PLANNING COMMISSION WORK SESSION AGENDA
Monday, August 26, 2024 - 6:00 PM
Council Chambers, 169 SW Coast Hwy, Newport, Oregon 97365

All public meetings of the City of Newport will be held in the City Council Chambers of the Newport City Hall, 169 SW Coast Highway, Newport. The meeting location is accessible to persons with disabilities. A request for an interpreter, or for other accommodations, should be made at least 48 hours in advance of the meeting to Erik Glover, City Recorder at 541.574.0613, or e.glover@newportoregon.gov.

All meetings are live-streamed at https://newportoregon.gov, and broadcast on Charter Channel 190. Anyone wishing to provide written public comment should send the comment to publiccomment@newportoregon.gov. Public comment must be received four hours prior to a scheduled meeting. For example, if a meeting is to be held at 3:00 P.M., the deadline to submit written comment is 11:00 A.M. If a meeting is scheduled to occur before noon, the written comment must be submitted by 5:00 P.M. the previous day.
To provide virtual public comment during a city meeting, a request must be made to the meeting staff at least 24 hours prior to the start of the meeting. This provision applies only to public comment and presenters outside the area and/or unable to physically attend an in person meeting.

The agenda may be amended during the meeting to add or delete items, change the order of agenda items, or discuss any other business deemed necessary at the time of the meeting.

---

1. CALL TO ORDER

Bill Branigan, Bob Berman, Jim Hanselman, Gary East, Braulio Escobar, John Updike, Dustin Capri, and Greg Sutton.

2. UNFINISHED BUSINESS

2.A Progress Report #2: The Newport Comprehensive Plan Streamlining Project (Beth Young).
Memorandum
New Sample Chapter 9
Oregon Statewide Planning Goal 11: Public Facilities and Services

3. NEW BUSINESS

3.A FEMA National Flood Insurance Program- Endangered Species Act Integration-Pre-Implementation Compliance Measure Discussion.
Memorandum
City of Newport PICM Community Letter (July 15, 2024)
FEMA PICM Fact Sheet
FEMA Oregon NFIP Model Ordinance
FEMA Habitat Assessment Guide
Oregon Delegation Letter to FEMA (August 22 , 2024)
Slide Presentation from FEMA's 4/20/23 Scoping Session

3.B Planning Commission Work Program Update.
PC Work Program - 08-22-24

4. ADJOURNMENT

City of Newport

Community Development Department

Memorandum

To: Planning Commission / Commission Advisory Committee

From: Associate Planner Beth Young, AICP

Date: August 23, 2024

Re: Progress Report #2: The Newport Comprehensive Plan Streamlining Project

---

If you recall from my June presentation, the goals of this project are to make the Newport Comprehensive Plan easy to navigate, both online and in print; to reduce the time required to access specific information; and to ensure that the document is respectful of all Newport citizens and interested parties.

I have, as well as I could, rearranged the chapters to align with, and to be in the same order as, the Statewide Goals. Chapter 9, for example, corresponds to Statewide Goal 11 (some chapters correspond to more than one Goal). Every chapter will begin with brief descriptions of that chapter's elements accompanied by Newport-specific (if possible) photographs. As promised, the "Goals, Policies and Implementation Measures" portion of each chapter will not change in any way.

Sample Chapter 9

Attached is sample Chapter 9 for your review and comment. This chapter aligns with Statewide Goal 11. Chapter 9 is mostly the old Chapter 5, with the Newport Police Department from old Chapter 6. I added City Streets, Newport Fire Department, Newport Municipal Airport, and Port of Newport (noting that the Port is not a part of the City) because these subjects are discussed in Statewide Goal 11.

DLCD now requires that certain items be included in all public facility plans as well as the body of the comp plan. They are: (a) a full list of all public facility plans (by title); (b) maps or written descriptions of all the facilities' locations and service areas; and (c) the policy(ies) or urban growth management agreement designating the provider or providers of each public facility system. I am currently gathering this info and these will be in a later version of Chapter 9.

Attachments

1. New Sample Chapter 9
2. Oregon Statewide Planning Goal 11: Public Facilities and Services

Chapter 9 Public Facilities and Services (Statewide Goal 11)

Water Supply

Newport's earliest water rights date back to a 1909 permit for a dam on Blattner Creek, a tributary of Big Creek. By 1915, the city had established a water supply system and received a Certificate of Water Right for 242 gallons per minute. Between 1915 and 1951 Newport secured additional water rights from Nye Creek, Hurbert Street Creek, and Big Creek. In 1951 the Big Creek Dam and Filtration Plan was completed. In 1963 the City applied for 38,000 linear feet of 14-inch piping to bring water from the Siletz River to the Big Creek reservoir, with proposed completion by 1970 (it was completed in 1994). The Upper Big Creek Dam was completed in 1969 and expanded in 1975.

Currently (2024) the City-owned and -operated system consists of: raw water supplies and intakes, water treatment facilities, water distribution facilities, and treated-water storage facilities. The 2008 **Water System Master Plan**[1] (Appendix X) includes an assessment of the entire system and provides guidance for the 2008-2028 timeframe. The 2024 **Engineering Design and Construction Standards** Manual (Appendix X) provides guidance for water systems.

In 2013 Newport's dams were deemed "most-critical, high-hazard dams" by the Oregon Dam Safety Engineer. In 2019, actual seepage was discovered in the upper dam, and in 2021 the Governor of Oregon declared the dams Unsafe and Potentially Unsafe and that corrective actions were needed. The City plans to enlarge the upper Big Creek Reservoir and replace both dams with one larger dam, estimated at $94.9 million to $123 million dollars. Every year the City issues a detailed **Annual Water Quality Report** (Appendix X).

Photo from City of Newport "SOS" Save our Supply website, 8/21/24

Wastewater System

The majority of Newport's wastewater, or sanitary sewer, system was built after 1950.The system includes <x> miles of mainline (including the Underbay Pipeline), <x> manholes, <x> active pump stations,<x> storage wells, and one wastewater treatment plant.

1 This will be replaced with the **2024 Water System Master Plan** when it is finalized.

CHAPTER SAMPLE 8/22/24

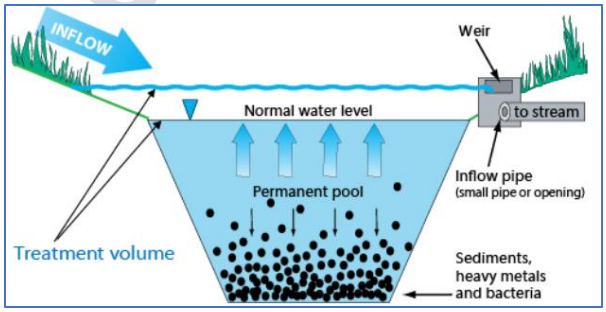
Aeration and Settling Tanks at the Vance Avery Wastewater Treatment Plant

The Vance Avery Wastewater Treatment Plant, located in South Beach, was built in 2002 at an initial cost of $42 million dollars. The plant is capable of treating 15 million gallons of wastewater per day and uses a biological process to treat wastes, creating clean water (which is further treated and pumped into the Pacific Ocean off Nye Beach) and Class A biosolids.

The 2018 update of the **Newport Sanitary Sewer Master Plan** (Appendix X), documents the historical, functional and environmental factors relevant to the City's wastewater system as well as a plan for the future. The 2024 **Engineering Design and Construction Standards Manual** (Appendix X) provides guidance for wastewater systems.

Storm Drainage System

Stormwater is defined as "surface water in abnormal quantity resulting from heavy rain or snowfall." Newport's stormwater system guides excess water over 43 drainage basins of dramatically varying terrain--including Pacific Coast Range foothills and deep ravines in north Newport, and flatlands and sand dunes in South Beach--to nearby streams and creeks and, eventually, to the Yaquina Bay or the Pacific Ocean. The system includes roadside ditches, retention ponds, culverts and pipelines.



Retention pond illustration from the 2018 Newport Stormwater Master Plan

The 2018 **Newport Stormwater Master Plan** (Appendix X) identifies system deficiencies and lists 32 needed improvement projects, estimated to

CHAPTER 9 SAMPLE 8/22/24

total $14.3 million dollars. The Plan describes each improvement project and ranks them, recommending that nine be undertaken by 2023 while others should be included in long-term planning. The 2024 **Engineering Design and Construction Standards** Manual (Appendix X) provides guidance for storm drainage systems.

City Streets

The history, organization, and plans for Newport transportation facilities are detailed in **Chapter 10** and the **City of Newport Transportation System Plan** (Appendix X).

The City has approximately 52 miles of paved streets and 11 miles of gravel or private streets. The 2024 **Engineering Design and Construction Standards Manual** (Appendix X) provides guidance for street construction. The 2018 **Pavement Management Plan** (Appendix X) inventories the City's pavement conditions and provides maintenance strategies for the 2018-2038 timeframe.

Oceanview Drive Emergency, 2024

Newport Fire Department

The Newport Fire Department started as Newport Hook and Ladder Co. No. 1 on May 4, 1885. In 2023 the NFD served approximately 12,500 residents of the Newport Rural Fire Protection District as well as an estimated 2.5 million visitors to Newport each year. As of 2024, NFD services included fire suppression; emergency medical services including advanced life support; motor vehicle crash rescue and extraction; hazardous materials response; marine and beach

CHAPTER SA

fire and rescue; fire inspections; fire investigations; public education; and active participation in community-wide events throughout the year. In addition the NFD deploys to wildland and wildland-urban interface fires whenever the Oregon State Fire Marshall and the Governor request assistance.

The NFD offers many outreach opportunities and maintains a strong media presence to inform and assist the community. Detailed information on emergency management, the **Newport Fire Department Strategic Plan** (Appendix X) and **NFD Standard of Cover** (Appendix X) are available online.

Newport Police Department

Photo from Newport Police Department website (8/21/24)

Founded in 1882, the The Newport Police Department has grown to a multi-departmental agency serving Newport and--in cooperation with other municipalities, the Lincoln County Sheriff's Office and Oregon State Police--beyond. NPD consists of the Patrol Division, community service officers, the Investigation Division, and support services including records, property and evidence.

NPD maintains a strong media presence. The **Newport Police Department Policy Manual** (Appendix X) and a **Welcome to Newport** (Appendix X) information packet are available online.

Newport Police Department
Mission Statement

[Our mission] is to consistently invest available resources toward our City's reputation as a safe place to live, work, play, learn, and visit . . . by complying with professional standards established by the Oath of Office, Professional Code of Ethics, and administrative directives. We will perform in a manner that promotes the public's trust, confidence, and sense of safety and security.

Newport Municipal Airport

Code ONP, The 700-acre Newport Municipal Airport is owned and operated by the City of Newport. It is accessed via the South Coast Highway (Highway 101), the only connector between all coastal Oregon cities, 3.5 miles south of the Yaquina Bay Bridge.

CHAPTER SAMPLE 9/24

The 2017 **Airport Master Plan** (Appendix X) provides historical and environmental information, recommended capital improvement projects for the 2017-2037 timeframe, and potential funding options.

