs to make sure the guidance provides clear instruction to the DMAs that practices consistent with the new development management measure need to be incorporated into their Implementation Plans (i.e., practices that will reduce post-development total suspended solid (TSS) loadings by 80% or reduce TSS loadings so that the average annual TSS loads are no greater than predevelopment loadings, and maintain post-development peak runoff rate and average volume to pre-development levels). The guidance also needs to clearly indicate that ODEQ can ensure implementation of the new development management measure, as needed.

It was EPA and NOAA's understanding that the Implementation Guidance would require Urban DMAs to include practices consistent with the new development measure within their TMDL Implementation Plans or, at a minimum, that ODEQ would have the ability to require implementation of the recommended new development management measure. While states can use voluntary approaches backed by enforceable authorities to meet their Coastal Nonpoint Program requirements (see EPA and NOAA's 1998 *Final Administrative Changes Memo*), statements in Oregon's July 2012 "final" draft appear to contradict Oregon's September 23, 2005, legal opinion asserting that ODEQ does have authority to require implementation of the 6217(g) measures as necessary to control nonpoint source pollution.

EPA and NOAA hope ODEQ can expeditiously complete the *Guidance for TMDL Implementation Plan Development for Urban/Rural Residential Land Uses within the Coastal Nonpoint Management Area* and ensure that it clearly states that Urban DMAs need to include practices consistent with the new development measure and that ODEQ has the ability to ensure implementation of these practices, as needed. We strongly encourage ODEQ to share a revised final draft of the guidance with EPA and NOAA for review so we can confirm that these requirements are met or provide recommendations for how the draft can be improved further.

4) ***Feedback on the Oregon's Progress in Meeting the Onsite Sewage Disposal System (OSDS) Condition on its Coastal Nonpoint Program***

To address its remaining condition for OSDS, ODEQ has proposed to develop rules to require point of sale inspections for systems within the Coastal Nonpoint Program boundary. EPA and NOAA applaud Oregon's progress on rule development and the fact that it was on target for meeting benchmarks in its July 2012 commitment letter. The proposed rules require all OSDS within the Coastal Nonpoint Program management area to be inspected by a professional engineer, registered environmental health specialist, wastewater specialist or certified inspector at the time of property transfer and that the results of the inspection be reported to ODEQ. The state has also provided a sample inspection form that provides a detailed examination of the system beyond a simple visual inspection. The proposed rules requiring point of sale inspections and reliance on qualified inspectors, combined with the

state's detailed inspection form, should enable the state to satisfy its OSDS condition when adopted.

EPA and NOAA are aware that ODEQ has decided to delay presenting the proposed rules to the Oregon EQC for adoption until March 2013 to give ODEQ ~~them~~ more time to discuss the proposed rules with several state legislatures. We recognize some additional time may be needed to address potential concerns. However, we strongly hope that the adoption of the proposed rules will not be delayed beyond March 2013. In addition, EPA and NOAA expect ODEQ to ensure that significant changes to the proposed rules do not occur such that the rules would no longer enable Oregon to satisfy its remaining OSDS condition.