



Oregon
Department
of Agriculture

MEMORANDUM

TO: House Agriculture and Land Use Committee members

FROM: Lisa Hanson, Deputy Director, Oregon Department of Agriculture
Shannon Hurn, Deputy Director, Oregon Department of Fish and Wildlife
Bill Ryan, Deputy Director, Oregon Department of State Lands

DATE: February 3, 2020

SUBJECT: Letter of Intent - HB 2437 Agency Roles

House Bill 2437 (2019), tasked the Oregon Department of Agriculture (ODA), Department of State Lands (DSL), and Oregon Fish and Wildlife (ODFW) to create a workable process for persons to maintain traditionally maintained channels while protecting ecological and life history functions of fish and wildlife that inhabit the channels. HB 2437 will be codified in ORS196.

Our three agencies are working closely together to implement HB 2437, with respect to our respective roles and authorities. HB 4155 provides a narrowly focused technical fix that will allow the three departments to implement those roles and responsibilities in a phased approach, aimed to minimize potential environmental risk and allow for adaptive management.

Language in HB 2437 and clarified by HB 4155 provides narrow, defined roles and responsibilities for ODA to implement a notification system to allow maintenance activities in "traditionally maintained channels" under specific conditions and in compliance with certain criteria. ODA, in coordination with ODFW, is responsible to audit compliance with the criteria. ODA and DSL in consultation with ODFW will establish details for addressing compliance and enforcement via a memorandum of understanding (MOU) as directed by HB2437 (2019) Sections 7 and 8. Under the new notification process, DSL will maintain final enforcement authority for Removal Fill Law compliance.

To implement the responsibilities assigned in HB 2437, each agency has a defined set of responsibilities.

Oregon Department of State Lands:

- Conduct rulemaking and consult with ODA and ODFW during the rulemaking process
- Maintain web-based maps of Essential Salmonid Habitat (ESH) streams
 - Channels listed as ESH are not eligible for this notification program
- Decide final notice mandatory conditions when ODA and ODFW do not agree
- Regulation and Enforcement of non-compliance issues e.g.
 - Wetland fill of sidecast material beyond the 1-year limit provided in ORS 196.906 - 196.919
 - Wetland and channel fill and removal outside of the notification process established by HB2437 (2019).
- Develop one or more General Permits for some maintenance activities in some channels that do not qualify for this notification program such as within wet or ESH designated channels.

Oregon Department of Agriculture:

- Provide information to landowners regarding the notification process, habitat and water quality improvement opportunities, and onsite audits
- Coordinate with Soil and Water Conservation Districts to engage landowners and offer technical assistance
- Receive notifications of maintenance activities from landowners and evaluate whether they are complete and consistent with the conditions in HB 2437
- Consult with ODFW and DSL regarding notifications received
- Perform site visits to
 - Identify additional conditions on maintenance activities when necessary
 - Conduct audits of on-going or completed maintenance activities
 - Evaluate compliance with the conditions in HB 2437 and additional site-specific conditions
- Work with landowners to address any compliance issues identified during the onsite audits

Per the direction provided in HB2437, ODA is conducting rulemaking in consultation with DSL and ODFW to establish a notice program for agriculture channel maintenance. HB 4155 allows ODA to take a phased approach to implementation of the notice program. This technical fix allows the three agencies to assess and adjust the program before making it available statewide.

Oregon Department of Fish and Wildlife:

- Conduct rulemaking to establish in-water work periods and consult with ODA and DSL during the rulemaking process
- Define the in-channel work periods for covered maintenance activities

- Review all complete notices received by ODA
 - Recommend additional mandatory conditions for a notice as needed
- Accompany ODA on site visits for
 - Consideration of additional maintenance activity conditions when necessary
 - Audits of on-going or completed maintenance activities
 - Compliance

These directions will be memorialized in an MOU between the Oregon Department of Agriculture, Oregon Department of State Lands, and Oregon Department of Fish and Wildlife. The three agencies are coordinating their rulemaking and MOU development efforts with the intent of implementing the notification process in time for the late summer summer/early fall 2020 work period.