ONP, May 2012

Port of Newport

The Port of Newport and the City of Newport are separate and independent entities.

Ports in Oregon serve a unique function as government agencies that also focus on profit-making enterprises. Like other local governments, ports are authorized to levy taxes, borrow money, issue bonds, and charge for services. A very small portion of most ports' revenues is derived from taxes. The Port of Newport maintains a website with information on Port history, organization, public meetings and strategic plans.

Commercial Fishing Vessels at Port Dock 5

SAMPLE 8/22/24

GOALS, POLICIES and IMPLEMENTATION MEASURES: PUBLIC FACILITIES AND SERVICES

GENERAL

Goal: To assure adequate planning for public facilities to meet the changing needs of the City of Newport urbanizable area.

Policy 1: The city shall develop and maintain public facilities master plans (by reference incorporated herein). These facility plans should include generalized descriptions of existing facilities operation and maintenance needs, future facilities needed to serve the urbanizable area, and rough estimates of projected costs, timing, and probable funding mechanisms. Public facilities should be designed and developed consistent with the various master plans.

Policy 2: In order to assure the orderly and cost efficient extension of public facilities, the city shall use the public facilities master plans in the capital improvement planning.

Policy 3: The city shall work with other providers of public facilities to facilitate coordinated development.

Policy 4: Essential public services should be available to a site or can be provided to a site with sufficient capacity to serve the property before it can receive development approval from the city. For purposes of this policy, essential services shall mean water, sanitary sewer (i.e. wastewater), storm drainage and streets. Development may be permitted for parcels without the essential services if: (a) the proposed development is consistent with the Comprehensive Plan; and (b) The property owner enters into an agreement, that runs with the land and is therefore binding upon future owners, that the property will connect to the essential service when it is reasonably available; and (c) The property owner signs an irrevocable consent to annex if outside the city limits and/or agrees to participate in a local improvement district for the essential service, except that annexation shall be required before property that is contiguous to the city limits can receive sanitary sewer service.

Policy 5: Upon the annexation of territory to the City of Newport, the city will be the provider of water and sewer service except as specified to the contrary in an urban service agreement or other intergovernmental agreement.

Policy 6: Local Improvement Districts (LIDs) should be evaluated as a means of funding public facilities where the construction of such facilities is expected to enhance the value of properties that are adjacent or proximate to the planned improvements. For LIDs in developed residential areas, the aggregate assessment amount within a prospective LID should be no more than 10% of the assessed value of properties within the boundaries of the proposed district. The

CHAPTER SAMPLE 8/2024

aggregate assessed value may be higher for other types of LIDs, such as developer-initiated districts; however, in no case should it exceed 50% of the assessed value of the affected property. When considering a new LID, the City should prepare an engineer's report that sets out the likely cost of constructing the improvement. Consideration should be given to bundling LID projects with other capital projects that the City secures bond funds to construct. For an LID to proceed, it must have a reasonable chance of being self-financing, with adequate reserves to ensure that payments are made on bonds/loans regardless of the property-owners' repayment. If an LID project is considered by the City Engineer to be a partial improvement (a less than ultimate planned design, the City should require that interim improvements conform to current City standards in a manner which will allow for completion of the total facility at such time that resources are available. New LIDs may be initiated by petition or resolution of the City Council.

Formation of an LID by Petition

The City Council shall evaluate new LIDs proposed by petition to determine if City resources should be expended to formulate an engineer's report. Only those projects with substantial public support should proceed. An LID petition that includes non-remonstrance agreements and/or petitions of support from property owners representing 75% of the benefited area shall be presumed to have substantial public support. If an LID petition seeks to leverage other funding to achieve 100% of the project costs then the City Council should consider the likelihood of whether or not those funds will be available within the timeframe that they would need to be committed for construction. When the City receives petitions for multiple LIDs, priority should be given to prospective LIDs with the highest level of documented support, as measured by recorded non-remonstrance agreements and/or petitions in the benefit area in question. The cost of completing the engineer's report should be included in the total LID assessment. The City should update its fee schedule to include a nonrefundable LID Application Fee to be paid by LID petitioner(s) for petition-initiated LIDs.

City Council-Initiated LIDs

The City Council on its own motion or upon recommendation by the City Manager may initiate an LID without a petition. In doing so the City Council shall consider the following factors:

- Project purpose and need, including whether or not the improvement addresses an immediate health and safety risk or if it has been identified as a priority improvement in an adopted public facility plan.
- Whether the improvement will address existing deficient infrastructure that is chronically failing.
- Capital cost of the improvement.
- Project cost contingencies and related construction risk factors, such as the need to acquire new public right-of-way, unique construction challenges, or environmental issues.
- Nature of the area benefited, including its existing condition.

CHAPTER SAMPLE 8/2024

- The amount of potential non-LID funding that is expected to be leveraged by the LID, if any. This may include, but is not limited to, federal or state grants, sewer or other types of service charges, urban renewal funds, revenue or general obligation bonds, and reimbursement districts.
- Percentage of properties within the benefit area that have prerecorded non-remonstrance agreements or have owners that favor formation of an LID. When considering multiple City-initiated LIDs, priority should be given to the LID that addresses the greatest number of factors identified above.

Policy 7: The City may use various means to finance, in whole or in part, improvements to public services in order to maintain public facility service levels and to carryout improvements identified in public facility plans, and adopted city goals and policies. This includes but is not limited to consideration of federal or state grants; water, sewer, storm drainage and other types of service charges; urban renewal funds, revenue or general obligation bonds, local improvement districts, and reimbursement districts.

WATER

Goal: To provide the City of Newport with a high quality water system that will supply residents and businesses with adequate quantities for consumption and fire protection.

Policy 1: The city will comply with state and federal laws concerning water quality and will take appropriate steps consistent with those laws to protect and maintain drinking water source areas.

Implementation Measure 1: The City shall work to establish a source water protection buffer in the Big Creek Watershed. The City declares the Big Creek Watershed a public facility consistent with the definition of Public Facility Systems in OAR 660-011-0005(7)(a)(A). The City will work to establish a source water protection buffer that is consistent with the findings of the Oregon Department of Environmental Quality / Oregon Health Department source water assessment report (PWS #4100566).

Policy 2: The water system will be designed and developed to satisfy the water demand of the various users under normal and predictable daily and seasonal patterns of use, and at the same time provide sufficient supplies for most emergency situations.

Policy 3: The city may extend water service to any property within the city's urban growth boundary, and may extend water service beyond the urban growth boundary if the extension of service is not inconsistent with an urban service agreement or other intergovernmental agreement. The city may require a consent to annexation as a condition of providing water service outside the city limits.

CHAPTER SAMPLE 8/2024

Policy 4: The city will acquire lands within the municipal watershed when available or necessary to protect water quality or improve its water system.

Policy 5: The city will reconstruct its municipal raw water storage and distribution facilities to address identified structural deficiencies to Big Creek Dam #1 and Big Creek Dam #2.

Implementation Measure 1: The city shall conduct necessary and appropriate engineering studies to determine the safest and most cost-effective approach to ensure the integrity of the municipal water supply. The studies shall identify the cost and timing of needed capital projects to address identified structural deficiencies and comply with Policy 2 of this section.

Implementation Measure 2: The city shall explore financing mechanisms, and prepare a financing plan to fund construction needed to resolve the structural deficiencies by 2030.

Implementation Measure 3: The city shall use data and findings from Implementation Measures 1 and 2 of this section to update the Water Supply section of the Public Facilities element of the Newport Comprehensive Plan to reflect new information as a result of the engineering and finance studies. <note: this is being done by referencing these studies in the text of the Water Supply section, above>

WASTEWATER

Goal: To provide a wastewater collection and treatment system with sufficient capacity to meet the present and future needs of the Newport urbanizable area in compliance with State and Federal regulations.

Policy 1: Improve and maintain the wastewater collection system as identified in the 1990 Public Facilities Plan for the City of Newport, by CH2MHILL, as amended by the following updates: (a) Wastewater Facilities Plan, by Fuller & Morris Engineering & CH2MHILL, dated May 1996, (b) 2006 South Beach Neighborhood Plan, and (c) Sanitary Sewer Master Plan, by Brown and Caldwell, dated February 9, 2018.

Policy 2: On-site sewer systems or holding tanks shall not be allowed unless the city's sanitary sewer system is greater than 250 feet away. In any case, a subsurface permit from the Lincoln County Sanitarian must be obtained prior to any development that will rely on an on-site sewer system or holding tank.

Policy 3: Existing structures within the city limits that contain sanitary facilities shall connect to the city's sanitary sewer system at such time as a gravity main or equivalent wastewater collection system is extended to within 250 feet of the property.

CHAPTER SAMPLE 8/2024

Policy 4: City wastewater services may be extended to any property within the urban growth boundary. Except for the very limited circumstances allowed by state law and regulations, the city will not generally provide wastewater services outside the urban growth boundary. The city may require a consent to annexation as a condition of providing wastewater service outside the city limits and shall require a property to annex before providing wastewater service if it is contiguous to the city limits. Nothing in this policy obligates the City to provide wastewater services outside of the city limits. For property outside the city limits but within the urban growth boundary, wastewater services may be provided at the City's discretion only for: (a) residentially zoned lands as allowed by county zoning without urban services, and (b) commercial and industrial zoned lands as allowed by county zoning at the scale of development in existence on September 4, 2007.

Policy 5: When designing the wastewater collection and treatment system to ensure there is sufficient capacity to meet current and future needs of the community, the City shall consider the demands of various users under normal and predictable daily and seasonal patterns of use.

Policy 6: When undertaking capital improvement planning, priority shall be given to projects that will repair, replace or upsize wastewater infrastructure with known condition or capacity limitations in order to minimize discharges that could compromise public health and safety, damage real property, or harm the environment.

POLICE SERVICES

Goal: The Newport Police Department seeks to improve the quality of life for Newport and its visitors by protecting persons and property from harm from others through the enforcement of federal, state, and local laws and ordinances.

Policy 1: The department shall monitor and evaluate community support for increasing the number of patrol officers.

Policy 2: The department shall continue to maintain efficiency and morale through the training and upgrading of personnel, as well as investment in computers and other support technologies.

Policy 3: The department, as part of the city's general fund, shall use a portion of the hotel/motel room tax revenues to help pay for police services necessitated by non-resident service demands.

Policy 4: The department shall encourage public education for crime prevention through programs of the department and by others.

Policy 5: The department shall support educational and crime prevention programs among youth, particularly through the schools. Policy 6: The department shall work cooperatively with interagency efforts as appropriate (e.g., drug enforcement, tactical teams, etc.).

CHAPTER SAMPLE 8/22/24

Oregon's Statewide Planning Goals & Guidelines

GOAL 11: PUBLIC FACILITIES AND SERVICES

OAR 660-015-0000(11)

To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

Urban and rural development shall be guided and supported by types and levels of urban and rural public facilities and services appropriate for, but limited to, the needs and requirements of the urban, urbanizable, and rural areas to be served. A provision for key facilities shall be included in each plan. Cities or counties shall develop and adopt a public facility plan for areas within an urban growth boundary containing a population greater than 2,500 persons. To meet current and long-range needs, a provision for solid waste disposal sites, including sites for inert waste, shall be included in each plan.

