

**October 9, 2000**

**TO: Governor Kitzhaber**  
**CC: Louise Solliday, GNRO**  
**FROM: Dick Benner, DLCD**  
**SUBJECT: Oregon Plan Quarterly Implementation Report**

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### **Summary of measures**

In February 2000, DLCD reviewed and revised its measures for the Oregon Plan for Salmon and Watersheds. DLCD's revised measures now consist of the following:

- ❖ DLCD-1: *Implement the Coastal Nonpoint Pollution Control Program (CNPCP)*, and a related measure, DLCD-5: *Implement CNPCP Urban management measures*; and DLCD-3: *Dynamic Estuary Management Information System (DEMIS)*. These three measures only apply in coastal basins.
- ❖ DLCD-9: *Develop a land use planning and growth management strategy for water quality and aquatic habitat*, and DLCD-10: *Revise Statewide Planning Goals to improve protection of water quality and aquatic habitat*. DLCD is only partially funded, and DLCD-10 would be implemented based on full funding and the results of DLCD-9.
- ❖ DLCD-4: *Implement Goal 5 Rules for Riparian Protection*; DLCD-6: *Update estuary habitat maps*; and DLCD-8: *Outreach/Education for members of local planning commissions and watershed councils* were not funded in the 1999-2001 biennium.
- ❖ For a variety of reasons, DLCD-7: *Local Government Salmon Recovery Work Group* is not being implemented.
- ❖ DLCD-2: *Riparian area technical assistance* was completed in 1997.

### **Implementation Measure Activities, Accomplishments, and Schedule Statewide**

DLCD-4: *Implement Goal 5 Rules for Riparian Protection*. As noted in the 1999 Implementation Report, without funding to pass through to local governments to implement Goal 5 rules related to riparian areas, DLCD's emphasis in DLCD-4 has been to provide technical assistance to local governments that are revising their regulations to protect riparian corridors. In this capacity, DLCD staff routinely answers questions about, and provides interpretations of, the Goal 5 rule. There is no firm schedule for completing DLCD-4.

### **Issues Needing Discussion/Resolution:**

It appears to us that publication of the 4(d) rule for listed salmonids may be having a significant chilling effect on the willingness of local jurisdictions to adopt programs to comply with the Goal 5 riparian rule. Metro and the larger Willamette Valley cities are moving forward to

improve protection, but smaller jurisdictions—those with a small staff and too many things to do—now find themselves in a difficult place. Cities and counties are understandably reluctant to begin what can be a difficult process to amend their local codes to improve riparian area protection, if they don't know the result will both comply with state law and avoid take under the ESA.

Many people question whether the Goal 5 rule is sufficient to avoid take. NMFS staff has said the Goal 5 riparian corridor “Safe Harbor” is not adequate to comply with the ESA. As you know, apart from “200 foot” reference in the Background for the proposed 4(d) rule published last December, NMFS has not said what *would* constitute a sufficient riparian buffer width in the urban landscape. Understandably, they don't want to cite a number, and equally understandably, local governments need a single number. The Goal 5 “safe harbor” was designed to provide a low-cost quick and predictable way to comply with goal requirements.

Although NMFS has not said so, it is possible that the standard Goal 5 process (often referred to as the “ESEE process”) *could* be used to develop a local program that would pass muster under the 4(d) rule. The standard process is based on the definition, inventory, and protection of “significant” riparian resources. Presumably, a city could define significant resources based on its consultation with NMFS.

In the end, we see a lot of people—including us—looking for a magic number, but we don't believe one is going to materialize in the short term. After NMFS completes the 4(d) workshops, we expect to resume discussions with them about the rule.

