

RESPONSES TO COMMENTS ON APPENDIX I

One of the responses from the September Mid-Coast Water Planning Partnership post-webinar survey included substantive feedback and concerns that the facilitation team, co-conveners, and local coordinator felt warranted a written response. This document responds to the major issues raised in the survey response in order to be transparent with all partners in how the comments were considered and/or addressed.

COMMENT: “Appendix I is full of misinformation and the authors [sic] personal commentary on the Oregon Forest Practices Act.”

RESPONSE: The appendix was included in the document at the request of several charter signatories, who requested to incorporate a review of policies, including the Endangered Species Act, that were relevant to implementation of this plan. The appendix contains information from state and federal agency websites and publications, staff from state and federal agencies focused on water quality and provision, science and policy analysis published in scholarly journals and books, supported by several dozen references. While some of the information, e.g. the policy analysis and historical context, may be open to different interpretations by stakeholders with different agendas, it does not reflect “personal commentary” nor is it “misinformation”. The appendix is already quite lengthy; the section on the Oregon Forest Practices Act is intended to summarize its evolution and principal tenets related to water quality, not provide an exhaustive, detailed history. The commenter does provide some instances where clarification is needed, or pertinent information was omitted, which are addressed below.

SENTENCE IN QUESTION: “As of August 2021, the FPA does not have any water quality protection provisions for operations in landslide-prone areas.”

RESPONSE: This sentence was based on the fact that FPA provisions for landslide prone areas and steep slopes are focused primarily on road locations and identifying areas where landslides could pose a threat to human life and infrastructure, rather than protection of water quality specifically. But the sentence as written appears to be open to misinterpretation. Also, technical assistance related to but not part of the FPA to reduce landslide risks to waterways during harvest operations has been provided in recent years. Therefore, the sentence in question was deleted and replaced with text as follows: *“In November 2018, the ODF issued additional guidance for implementing FPA rules for ground-based forest operations on steep slopes.”* A citation for this guidance document was also added, along with a citation for a 2003 technical note on high landslide hazard locations and public safety.

SENTENCE IN QUESTION: “As of August 2021, the FPA still lacks provisions to protect small, non-fish-bearing, ephemeral and intermittent streams during harvesting.”

RESPONSE: This sentence regards the fact that FPA provisions do not include protective buffers where harvesting is limited or precluded along these stream types. Harvesting is allowed up to the edge of these waterways, and any additional sediment inputs or other impacts that result can be transported downstream into protected reaches where beneficial uses have been identified, affecting water quality there. The text was clarified to be more specific about this, and to acknowledge protections in place for other stream types, as follows:

“On lands subject to FPA rules, fish-bearing streams, streams used as domestic water supplies, and non-fish, non-domestic medium and large streams (as defined in the FPA stream classification system described below) currently have some type of buffer requirement. The widths of these buffers are generally less than those for similar streams on state and federal forestlands. The FPA does not require buffer strips where harvesting is limited or precluded along small, non-fish-bearing, ephemeral and intermittent streams.” A citation (Boisjolie et al. 2017) was added in support of these statements.

COMMENT: “There is not a single mention of the June 2020 legislation that was passed and went into effect January of 2021 expanding buffers around streams, including all flowing fish and non-fish streams when helicopter herbicides in forestry are applied.”

RESPONSE: True. This oversight was corrected by adding text based on information in an ODF summary of the bill (SB 1602), in two places, along with a citation for the ODF summary document:

“Oregon Senate Bill 1602, signed into law in 2020, included several more updates to the FPA. Changes that went into effect on January 1, 2021 increased buffers around homes, schools, water intakes, and some streams for helicopter spraying of forestry pesticides. The updated buffers, within which pesticides may not be sprayed, are:

- *At least 75 feet from streams with fish or domestic water use;*
- *50 feet from other streams with surface water present;*
- *300 feet from a school or inhabited dwelling; and*
- *300 feet from a qualifying water intake.*

The law did not change regulations for pesticides sprayed by ground, fixed-wing, and drone methods. (Barnard and Hennemann 2020.)

Senate Bill 1602 also included changes to the ODF Forest Activity Electronic Notification and Reporting System (FERNS), described in more detail below.”

“Senate Bill 1602 of 2020 included changes to the FERNS notification system to improve communication among helicopter pesticide sprayers, neighbors, and water users. The law requires the operator overseeing the action, the timber owner, or the landowner to send helicopter pesticide spray plans to the ODF. These plans must include:

- *Pesticides likely to be used;*
- *Areas to be sprayed;*
- *A 90-day window for applying the pesticides; and*
- *The operator, timber owner, or landowner's mailing address, email, and phone number.*

Additionally, pesticide applicators must use the FERNS e-notification system to notify registered water users and neighbors that are within one mile of the area(s) to be sprayed by 7 p.m. the night before the planned spray. Neighbors and water users must sign up to receive these notices via the FERNS. The neighbors and water users who can sign up for these specific notifications are limited to those within one mile of the proposed work. They will receive notices by email or text message about the proposed 90-day window, and the night before the flights. Operators must wait 30 days before spraying areas within one mile of registered water users and neighbors to allow for communications among these neighbors. These

updates involved some additional development of the FERNS and are scheduled to be implemented by June 2022.” (Barnard and Hennemann 2020.)

COMMENT: The respondent also indicated concerns with Action Items 46 and 47 and recommends collapsing into the language already existing into Action Item 44.

RESPONSE: This proposal seeks to revise Action Items where the subset of charter signatories focused on drafting the plan reached informed consent. Therefore, it is important to take this proposal back to the charter signatories and the larger Partnership for them to consider the proposal. The charter signatories will vote on the proposal at the November 18th meeting per the consensus process laid out in the charter.