Counties shall develop and adopt community public facility plans regulating facilities and services for certain unincorporated communities outside urban growth boundaries as specified by Commission rules.

Local Governments shall not allow the establishment or extension of sewer systems outside urban growth boundaries or unincorporated community boundaries, or allow extensions of sewer lines from within urban growth boundaries or unincorporated community boundaries to serve land outside those boundaries, except where the new or extended system is the only practicable alternative to mitigate a public health hazard and will not adversely affect farm or forest land.

Local governments may allow residential uses located on certain rural residential lots or parcels inside existing sewer district or sanitary authority boundaries to connect to an existing sewer line under the terms and conditions specified by Commission rules.

Local governments shall not rely upon the presence, establishment, or extension of a water or sewer system to allow residential development of land outside urban growth boundaries or unincorporated community boundaries at a density higher than authorized without service from such a system.

In accordance with ORS 197.180 and Goal 2, state agencies that provide funding for transportation, water supply, sewage and solid waste facilities shall identify in their coordination programs how they will coordinate that funding with other state agencies and with the public facility plans of cities and counties.

A Timely, Orderly, and Efficient Arrangement – refers to a system or plan that coordinates the type, locations and delivery of public facilities and services in a manner that best supports the existing and proposed land uses.

Rural Facilities and Services – refers to facilities and services suitable and appropriate solely for the needs of rural lands.

Urban Facilities and Services – Refers to key facilities and to appropriate types and levels of at least the following: police protection; sanitary facilities; storm drainage facilities; planning, zoning and subdivision control; health services; recreation facilities and services; energy and communication services; and community governmental services.

Public Facilities Plan – A public facility plan is a support document or documents to a comprehensive plan. The facility plan describes the water, sewer and transportation facilities which are to support the land uses designated in the appropriate acknowledged comprehensive plan or plans within an urban growth boundary containing a population greater than 2,500.

Community Public Facilities Plan – A support document or documents to a comprehensive plan applicable to specific unincorporated communities outside UGBs. The community public facility plan describes the water and sewer services and facilities which are to support the land uses designated in the plan for the unincorporated community.

Water system – means a system for the provision of piped water for human consumption subject to regulation under ORS 448.119 to 448.285.

Extension of a sewer or water system – means the extension of a pipe, conduit, pipeline, main, or other physical component from or to an existing sewer or water system, as defined by Commission rules.

GUIDELINES

A. PLANNING

1. Plans providing for public facilities and services should be coordinated with plans for designation of urban boundaries, urbanizable land, rural uses and for the transition of rural land to urban uses.

2. Public facilities and services for rural areas should be provided at levels appropriate for rural use only and should not support urban uses.

3. Public facilities and services in urban areas should be provided at levels necessary and suitable for urban uses.

4. Public facilities and services in urbanizable areas should be provided at levels necessary and suitable for existing uses. The provision for future public facilities and services in these areas should be based upon: (1) the time required to provide the service; (2) reliability of service; (3) financial cost; and (4) levels of service needed and desired.

5. A public facility or service should not be provided in an urbanizable area unless there is provision for the coordinated development of all the other urban facilities and services appropriate to that area.

6. All utility lines and facilities should be located on or adjacent to existing public or private rights-of-way to avoid dividing existing farm units.

7. Plans providing for public facilities and services should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land

conservation and development action provided for by such plans should not exceed the carrying capacity of such resources.

B. IMPLEMENTATION

1. Capital improvement programming and budgeting should be utilized to achieve desired types and levels of public facilities and services in urban, urbanizable and rural areas.

2. Public facilities and services should be appropriate to support sufficient amounts of land to maintain an adequate housing market in areas undergoing development or redevelopment.

3. The level of key facilities that can be provided should be considered as a principal factor in planning for various densities and types of urban and rural land uses.

4. Plans should designate sites of power generation facilities and the location of electric transmission lines in areas intended to support desired levels of urban and rural development.

5. Additional methods and devices for achieving desired types and levels of public facilities and services should include but not be limited to the following: (1) tax incentives and disincentives; (2) land use controls and ordinances; (3) multiple use and joint development practices; (4) fee and less-than-fee acquisition techniques; and (5) enforcement of local health and safety codes.

6. Plans should provide for a detailed management program to assign respective implementation roles and responsibilities to those governmental bodies operating in the planning area and having interests in carrying out the goal

City of Newport

Community Development Department

Memorandum

To: Planning Commission / Commission Advisory Committee

From: Derrick I. Tokos, AICP, Community Development Director

Date: August 22, 2024

Re: FEMA National Flood Insurance Program – Endangered Species Act Integration Pre-Implementation Compliance Measure Discussion

---

This work session has been scheduled to obtain feedback from the Planning Commission on which of the three Pre-Implementation Compliance Measures the City should implement in order for properties in the City to continue to be eligible for federally subsidized flood insurance under the National Flood Insurance Program.

On April 24, 2023, I updated the Planning Commission on the 2016 lawsuit brought against the Federal Emergency Management Agency (FEMA) by the Audubon Society. FEMA settled that litigation and initiated consultation with the National Marine Fisheries Service (NMFS) pursuant to Section 7 of the Endangered Species Act (ESA). NMFS then prepared and issued a Biological Opinion that requires FEMA make several changes to how the National Flood Insurance Program (NFIP) is implemented in Oregon to avoid continued jeopardy to habitat for threatened and endangered species (e.g. salmonids).

On March 6, 2023, FEMA published a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS). FEMA solicited public comments on potential issues, concerns, and reasonable alternatives that they should consider in the EIS before finalizing an ESA compliant implementation plan that cities in the state must follow. They set a May 5, 2023 deadline for providing comment, and the City elected to provide feedback.

FEMA's implementation plan is in draft form and it will be further revised based upon how the EIS plays out. The draft plan was developed by FEMA with input from the State of Oregon and public stakeholders between 2016 and 2021. It includes mapping products and reporting requirements for NFIP-participating communities, as well as a range of potential measures communities will need to select from to collectively meet a "no net loss" standard of three key natural floodplain functions: flood storage, water quality, and riparian vegetation. At the time, FEMA's thinking was that the EIS would be completed by December of 2024. They would then finalize plan by March of 2025 and community implementation would start in September of 2025 (see attached scoping Session Slide Presentation).

That schedule has changed. FEMA now expects that the final plan will not be ready for implementation until 2027 and, as a consequence, they are requiring NFIP participating

communities adopt and apply Pre-Implementation Compliance Measures (PICMs) until the final plan is made available (see attached PICM summary). Communities first learned of the PICM requirement in July of this year when FEMA sent out letters advising communities that they would have to select one of three regulatory options by December 1, 2024 (letter enclosed). Newport's letter is dated July 15, 2024. It notes that cities may prohibit all new development within the floodplain, adopt FEMA's ESA Compliant Model Ordinance, or require each new development prepare a habitat assessment and mitigation plan to demonstrate no net loss.

FEMA's July letter included dates for webinars where affected jurisdictions could learn more about the three options. I attended the July 31, 2024 webinar. Lastly, the July letter noted that effective August 1, 2024, FEMA would no longer process letters of map revision based upon fill within the 100 year floodplain. The model ordinance, and guidance materials for the preparation of habitat assessments, were released by FEMA on August 15, 2024. Both documents are included in your packet. On August 22, 2024, Oregon's congressional delegation issued a letter to FEMA asking that the Agency provide communities more time to select one of the three options. They also asked that the Agency accept letters of map revision based on fill for 90-days to accommodate in-process development projects.

The City Council will consider the matter at its September 16, 2024 work session, and a copy of the minutes from this meeting will be provided to them for their consideration.

Attachments
City of Newport PICM Community Letter (July 15, 2024)
FEMA PICM Fact Sheet
FEMA Oregon NFIP Model Ordinance
FEMA Habitat Assessment Guide
Oregon Delegation Letter to FEMA (August 22, 2024)
Slide Presentation from FEMA's 4/20/23 Scoping Session

U.S. Department of Homeland Security
FEMA Region 10
130 228th Street, SW
Bothell, WA 98021-8627

FEMA

July 15, 2024

Jan Kaplan
169 SW Coast Hwy
City Hall
NEWPORT, Oregon 97365

Dear Jan Kaplan:

The purpose of this letter is to announce the start of the United States Department of Homeland Security's Federal Emergency Management Agency's (FEMA) Pre-Implementation Compliance Measures (PICM) for National Flood Insurance Program (NFIP) participating communities in Oregon. The intent of PICM is to ensure the continued existence of threatened or endangered species in compliance with the Endangered Species Act (ESA). These measures include coordination with communities to provide appropriate technical assistance, help identify available resources, deliver trainings, and facilitate workshops to ensure on-going community participation in the NFIP. These pre-implementation compliance measures will assist communities in preparing for the Final NFIP-ESA Implementation Plan by helping them develop short and long-term solutions to ensure their on-going participation in the NFIP.

FEMA is currently conducting a National Environmental Policy Act (NEPA) evaluation of impacts associated with the Oregon NFIP-ESA Implementation Plan. FEMA developed this plan, in part, due to a Biological Opinion in 2016 from National Marine Fisheries Services. The Biological Opinion recommended specific measures for FEMA to take to avoid jeopardizing endangered species, including interim compliance measures. The release of the Final Implementation Plan (Plan) is anticipated by 2026, following the Record of Decision in the Environmental Impact Statement (EIS) process, then FEMA will fully implement the Plan in 2027.

FEMA has heard concerns from several communities regarding challenges they are facing to meet the expectations of this Plan. To provide communities with the support needed to incorporate ESA considerations to their permitting of development in the floodplain, FEMA will inform, educate, and support our Oregon NFIP participating communities through the PICM before the Final Implementation Plan is released.

NFIP participating communities in Oregon must select one of the PICM pathways which include the following: (1) adopt a model ordinance that considers impacts to species and their habitat and requires mitigation to a no net loss standard; (2) choose to require a habitat assessment and mitigation plan for development on a permit-by-permit basis; or (3) putting in place a prohibition on floodplain development in the Special Flood Hazard Area (SFHA). Communities must pick a PICM pathway by December 1, 2024. If a community fails to inform FEMA of its selection, they will default to the permit-by-permit PICM pathway. Communities will be required to report their floodplain development activities to FEMA beginning in January of 2025. Failure to report may result in a

compliance visit.

As a part of the PICM, FEMA will implement a delay in the processing of two types of Letters of Map Changes in the Oregon NFIP-ESA Implementation Plan area, specifically Letters of Map Changes associated with the placement of fill in the floodplain: Conditional Letter of Map Revision Based on Fill (CLOMR-F) and Letter of Map Revision Based on Fill (LOMR-F) requests. This action was specifically requested by NMFS in their 2016 Biological Opinion and serves to remove any perceived programmatic incentive of using fill in the floodplain. This delay in processing will begin on August 1, 2024, and will be in place until the Final Implementation Plan is released.

Your community's ongoing participation in the NFIP is critical, as it provides access to flood insurance for property owners, renters, and businesses. In City Of Newport there are currently 119 of NFIP policies in force representing $36065000 in coverage for your community.