### **Coastal Basins**

DLCD-1, Implement the Coastal Nonpoint Pollution Control Program (CNPCP):

DLCD developed draft five- and fifteen-year implementation plans for the CNPCP and submitted them to National Oceanographic and Atmospheric Administration's Office of Coastal Resource Management (OCRM) in June. NOAA has not yet responded with written comments on the plans. Several of the required CNPCP management measures are not directly implemented through state law. As outlined in the five year implementation plan, DLCD's CNPCP strategy is to implement the remaining CNPCP management measures through existing state programs to meet water quality standards, principally the Senate Bill 1010 and TMDL processes. DLCD has also set aside funds to assist DEQ's Northwest Region Hazardous Waste section develop a technical assistance and educational outreach program to address waste generation and disposal problems in marinas.

DLCD-3, Dynamic Estuary Management Information System (DEMIS):

Work on DEMIS has continued as planned. We have finished collecting GIS and raster data sets for the Coquille and Nehalem estuaries, and we are nearing completion for the Siletz and Siuslaw estuaries. We also have updated the data sets previously collected for the Coos Bay estuary. For each of these estuaries, a preliminary inventory of areas with potential for restoration has been created, along with an accompanying database to hold restoration-related information for each site in the inventory. The database population process is underway with completion expected by this November. Once all of the data has undergone final review, the inventory results will be available on the DEMIS website at <http://www.lcd.state.or.us/coast/demis/core.htm>.

DLCD-5, CNPCP Urban Management Measures

We have worked with DEQ to develop the *Water Quality Model Code and Guidebook* to assist local governments with meeting load allocations under a TMDL and to address Endangered Species Act liability issues surrounding new urban development and redevelopment. We also recently reviewed the scientific basis and administrative strategy used by Metro to adopt Title 3 of its Functional Plan. As part of a watershed management strategy to restore and protect water quality in the region, Metro has chosen to protect riparian areas, streams, and wetlands under Statewide Planning Goals 6 and 7. Even though Metro is not subject to the requirements of the CNPCP, Metro's work could set a precedent and provide an example for using existing state regulations to implement urban management measures required by the coastal nonpoint program.

### **Willamette Basin**

DLCD had provided considerable support to various groups working under the Willamette restoration Initiative, most recently with the *Willamette Measures Integration Group*. The WMIG is assisting WRI staff in organizing and aligning state and federal agency measures with the draft goals for the restoration of the Willamette basin, and assessing their adequacy in restoring the Willamette watershed.

### **Other Agency Activities that Support the Oregon Plan**

*Riparian Management Work Group:* DLCDC spent some time in the beginning of the quarter working with the Riparian Management Work Group (pursuant to section 3(n) of Executive Order 99-01) to edit and finalize the group's report. All the agencies involved in the RMWG have had suggested edits to the draft final report, some of which conflict with others. The report is now expected to be finalized by the end of 2000, which is well behind the original target date for completion of March, 2000.

*Tillamook County Gravel Removal:* Throughout the last quarter, a substantial amount of staff time has been spent on issues related to gravel removal in Tillamook County. DLCDC has reviewed and commented on several DSL and Corps of Engineers permits for gravel removal from Tillamook County streams. Many of the proposals are subject to a mediated agreement first signed in 1992. However, a few proposals involve estuarine areas, which are not subject to the mediated agreement. DLCDC is also one of several parties involved in developing a "Stream Corridor Management Plan" as called for in the mediated agreement.

### **Issues Needing Discussion/Resolution:**

Tillamook County gravel removal proposals have involved several issues which need serious attention before next year's in-water work period. First, it is clear that, even though the mediated agreement prohibits commercial gravel removal from five streams, the proposals to remove gravel for "noncommercial" purposes clearly reach the magnitude of commercial operations. Second, the primary purposes cited for noncommercial proposals are erosion control and flood control, and while there are several alternative approaches to address erosion and flooding problems, state and federal permit processes do not require that less-invasive alternatives to gravel removal be considered or implemented first. Third, local, state, and federal agencies are being asked to make flood management decisions on the basis of single, uncoordinated, unrelated gravel removal proposals. And finally, one of the most popular ideas among Tillamook citizens appears to be to dredge estuarine areas to reduce flooding, but 1) dredging below tide is not likely to affect flows above tide; and 2) estuarine dredging for flood control purposes is not permitted under Goal 16.

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