FEMA will be conducting informational virtual webinars this summer to provide an overview and status update for the Oregon NFIP-ESA integration, introduce the Pre-Implementation Compliance Measures, and provide an opportunity for Oregon NFIP floodplain managers to ask questions of FEMA staff. In the fall, FEMA will hold workshops to provide in-depth opportunities for local technical staff to work with FEMA technical staff, to understand and discuss issues relating to the PICM.

The webinars will be held virtually over Zoom. The information at each webinar is the same so your jurisdiction only needs to attend one. You can register for a webinar using the links below.

- Wednesday, July 31 at 3-5pm PT: https://kearnswest.zoom.us/meeting/register/tZEkc-murjstGdPJiFioethjRk-id8N-k0hj
- Tuesday, August 13 at 9:30-11:30am PT: https://kearnswest.zoom.us/meeting/register/tZAod-isrTsqGN0KqckRLPPeaZuu4rv96lcR
- Thursday, August 15 at 2-4pm PT: https://kearnswest.zoom.us/meeting/register/tZIqcOGpqDojHtTXaa946aI9dMpCTcJlH_zt
- Wednesday, August 21 at 12:30-2:30pm PT: https://kearnswest.zoom.us/meeting/register/tZYqcuGsrD8rH9DZO22vG0v9KrNzVeUZA9gy

FEMA will also develop a questionnaire to allow communities to identify how they currently incorporate or plan to incorporate ESA considerations, both in the short-term and long-term. To assist communities in making this determination, FEMA will be offering guidance on the potential pathways that help ensure current compliance. Communities will also be asked to help identify what technical assistance and training would be most beneficial. Feedback from this questionnaire will drive FEMA's engagement and outreach.

Upon completion of the Environmental Impact Statement review and determination, the Final Implementation Plan will be distributed along with several guidance documents and a series of Frequently Asked Questions. FEMA will also be starting NFIP Compliance Audits, in which we will be reviewing permits issued by communities for development in the floodplain and will expect the community to be able to demonstrate what actions are being taken to address ESA considerations.

If you have any questions, please contact us through our project email address fema-r10-mit-

PICM@fema.dhs.gov. Thank you for your community's on-going efforts to reduce flood risk in your community and for your support as we worked toward these milestones.

Sincerely,

Willie G. Nunn
Regional Administrator
FEMA Region 10

cc: DerrickTokos, City Of Newport
John Graves, Floodplain Management and Insurance Branch Chief
Deanna Wright, Oregon State National Flood Insurance Program Coordinator

Enclosure: Pre-Implementation Compliance Measures Fact Sheet

Pre-Implementation Compliance Measures Overview

Beginning this summer, FEMA will assist communities with coming changes to the National Flood Insurance Program (NFIP) in Oregon.

Why are the changes needed?

As the result of a Biological Opinion issued by the National Marine Fisheries Service, communities are required to demonstrate how floodplain development is compliant with the Endangered Species Act in Special Flood Hazard Areas. Changes are needed to protect the habitat of several species of fish and the Southern Resident killer whales to comply with the Endangered Species Act (ESA). FEMA outlined these changes in the draft Oregon NFIP-ESA Implementation Plan.

Current status

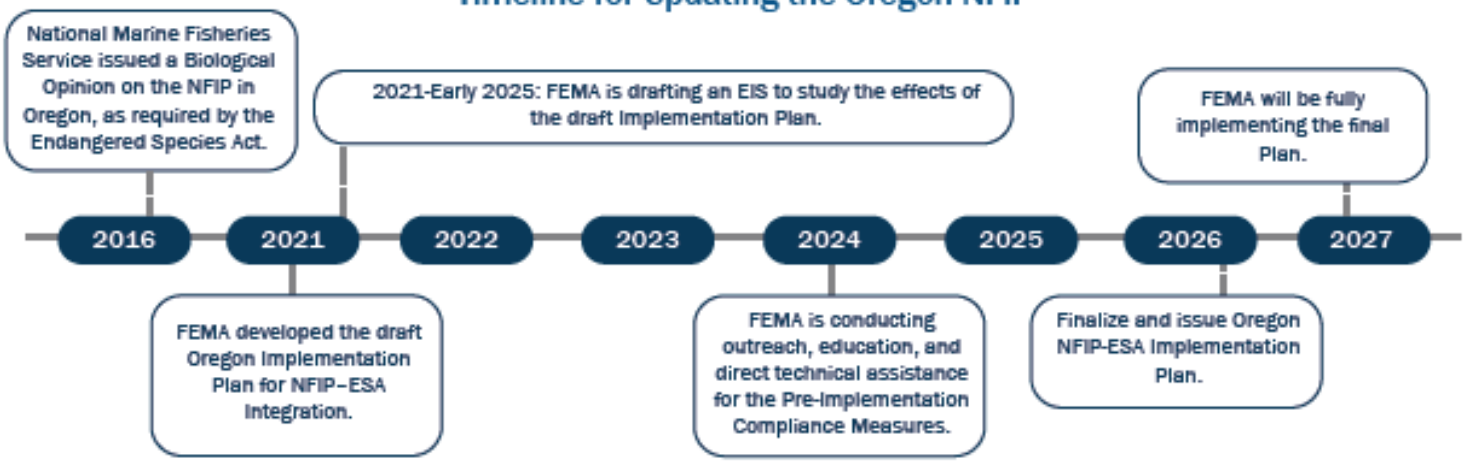
FEMA is evaluating proposed changes to the NFIP outlined in the Implementation Plan through an environmental impact statement (EIS), in compliance with the National Environmental Policy Act (NEPA).

The National Flood Insurance Program serves to protect lives and property, while reducing costs to taxpayers due to flooding loss.

What is "no net loss"?
Any development action resulting in negative impacts to one or more key floodplain functions that are then mitigated or avoided to offset said impacts.

The Final Implementation Plan is anticipated by 2026 following the Record of Decision in the EIS process, then FEMA will fully implement the plan in 2027. Until then, communities need to begin taking action to protect habitat and achieve "no net loss." FEMA is offering several resources for communities to learn more and implement interim measures, called Pre-Implementation Compliance Measures (PICMs).

Timeline for Updating the Oregon NFIP



What can communities do to comply with these changes?

Oregon communities participating in the NFIP can take short-term measures to comply with ESA requirements, known as PICMs. FEMA developed these measures in response to concerns from communities about the time and resources needed to meet requirements and ensure their future good standing in the NFIP. By implementing these measures now, communities will be better prepared for compliance audits, which will begin when the Final Implementation Plan is in place.

Communities can select one of the following three PICMs:

- Prohibit all new development in the floodplain.
- Incorporate the ESA into local floodplain ordinances.
- Require permit applicants to develop a Floodplain Habitat Assessment documenting that their proposed development in the Special Flood Hazard Area will achieve "no net loss."

Communities must report to FEMA on their implementation of interim measures.

In addition to the above measures, as of August 1, 2024, FEMA is temporarily suspending processing applications for Letters of Map Revision based on Fill (LOMR-Fs) and Conditional Letters of Map Revision based on Fill (CLOMR-Fs) in NFIP communities to avoid potentially negative effects on ESA-listed species.

FEMA is here to support your community.

FEMA is offering several resources to assist communities in preparing for the Oregon NFIP-ESA Implementation Plan.

- **Informational Webinars (Summer 2024):** Learn about what FEMA is doing to revise the Implementation Plan and receive an introduction to the PICMs.
- **Questionnaire (Summer 2024):** Share what floodplain management measures your community is currently implementing to comply with the ESA, which PICMs you're most interested in, and what support you need. Your feedback will help us plan the fall workshops and identify needs for technical assistance.
- **Workshops (Fall 2024):** Get an in-depth look at PICMs and talk through questions and concerns with FEMA staff.
- **Technical Assistance (Begins in Fall 2024):** Get support from FEMA to begin implementing PICMs.

Learn more and participate

Visit www.fema.gov/about/organization/region-10/oregon/nfip-esa-integration to read the latest information about NFIP-ESA Integration in Oregon.

You can also contact us at FEMA-R10-MIT-PICM@fema.dhs.gov

Pre-Implementation Compliance Measures Overview

Beginning this summer, FEMA will assist communities with coming changes to the National Flood Insurance Program (NFIP) in Oregon.

The National Flood Insurance Program serves to protect lives and property, while reducing costs to taxpayers due to flooding loss.

Why are the changes needed?

As the result of a Biological Opinion issued by the National Marine Fisheries Service, communities are required to demonstrate how floodplain development is compliant with the Endangered Species Act in Special Flood Hazard Areas. Changes are needed to protect the habitat of several species of fish and the Southern Resident killer whales to comply with the Endangered Species Act (ESA). FEMA outlined these changes in the draft Oregon NFIP-ESA Implementation Plan.

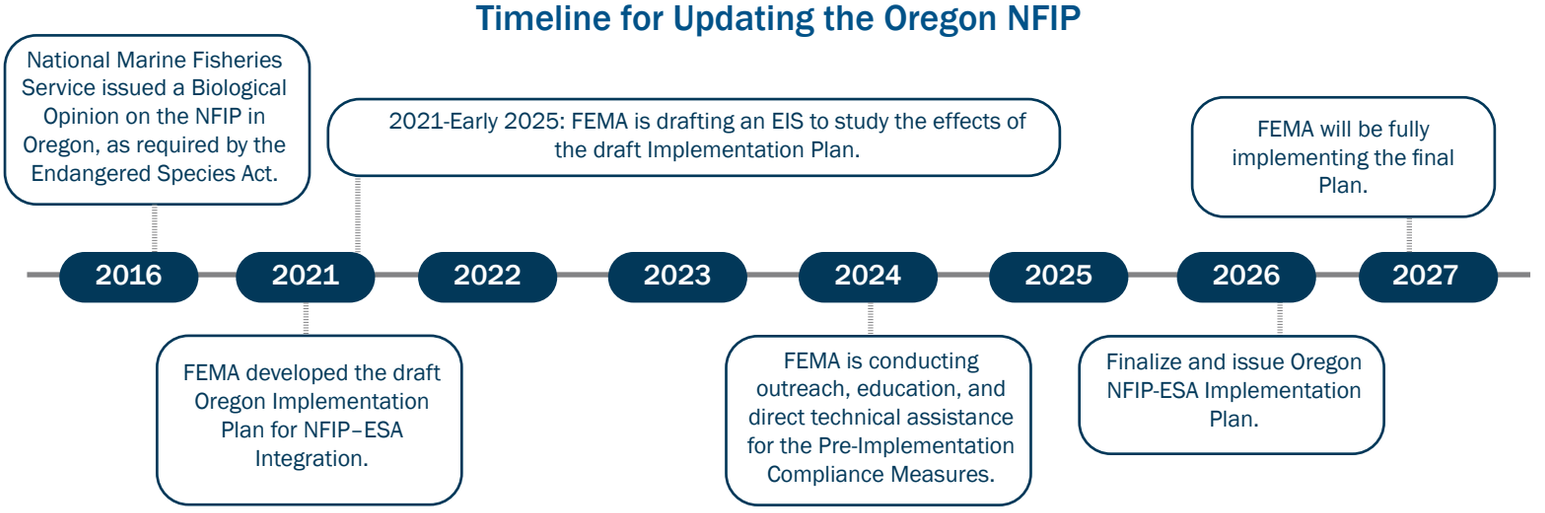
Current status

FEMA is evaluating proposed changes to the NFIP outlined in the Implementation Plan through an environmental impact statement (EIS), in compliance with the National Environmental Policy Act (NEPA).

What is "no net loss"?
Any development action resulting in negative impacts to one or more key floodplain functions that are then mitigated or avoided to offset said impacts.

The Final Implementation Plan is anticipated by 2026 following the Record of Decision in the EIS process, then FEMA will fully implement the plan in 2027. Until then, communities need to begin taking action to protect habitat and achieve "no net loss." FEMA is offering several resources for communities to learn more and implement interim measures, called Pre-Implementation Compliance Measures (PICMs).

Timeline for Updating the Oregon NFIP



What can communities do to comply with these changes?

Oregon communities participating in the NFIP can take short-term measures to comply with ESA requirements, known as PICMs. FEMA developed these measures in response to concerns from communities about the time and resources needed to meet requirements and ensure their future good standing in the NFIP. By implementing these measures now, communities will be better prepared for compliance audits, which will begin when the Final Implementation Plan is in place.

Communities can select one of the following three PICMs:

- Prohibit all new development in the floodplain.
- Incorporate the ESA into local floodplain ordinances.
- Require permit applicants to develop a Floodplain Habitat Assessment documenting that their proposed development in the Special Flood Hazard Area will achieve "no net loss."

Communities must report to FEMA on their implementation of interim measures.

In addition to the above measures, as of August 1, 2024, FEMA is temporarily suspending processing applications for Letters of Map Revision based on Fill (LOMR-Fs) and Conditional Letters of Map Revision based on Fill (CLOMR-Fs) in NFIP communities to avoid potentially negative effects on ESA-listed species.

FEMA is here to support your community.

FEMA is offering several resources to assist communities in preparing for the Oregon NFIP-ESA Implementation Plan.

- **Informational Webinars (Summer 2024):** Learn about what FEMA is doing to revise the Implementation Plan and receive an introduction to the PICMs.
- **Questionnaire (Summer 2024):** Share what floodplain management measures your community is currently implementing to comply with the ESA, which PICMs you're most interested in, and what support you need. Your feedback will help us plan the fall workshops and identify needs for technical assistance.
- **Workshops (Fall 2024):** Get an in-depth look at PICMs and talk through questions and concerns with FEMA staff.
- **Technical Assistance (Begins in Fall 2024):** Get support from FEMA to begin implementing PICMs.

Learn more and participate

Visit www.fema.gov/about/organization/region-10/oregon/nfip-esa-integration to read the latest information about NFIP-ESA Integration in Oregon.

You can also contact us at FEMA-R10-MIT-PICM@fema.dhs.gov

NFIP Oregon Implementation Program Guidance

Model Floodplain Management Ordinance

For Participating Communities in the Implementation Plan Area

FEMA

Federal Emergency Management Agency
Region 10
Department of Homeland Security
130 – 228th Street SW
Bothell, WA 98021

Note to Communities: This document presents the draft model ordinance that for the Pre-Implementation Compliance Measures and is intended to closely represent most of the language that will be presented as Pathway A of the Draft Implementation Plan. It is built off the 2020 State of Oregon Model Flood Hazard Management Ordinance and the 2018 iteration of the Oregon Model ordinance for ESA Integration. It reflects the NMFS 2016 Biological Opinion (BiOp) (except where noted) and is informed by the 2023 NEPA Scoping effort.

Table of Contents

Acronyms and Abbreviations

BiOp	Biological Opinion
CFR	Code of Federal Regulations
CLOMR	Conditional Letter of Map Revision
CRS	Community Rating System
dbh	diameter breast height
ESA	Endangered Species Act
FEMA	Federal Emergency Management Agency
LID	Low-Impact Development
LOMR	Letter of Map Revision
MHHW	Marine Higher-High Water line
NFIP	National Flood Insurance Program
NMFS	National Marine Fisheries Service
OHWM	Ordinary High Water Mark
ORS	Oregon Revised Statutes
ORSC	Oregon Residential Specialty Code
OSSC	Oregon Structural Specialty Code
RBZ	Riparian buffer zone
SFHA	Special Flood Hazard Area
TB	Technical Bulletin

SECTION 1. Introduction

FEMA has developed this model flood hazard management ordinance ("2024 model ordinance") to address the requirements outlined in the Draft Implementation Plan for National Flood Insurance Program (NFIP)-Endangered Species Act (ESA) Integration in Oregon ("Oregon Implementation Plan"). The Federal Emergency Management Agency (FEMA) consulted with the National Marine Fisheries Service (NMFS) on potential effects of the implementation of the NFIP in Oregon on listed species under NMFS authority. In 2016, NMFS issued a Biological Opinion (BiOp), which recommended changes to the implementation of the NFIP in Oregon within the plan area (see the 2024 Draft Oregon Implementation Plan for NFIP-ESA Integration [2024 Draft Implementation Plan] for a description of the plan area).

As a result of the BiOp issued by NMFS, communities are required to demonstrate how floodplain development is compliant with the Endangered Species Act in the SFHA while the 2024 Draft Implementation Plan undergoes an Environmental Impact Statement (EIS). The 2024 model ordinance provides the tools a community would need to implement "Path A" of the 2024 Draft Implementation Plan and serves as one of three actions a community can take under Pre-Implementation Compliance Measures (PICM).

The regulatory language contained within the 2024 model ordinance can be adopted verbatim and incorporated into local floodplain and land use regulations, or a community may select those sections that are missing from its current floodplain ordinance and adopt those sections. The State of Oregon's Model Flood Hazard Management Ordinance (2020) was used as a starting point, with additions to provide compliance with the Oregon Implementation Plan. The additional sections are clearly noted with yellow highlighting to simplify implementation for Oregon communities in the plan area that have already adopted the Oregon Model Flood Hazard Management Ordinance (2020).

This 2024 model ordinance provides a set of provisions to protect the built environment from flood damage and to minimize potential impacts of construction and reconstruction on public health and safety, property, water quality, and aquatic and riparian habitats. The requirements pertain to new development in Special Flood Hazard Area (see definitions), which includes the maintenance, repair, or remodel of existing structures and utilities when the existing footprint is expanded and/or the floodplain is further encroached upon.

The Oregon Implementation Plan and this model ordinance do not change the definition of development in 44 Code of Federal Regulations [CFR] 59.1.

> "Development" is defined as "any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials." (44 C.F.R. 59.1)

The 2024 model ordinance provides compliance with federal and state statutes and with the Oregon Implementation Plan. The 2024 model ordinance conforms to the following:

1. The requirements of the NFIP, as specified in 44 CFR 59 and 60.

2. Oregon State codes to protect structures from flood damage that are specified in Oregon Structural Specialty Code (OSSC), Section 1612 and Oregon Residential Specialty Code (ORSC), Section R322.

3. Oregon Statewide Land Use Planning Goals

4. Provisions needed to meet the requirements of the Oregon Implementation Plan for NFIP-ESA Integration. These sections are highlighted in yellow in the model ordinance.

This 2024 model ordinance provides communities with ordinance language that complies with the NFIP-ESA Integration Implementation Plan. Adoption of the ordinance language will ensure compliance with the minimum standards for participation in the NFIP in the plan area in Oregon. Prior to adoption of the ordinance language, communities must have their locally proposed draft language reviewed by FEMA and/or the Oregon Department of Land Conservation and Development.

The model flood hazard ordinance includes standards and provisions that encourage sound floodplain management. The language is based on the minimum requirements of the NFIP found in 44 CFR 59 and 60, Oregon's statewide land use planning Goal 7, and Oregon specialty codes. The new language added to the state model floodplain ordinance, highlighted in yellow, provides compliance with the ESA for floodplain development in the plan area.

Adherent to the NMFS 2016 Biological Opinion, mitigation is necessary to ensure a no net loss in floodplain functions. FEMA's 2024 Draft Oregon Implementation Plan identifies proxies that provide measurable actions that can prevent the no net loss of the parent floodplain functions. These proxies include undeveloped space, pervious surfaces, and trees to account for a no net loss in respective floodplain functions of floodplain storage, water quality, and vegetation. Mitigation of these proxies must be completed to ensure compliance with no net loss standards. No net loss applies to the net change in floodplain functions as compared to existing conditions at the time of proposed development and mitigation must be addressed to the floodplain function that is receiving the detrimental impact.

1.1. How to Use this Document

This 2024 model ordinance includes a Table of Contents and a Regulatory Crosswalk that identifies the federal and state standards that align to and are reflected in each section. Communities will need to review their ordinances and ensure that all the required components are included.

Please refer to FEMA's website for information on how to determine whether or not your community is within the plan area.

1.1.1. ORDINANCE LANGUAGE LEGEND:

The colors are used in the text in the model ordinance to denote specific actions or sections with specific applicability.

- Black: Represents the existing NFIP and current state minimum requirements that are found in the 2020 Oregon Model Flood Hazard Management Ordinance.
- Red: Represents language that must be replaced with community specific information. Only include the appropriate language for your community.
- Purple: Represents language required for communities with Coastal High Hazard Areas mapped by FEMA (V Zones or Coastal A Zones). *(DELETE ALL PURPLE LANGUAGE IF NOT A COASTAL COMMUNITY).*
- Blue: Represents hyperlinks to other sections of the document or external websites.
- Yellow highlighting: Represents new ordinance language not in the 2020 Oregon Model Flood Hazard Management Ordinance. Communities that have previously adopted the state model ordinance may focus on the yellow highlighted sections.

1.2. Changes from the 2020 Oregon Model Flood Hazard Management Ordinance

This 2024 version of the Oregon Model Flood Hazard Ordinance (to be referred to herein as the "2024 Model Ordinance"), varies from the 2020 Oregon Model Flood Hazard Management Ordinance. with the addition of new content to be included for ESA compliance for NFIP-participating communities in the plan area. If no part of the Special Flood Hazard Area (SFHA) in your NFIP-participating community is in the Oregon NFIP-ESA Integration plan area, your community may continue to use the 2020 Oregon Model Flood Hazard Management Ordinance.

In general, the ordinance was revised to ensure that the implementation of the NFIP-ESA integration no net loss standards avoids or offsets adverse impacts on threatened and endangered species and their critical habitat. A summary of the primary changes found in the 2024 model ordinance is provided below:

1. New language has been added to incorporate the following no net loss standards:
    a. No net loss of undeveloped space (see Section 6.1.1).
    b. No net loss of pervious surface. (see Section 6.1.2).
    c. No net loss of trees equal to or greater than 6 inches dbh (i.e., tree diameter measured at 4.5 feet from the ground surface). (see Section 6.1.3).

2. Some definitions (see 2.0) have been added to provide context for the new no net loss standards from the Oregon Implementation Plan.

3. Language has been added:

    a. (see 6.3) to address activities that may require a floodplain development permit but are exempt from the no net loss requirement per the BiOp.

    b. (see 6.4) to address the specific requirements of the Riparian Buffer Zone (RBZ).

4. In general, the language in the 2024 model ordinance mirrors the language from the 2020 Oregon Model Flood Hazard Management Ordinance. Minor edits to the 2020 language have been made for clarity, punctuation, and grammar.

1.3. Community Rating System

Implementation of the new no net loss standards related to NFIP-ESA integration may be eligible for credit under the Community Rating System (CRS). The CRS is explained further in CRS Credit for Habitat Protection, available online at: https://crsresources.org/files/guides/crs-credit-for-habitat-protection.pdf, and the 2017 CRS Coordinators' Manual, available online at: https://www.fema.gov/sites/default/files/documents/fema_community-rating-system_coordinators-manual_2017.pdf, and the 2021 Addendum to the 2017 CRS Coordinator's Manual, available online at: https://www.fema.gov/sites/default/files/documents/fema_community-rating-system_coordinator-manual_addendum-2021.pdf. The Association of State Floodplain Managers' Green Guide, also provides useful information on development techniques that avoid impacts on natural functions and values of floodplains. This document is available at: www.floodsciencecenter.org/products/crs-community-resilience/green-guide/. Communities interested in CRS credits should contact their CRS specialist for additional information and review.

Implementation of the no net loss standards would most likely contribute to credits under the following CRS activities:

- Activity 430 Higher Regulatory Standards
    - Development Limitations
        - Prohibition of all fill (DL1a): This credit is for prohibiting all filling in the regulatory floodplain. To meet this standard, communities may NOT approve Conditional Letters or Letters of Map Revision based on Fill (CLOMR-F or LOMR-F). If a CLOMR-F or LOMR-F is issued for a property in a community, then DL1 credit will be denied. This applies to CLOMRs and LOMRs that include filling as part of the reason for requesting a map change. Minor filling may be allowed where needed to protect or restore natural floodplain functions, such as part of a channel restoration project.

- The CRS manual describes a number of regulatory approaches that do not warrant credit under DL1; however, because the Oregon NFIP-ESA integration no net loss standards exceed the approaches described in the manual, a community meeting the Oregon no net loss standards should qualify for credit under DL1.

- Compensatory storage (DL1b): This credit is for regulations that require new development to provide compensatory storage at hydraulically equivalent sites up to a ratio of 1.5:1. Credit is not provided for:

    - Compensatory storage requirements in floodways only or in V Zones only, or

    - Stormwater management regulations that require a developer to compensate for any increase in runoff created by the development. This is credited under Activity 450.

- Activity 450 Stormwater Management

    - Stormwater management regulations (SMR – 452a): This credit is the sum of four sub-elements: Size of development (Section 452.a(1), SZ); design storm used (Section 452.a(2), DS); low-impact development (LID) regulations (Section 452.a(3), LID); and public agency authority to inspect and maintain, at the owner's expense, private facilities constructed to comply with the ordinance (Section 452.a.(4), PUB).

        - LID credits the community's regulatory language that requires the implementation of LID techniques to the maximum extent feasible to control peak runoff when new development occurs. LID techniques can significantly reduce or eliminate the increase in stormwater runoff created by traditional development, encourage aquifer recharge, and promote better water quality.

SECTION 2. Regulatory Crosswalk

The following table presents a crosswalk of the model ordinance sections against the relevant federal and state laws, regulations, and policies. The new sections related to the Oregon NFIP-ESA integration implementation (yellow highlighted sections of the model ordinance) are not listed in this table and are related to compliance with the ESA.

Ordinance Section	44 CFR and Technical Bulletin (TB) Citation(s)	State of Oregon Citation(s) (Goal 7, Specialty Codes*, Oregon Revised Statutes [ORS])
1.1 Statutory Authorization	59.22(a)(2)	Goal 7; ORS 203.035 (Counties), ORS 197.175 (Cities)
1.2 Findings of Fact	59.22(a)(1)	Goal 7
1.3 Statement of Purpose	59.2; 59.22(a)(1) and (8); 60.22	Goal 7
1.4 Methods of Reducing Flood Losses	60.22	Goal 7
2.0 Definitions	59.1; 33 CFR 328.3(c)(7)	Goal 7
3.1 Lands to Which this Ordinance Applies	59.22(a)	Goal 7
3.2 Basis for Establishing the Special Flood Hazard Areas	59.22(a)(6); 60.2(h)	Goal 7
3.3 Coordination with Specialty Codes Adopted by the State of Oregon Building Codes Division		ORS 455
3.4.1 Compliance	60.1(b) – (d)	Goal 7
3.4.2 Penalties for Noncompliance	60.1(b) – (d)	Goal 7
3.5.1 Abrogation	60.1(b) – (d)	Goal 7
3.5.2 Severability		
3.6 Interpretation	60.1(b) – (d)	Goal 7
3.7.1 Warning		
3.7.2 Disclaimer of Liability		
4.1 Designation of the Floodplain Administrator	59.22(b)(1)	Goal 7
4.2.1 Permit Review	60.3(a)(1) – (3); 60.3(c)(10)	Goal 7
4.2.2 Information to be Obtained and Maintained	59.22(a)(9)(iii); 60.3(b)(5)(i) and (iii); 60.3(c)(4); 60.3(b)(3); 60.6(a)(6)	Goal 7; 105.9; 110.33; R106.1.4; R109.1.3; R109.1.6.1; R322.1.10; R322.3.6

Ordinance Section	44 CFR and Technical Bulletin (TB) Citation(s)	State of Oregon Citation(s) (Goal 7, Specialty Codes*, Oregon Revised Statutes [ORS])
4.2.3.1 Community Boundary Alterations	59.22(a)(9)(v)	Goal 7
4.2.3.2 Watercourse Alterations	60.3(b)(6) – (7), 65.6(12-13)	Goal 7
4.2.3.3 Requirement to Submit New Technical Data	65.3, 65.6, 65.7, 65.12	Goal 7
4.2.4 Substantial Improvement and Substantial Damage Assessments and Determinations	59.1; 60.3(a)(3); 60.3(b)(2); 60.3(b)(5)(i); 60.3(c)(1), (2), (3), (5) – (8), (10), (12); 60.3(d)(3); 60.3(e)(4), (5), (8)	Goal 7
4.3.1 Floodplain Development Permit Required	60.3(a)(1)	Goal 7
4.3.2 Application for Development Permit	60.3(a)(1); 60.3(b)(3); 60.3(c)(4)	Goal 7; Oregon Residential Specialty Code (R) 106.1.4; R322.3.6
4.4 Variance Procedure	60.6(a)	Goal 7
4.4.1 Conditions for Variances	60.6(a)	Goal 7
4.4.2 Variance Notification	60.6(a)(5)	Goal 7
5.1.1 Alteration of Watercourses	60.3(b)(6) and (7)	Goal 7
5.1.2 Anchoring	60.3(a)(3); 60.3(b)(1), (2), and (8)	Goal 7; R322.1.2
5.1.3 Construction Materials and Methods	60.3(a)(3), TB 2; TB 11	Goal 7; R322.1.3; R322.1.3
5.1.4.1 Water Supply, Sanitary Sewer, and On-Site Waste Disposal Systems	60.3(a)(5) and (6)	Goal 7; R322.1.7
5.1.4.2 Electrical, Mechanical, Plumbing, and Other Equipment	60.3(a)(3)	Goal 7; R322.1.6;
5.1.5 Tanks		R322.2.4; R322.3.7
5.1.6 Subdivision Proposals	60.3(a)(4)(i) – (iii); 60.3(b)(3)	Goal 7
5.1.7 Use of Other Base Flood Data	60.3(a)(3); 60.3(b)(4); 60.3(b)(3); TB 10-01	Goal 7; R322.3.2
5.1.8 Structures Located in Multiple or Partial Flood Zones		R322.1
5.2.1 Flood Openings	60.3(c)(5); TB 1; TB 11	Goal 7; R322.2.2;

Ordinance Section	44 CFR and Technical Bulletin (TB) Citation(s)	State of Oregon Citation(s) (Goal 7, Specialty Codes*, Oregon Revised Statutes [ORS])
		R322.2.2.1
5.2.2 Garages	TB 7-93	R309
5.2.3.1 Before Regulatory Floodway	60.3(c)(10)	Goal 7
5.2.3.2 Residential Construction	60.3(c)(2)	Goal 7
5.2.3.3 Non-residential Construction	60.3(c)(3) – (5); TB 3	Goal 7; R322.2.2; R322.2.2.1
5.2.3.4 Manufactured Dwellings	60.3(b)(8); 60.3(c)(6)(iv); 60.3(c)(12)(ii)	Goal 7; State of OR Manufactured Dwelling Installation Specialty Code (MDISC) and associated statewide Code Interpretation dated 1/1/2011
5.2.3.5 Recreational Vehicles	60.3(c)(14)(i) – (iii)	Goal 7
5.2.3.6 Appurtenant (Accessory) Structures	60.3(c)(5); TB 1; TB 7-93	Oregon Structural Specialty Code (S) 105.2; R105.2
5.2.4 Floodways	60.3(d); FEMA Region X Fish Enhancement Memo (Mark Riebau)	Goal 7
5.2.5 Standards for Shallow Flooding Areas	60.3(c)(7), (8), (11), and (14)	Goal 7
5.3 Specific Standards for Coastal High Hazard Flood Zones, and 5.3.1 Development Standards	60.3(e); TB 5; TB 8; TB 9	Goal 7; R322.3.1; R322.3.2; R322.3.3; R322.3.4; R322.3.5
5.3.1.1 Manufactured Dwelling Standards for Coastal High Hazard Zones	60.3(e)(8)(i) – (iii)	Goal 7; RR322.3.2; State of OR Manufactured Dwelling Installation Specialty Code (MDISC) and associated statewide Code Interpretation dated 1/1/2011

Ordinance Section	44 CFR and Technical Bulletin (TB) Citation(s)	State of Oregon Citation(s) (Goal 7, Specialty Codes*, Oregon Revised Statutes [ORS])
5.3.1.2 Recreational Vehicle Standards for Coastal High Hazard Zones	60.3(e)(9)(i)- (iii)	Goal 7
5.3.1.3 Tank Standards for Coastal High Hazard Zones		R322.2.4; R322.3.7

*Link to Oregon Specialty Codes (https://www.oregon.gov/bcd/codes-stand/Pages/adopted-codes.aspx)

SECTION 3. Model Ordinance Language

1.0 STATUTORY AUTHORITY, FINDINGS OF FACT, PURPOSE, AND METHODS

1.1 STATUTORY AUTHORIZATION

The State of Oregon has in ORS 203.035 (COUNTIES) OR ORS 197.175 (CITIES) delegated the responsibility to local governmental units to adopt floodplain management regulations designed to promote the public health, safety, and general welfare of its citizenry.

Therefore, the COMMUNITY NAME does ordain as follows:

1.2 FINDINGS OF FACT

A. The flood hazard areas of COMMUNITY NAME preserve the natural and beneficial values served by floodplains but are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

B. These flood losses may be caused by the cumulative effect of obstructions in special flood hazard areas which increase flood heights and velocities, and when inadequately anchored, cause damage in other areas. Uses that are inadequately floodproofed, elevated, or otherwise protected from flood damage also contribute to flood loss.

1.3 STATEMENT OF PURPOSE

It is the purpose of this ordinance to promote public health, safety, and general welfare, and to minimize public and private losses due to flooding in special flood hazard areas by provisions designed to:

A. Protect human life and health;

B. Minimize expenditure of public money for costly flood control projects;

C. Preserve natural and beneficial floodplain functions;

D. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

E. Minimize prolonged business interruptions;

F. Minimize damage to public facilities and utilities such as water and gas mains; electric, telephone and sewer lines; and streets and bridges located in special flood hazard areas;

G. Help maintain a stable tax base by providing for the sound use and development of flood hazard areas so as to minimize blight areas caused by flooding;

H. Notify potential buyers that the property is in a special flood hazard area;

I. Notify those who occupy special flood hazard areas that they assume responsibility for their actions;

J. Participate in and maintain eligibility for flood insurance and disaster relief.

1.4 METHODS OF REDUCING FLOOD LOSSES

In order to accomplish its purposes, this ordinance includes methods and provisions for:

A. Restricting or prohibiting development which is dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

B. Requiring that development vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

C. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;

D. Controlling filling, grading, dredging, and other development which may increase flood damage;

E. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or may increase flood hazards in other areas.

F. Employing a standard of “no net loss” of natural and beneficial floodplain functions.

2.0 DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage.

Appeal: A request for a review of the interpretation of any provision of this ordinance or a request for a variance.

Area of shallow flooding: A designated Zone AO, AH, AR/AO or AR/AH on a community’s Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel

does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of special flood hazard: The land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. It is shown on the Flood Insurance Rate Map (FIRM) as Zone A, AO, AH, A1-30, AE, A99, AR (V, V1-30, VE). "Special flood hazard area" is synonymous in meaning and definition with the phrase "area of special flood hazard."

Base flood: The flood having a one percent chance of being equaled or exceeded in any given year.

Base flood elevation (BFE): The elevation to which floodwater is anticipated to rise during the base flood.

Basement: Any area of the building having its floor subgrade (below ground level) on all sides.

Breakaway wall: A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

Coastal high hazard area: An area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

Development: Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Fill: Placement of any materials such as soil, gravel, crushed stone, or other materials that change the elevation of the floodplain. The placement of fill is considered "development."

Fish Accessible Space: The volumetric space available to fish to access.

Fish Egress-able Space: The volumetric space available to fish to exit or leave from.

Flood or Flooding:

(a) A general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) The overflow of inland or tidal waters.

(2) The unusual and rapid accumulation or runoff of surface waters from any source.

(3) Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (a)(2) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

(b) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a)(1) of this definition.

Flood elevation study: an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

Flood Insurance Rate Map (FIRM): The official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

Flood Insurance Study (FIS): See "Flood elevation study."

Floodway: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. Also referred to as "Regulatory Floodway."

Functionally Dependent Use: A use which cannot perform its intended purpose unless it is located or carried out in proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Green Infrastructure: Use of natural or human-made hydrologic features to manage water and provide environmental and community benefits. Green infrastructure uses management approaches and technologies that use, enhance, and/or mimic the natural hydrologic cycle processes of infiltration, evapotranspiration, and reuse. At a large scale, it is an interconnected network of green space that conserves natural systems and provides assorted benefits to human populations. At a local scale, it manages stormwater by infiltrating it into the ground where it is generated using vegetation or porous surfaces, or by capturing it for later reuse. Green infrastructure practices can be used to achieve no net loss of pervious surface by creating infiltration of stormwater in an amount equal to or greater than the infiltration lost by the placement of new impervious surface.

Habitat Restoration Activities: Activities with the sole purpose of restoring habitats that have only temporary impacts and long-term benefits to habitat. Such projects cannot include ancillary structures such as a storage shed for maintenance equipment, must demonstrate that no rise in the BFE would occur as a result of the project and obtain a CLOMR and LOMR, and have obtained any other required permits (e.g., CWA Section 404 permit).

Hazard Trees: Standing dead, dying, or diseased trees or ones with a structural defect that makes it likely to fail in whole or in part and that present a potential hazard to a structure or as defined by the community.

Highest adjacent grade: The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic structure: Any structure that is:

(a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or

(d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

(1) By an approved state program as determined by the Secretary of the Interior or

(2) Directly by the Secretary of the Interior in states without approved programs.

Hydraulically Equivalent Elevation: A location (e.g., a site where no net loss standards are implemented) that is approximately equivalent to another (e.g., the impacted site) relative to the same 100-year water surface elevation contour or base flood elevation. This may be estimated based on a point that is along the same approximate line perpendicular to the direction of flow.

Hydrologically Connected: The interconnection of groundwater and surface water such that they constitute one water supply and use of either results in an impact to both.

Impervious Surface: A surface that cannot be penetrated by water and thereby prevents infiltration and increases the amount and rate of surface water runoff, leading to erosion of stream banks, degradation of habitat, and increased sediment loads in streams. Such surfaces can accumulate large amounts of pollutants that are then "flushed" into local water bodies during storms and can also interfere with recharge of groundwater and the base flows to water bodies.

Low Impact Development: An approach to land development (or redevelopment) that works with nature to manage stormwater as close to its source as possible. It employs principles such as preserving and recreating natural landscape features and minimizing effective imperviousness to create functional and appealing site drainage that treats stormwater as a resource rather than a waste product. Low Impact Development refers to designing and implementing practices that can be employed at the site level to control stormwater and help replicate the predevelopment hydrology of the site. Low impact development helps achieve no net loss of pervious surface by infiltrating stormwater in an amount equal to or greater than the infiltration lost by the placement of new impervious surface. LID is a subset of green infrastructure.

Lowest floor: The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

Manufactured dwelling: A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured dwelling" does not include a "recreational vehicle" and is synonymous with "manufactured home."

Manufactured dwelling park or subdivision: A parcel (or contiguous parcels) of land divided into two or more manufactured dwelling lots for rent or sale.

Mean Higher-High Water: The average of the higher-high water height of each tidal day observed over the National Tidal Datum Epoch.

Mean sea level: For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which Base Flood Elevations shown on a community's Flood Insurance Rate Map are referenced.

New construction: For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by COMMUNITY NAME and includes any subsequent improvements to such structures.

No Net Loss: A standard where adverse impacts must be avoided or offset through adherence to certain requirements so that there is no net change in the function

from the existing condition when a development application is submitted to the state, tribal, or local jurisdiction. The floodplain functions of floodplain storage, water quality, and vegetation must be maintained.

Offsite: Mitigation occurring outside of the project area.

Onsite: Mitigation occurring within the project area.

Ordinary High Water Mark: The line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

Qualified Professional: Appropriate subject matter expert that is defined by the community.

Reach: A section of a stream or river along which similar hydrologic conditions exist, such as discharge, depth, area, and slope. It can also be the length of a stream or river (with varying conditions) between major tributaries or two stream gages, or a length of river for which the characteristics are well described by readings at a single stream gage.

Recreational vehicle: A vehicle which is:

(a) Built on a single chassis;

(b) 400 square feet or less when measured at the largest horizontal projection;

(c) Designed to be self-propelled or permanently towable by a light duty truck; and

(d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Riparian: Of, adjacent to, or living on, the bank of a river, lake, pond, or other water body.

Riparian Buffer Zone (RBZ): The outer boundary of the riparian buffer zone is measured from the ordinary high water line of a fresh waterbody (lake; pond; ephemeral, intermittent, or perennial stream) or mean higher-high water line of a marine shoreline or tidally influenced river reach to 170 feet horizontally on each side of the stream or 170 feet inland from the MHHW. The riparian buffer zone includes the area between these outer boundaries on each side of the stream, including the stream channel. Where the RBZ is larger than the special flood hazard area, the no net loss standards shall only apply to the area within the special flood hazard area.

Riparian Buffer Zone Fringe: The area outside of the RBZ and floodway but still within the SFHA.

Silviculture: The art and science of controlling the establishment, growth, composition, health, and quality of forests and woodlands.

Special flood hazard area: See "Area of special flood hazard" for this definition.

Start of construction: Includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days from the date of the permit. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured dwelling on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure: For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured dwelling.

Substantial damage: Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement: Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

(a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

(b) Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

Undeveloped Space: The volume of flood capacity and fish-accessible/egress-able habitat from the existing ground to the Base Flood Elevation that is undeveloped. Any form of development including, but not limited to, the addition of fill, structures, concrete

structures (vaults or tanks), pilings, levees and dikes, or any other development that reduces flood storage volume and fish accessible/egress-able habitat must achieve no net loss.

Variance: A grant of relief by COMMUNITY NAME from the terms of a floodplain management regulation.

Violation: The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

3.0 GENERAL PROVISIONS

3.1 LANDS TO WHICH THIS ORDINANCE APPLIES

This ordinance shall apply to all special flood hazard areas within the jurisdiction of COMMUNITY NAME.

3.2 BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS

The special flood hazard areas identified by the Federal Insurance Administrator in a scientific and engineering report entitled "The Flood Insurance Study (FIS) for "EXACT TITLE OF FLOOD INSURANCE STUDY FOR COMMUNITY", dated DATE (MONTH DAY, FOUR DIGIT YEAR), with accompanying Flood Insurance Rate Maps (FIRMs) LIST ALL EFFECTIVE FIRM PANELS HERE (UNLESS ALL PANELS ARE BEING REPLACED THROUGH A NEW COUNTY_WIDE MAP THAT INCORPORATES ALL PREVIOUS PANELS/VERSIONS, IN THAT SITUATION PANELS DO NOT NEED TO BE INDIVIDUALLY LISTED) are hereby adopted by reference and declared to be a part of this ordinance. The FIS and FIRM panels are on file at INSERT THE LOCATION (I.E. COMMUNITY PLANNING DEPARTMENT LOCATED IN THE COMMUNITY ADMINISTRATIVE BUILDING).

3.3 COORDINATION WITH STATE OF OREGON SPECIALTY CODES

Pursuant to the requirement established in ORS 455 that the COMMUNITY NAME administers and enforces the State of Oregon Specialty Codes, the COMMUNITY NAME does hereby acknowledge that the Oregon Specialty Codes contain certain provisions that apply to the design and construction of buildings and structures located in special flood hazard areas. Therefore, this ordinance is intended to be administered and enforced in conjunction with the Oregon Specialty Codes.

3.4 COMPLIANCE AND PENALTIES FOR NONCOMPLIANCE

3.4.1 COMPLIANCE

All development within special flood hazard areas is subject to the terms of this ordinance and required to comply with its provisions and all other applicable regulations.

3.4.2 PENALTIES FOR NONCOMPLIANCE

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Violations of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a (INFRACTION TYPE (I.E. MISDEMEANOR) AND PENALTIES PER STATE/LOCAL LAW ASSOCIATED WITH SPECIFIED INFRACTION TYPE (I.E. ANY PERSON WHO VIOLATES THE REQUIREMENTS OF THIS ORDINANCE SHALL UPON CONVICTION THEREOF BE FINED NOT MORE THAN A SPECIFIED AMOUNT OF MONEY…) Nothing contained herein shall prevent the COMMUNITY NAME from taking such other lawful action as is necessary to prevent or remedy any violation.

3.5 ABROGATION AND SEVERABILITY

3.5.1 ABROGATION

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

3.5.2 SEVERABILITY

This ordinance and the various parts thereof are hereby declared to be severable. If any section clause, sentence, or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.

3.6 INTERPRETATION

In the interpretation and application of this ordinance, all provisions shall be:

A. Considered as minimum requirements;

B. Liberally construed in favor of the governing body; and

C. Deemed neither to limit nor repeal any other powers granted under state statutes.

3.7 WARNING AND DISCLAIMER OF LIABILITY

3.7.1 WARNING

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply

that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages.

3.7.2 DISCLAIMER OF LIABILITY

This ordinance shall not create liability on the part of the COMMUNITY NAME, any officer or employee thereof, or the Federal Insurance Administrator for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

4.0 ADMINISTRATION

4.1 DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR

The INDIVIDUAL JOB TITLE is hereby appointed to administer, implement, and enforce this ordinance by granting or denying development permits in accordance with its provisions. The Floodplain Administrator may delegate authority to implement these provisions.

Additional Recommended Language Provided in Appendix B

4.2 DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR

Duties of the floodplain administrator, or their designee, shall include, but not be limited to:

4.2.1 PERMIT REVIEW

Review all development permits to:

A. Determine that the permit requirements of this ordinance have been satisfied;

B. Determine that all other required local, state, and federal permits have been obtained and approved;

C. Determine if the proposed development is located in a floodway.

i. If located in the floodway assure that the floodway provisions of this ordinance in section **5.2.4** are met; and

ii. Determine if the proposed development is located in an area where Base Flood Elevation (BFE) data is available either through the Flood Insurance Study (FIS) or from another authoritative source. If BFE data is not available then ensure compliance with the provisions of sections **5.1.7**; and

iii. Provide to building officials the Base Flood Elevation (BFE) (ADD FREEBOARD IF COMMUNITY HAS HIGHER ELEVATION STANDARDS) applicable to any building requiring a development permit.

D. Determine if the proposed development qualifies as a substantial improvement as defined in section **2.0**.

E. Determine if the proposed development activity is a watercourse alteration. If a watercourse alteration is proposed, ensure compliance with the provisions in section **5.1.1**.

F. Determine if the proposed development activity includes the placement of fill or excavation.

G. Determine whether the proposed development activity complies with the no net loss standards in Section 6.0.

4.2.2 INFORMATION TO BE OBTAINED AND MAINTAINED

The following information shall be obtained and maintained and shall be made available for public inspection as needed:

A. The actual elevation (in relation to mean sea level) of the lowest floor (including basements) and all attendant utilities of all new or substantially improved structures where Base Flood Elevation (BFE) data is provided through the Flood Insurance Study (FIS), Flood Insurance Rate Map (FIRM), or obtained in accordance with section **5.1.7**.

B. The elevation (in relation to mean sea level) of the natural grade of the building site for a structure prior to the start of construction and the placement of any fill and ensure that the requirements of sections **4.2.1(B), 5.2.4, and 5.3.1(F),** are adhered to.

C. Upon placement of the lowest floor of a structure (including basement) but prior to further vertical construction, documentation, prepared and sealed by a professional licensed surveyor or engineer, certifying the elevation (in relation to mean sea level) of the lowest floor (including basement).

D. Where base flood elevation data are utilized, As-built certification of the elevation (in relation to mean sea level) of the lowest floor (including basement) prepared and sealed by a professional licensed surveyor or engineer, prior to the final inspection.

E. Maintain all Elevation Certificates (EC) submitted to the community.

F. The elevation (in relation to mean sea level) to which the structure and all attendant utilities were floodproofed for all new or substantially improved floodproofed structures where allowed under this ordinance and where

Base Flood Elevation (BFE) data is provided through the FIS, FIRM, or obtained in accordance with section **5.1.7**.

G. All floodproofing certificates required under this ordinance.

H. All variance actions, including justification for their issuance.

I. All hydrologic and hydraulic analyses performed as required under section **5.2.4**.

J. All Substantial Improvement and Substantial Damage calculations and determinations as required under section **4.2.4**.

K. Documentation of how no net loss standards have been met (see Section 6.0)

L. All records pertaining to the provisions of this ordinance.

4.2.3 REQUIREMENT TO NOTIFY OTHER ENTITIES AND SUBMIT NEW TECHNICAL DATA

4.2.3.1 COMMUNITY BOUNDARY ALTERATIONS

The Floodplain Administrator shall notify the Federal Insurance Administrator in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed authority or no longer has authority to adopt and enforce floodplain management regulations for a particular area, to ensure that all Flood Hazard Boundary Maps (FHBM) and Flood Insurance Rate Maps (FIRM) accurately represent the community's boundaries. Include within such notification a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished floodplain management regulatory authority.

4.2.3.2 WATERCOURSE ALTERATIONS

A. Notify adjacent communities, the Department of Land Conservation and Development, and other appropriate state and federal agencies, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration. This notification shall be provided by the applicant to the Federal Insurance Administration as a Letter of Map Revision (LOMR) along with either:

i. A proposed maintenance plan to assure the flood carrying capacity within the altered or relocated portion of the watercourse is maintained; or

ii. Certification by a registered professional engineer that the project has been designed to retain its flood carrying capacity without periodic maintenance.

B. The applicant shall be required to submit a Conditional Letter of Map Revision (CLOMR) when required under section **4.2.3.3**. Ensure compliance with all applicable requirements in sections **4.2.3.3** and **5.1.1**.

4.2.3.3 REQUIREMENT TO SUBMIT NEW TECHNICAL DATA

A. A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, a community shall notify the Federal Insurance Administrator of the changes by submitting technical or scientific data in accordance with Title 44 of the Code of Federal Regulations (CFR), Section 65.3. The community may require the applicant to submit such data and review fees required for compliance with this section through the applicable FEMA Letter of Map Change (LOMC) process.

B. The Floodplain Administrator shall require a Conditional Letter of Map Revision prior to the issuance of a floodplain development permit for:

i. Proposed floodway encroachments that increase the base flood elevation; and

ii. Proposed development which increases the base flood elevation by more than one foot in areas where FEMA has provided base flood elevations but no floodway.

C. An applicant shall notify FEMA within six (6) months of project completion when an applicant has obtained a Conditional Letter of Map Revision (CLOMR) from FEMA. This notification to FEMA shall be provided as a Letter of Map Revision (LOMR).

Additional Recommended Language Provided in Appendix B

4.2.4 SUBSTANTIAL IMPROVEMENT AND SUBSTANTIAL DAMAGE ASSESSMENTS AND DETERMINATIONS

Conduct Substantial Improvement (SI) (as defined in section 2.0) reviews for all structural development proposal applications and maintain a record of SI calculations within permit files in accordance with section **4.2.2**. Conduct Substantial Damage (SD) (as defined in section 2.0) assessments when structures are damaged due to a natural hazard event or other causes. Make SD determinations whenever structures within the special flood hazard area (as established in section **3.2**) are damaged to the extent that the cost of restoring

the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

4.3 ESTABLISHMENT OF DEVELOPMENT PERMIT

4.3.1 FLOODPLAIN DEVELOPMENT PERMIT REQUIRED

A development permit shall be obtained before construction or development begins within any area horizontally within the special flood hazard area established in section **3.2**. The development permit shall be required for all structures, including manufactured dwellings, and for all other development, as defined in section **2.0**, including fill and other development activities.

4.3.2 APPLICATION FOR DEVELOPMENT PERMIT

Application for a development permit may be made on forms furnished by the Floodplain Administrator and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

A. In riverine flood zones, the proposed elevation (in relation to mean sea level), of the lowest floor (including basement) and all attendant utilities of all new and substantially improved structures; in accordance with the requirements of section **4.2.2**.

B. In coastal flood zones (V zones and coastal A zones), the proposed elevation in relation to mean sea level of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of all structures, and whether such structures contain a basement.

C. Proposed elevation in relation to mean sea level to which any non-residential structure will be floodproofed.

D. Certification by a registered professional engineer or architect licensed in the State of Oregon that the floodproofing methods proposed for any non-residential structure meet the floodproofing criteria for non-residential structures in section **5.2.3.3**.

E. Description of the extent to which any watercourse will be altered or relocated.

F. Base Flood Elevation data for subdivision proposals or other development when required per sections **4.2.1 and 5.1.6**.

G. Substantial improvement calculation for any improvement, addition, reconstruction, renovation, or rehabilitation of an existing structure.

H. The amount and location of any fill or excavation activities proposed.

4.4 VARIANCE PROCEDURE

The issuance of a variance is for floodplain management purposes only. Flood insurance premium rates are determined by federal statute according to actuarial risk and will not be modified by the granting of a variance.

4.4.1 CONDITIONS FOR VARIANCES

A. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the provisions of sections **4.4.1 (C) and (E), and 4.4.2**. As the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases.

B. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

C. Variances shall not be issued within any floodway if any increase in flood levels during the base flood discharge would result.

D. Variances shall only be issued upon:

i. A showing of good and sufficient cause;

ii. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and,

iii. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing laws or ordinances.

E. Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the criteria of section **4.4.1 (B) – (D)** are met, and the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

F. Variances shall not be issued unless it is demonstrated that the development will not result in net loss of the following proxies for the three floodplain functions in the SFHA: undeveloped space; pervious surface; or trees 6 inches dbh or greater (see Section 6.0 and associated options in Table 1).

Additional Optional Language Provided in Appendix B.

4.4.2 VARIANCE NOTIFICATION

Any applicant to whom a variance is granted shall be given written notice that the issuance of a variance to construct a structure below the Base Flood Elevation will result in increased premium rates for flood insurance and that such construction below the base flood elevation increases risks to life and property. Such notification and a record of all variance actions, including justification for their issuance shall be maintained in accordance with section **4.2.2**.

5.0 PROVISIONS FOR FLOOD HAZARD REDUCTION

5.1 GENERAL STANDARDS

In all special flood hazard areas, the no net loss standards (see Section 6.0) and the following standards shall be adhered to:

5.1.1 ALTERATION OF WATERCOURSES

Require that the flood carrying capacity within the altered or relocated portion of said watercourse is maintained. Require that maintenance is provided within the altered or relocated portion of said watercourse to ensure that the flood carrying capacity is not diminished. Require compliance with sections **4.2.3.2 and 4.2.3.3**.

5.1.2 ANCHORING

A. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

B. All manufactured dwellings shall be anchored per section **5.2.3.4**.

5.1.3 CONSTRUCTION MATERIALS AND METHODS

A. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

B. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

5.1.4 UTILITIES AND EQUIPMENT

5.1.4.1 WATER SUPPLY, SANITARY SEWER, AND ON-SITE WASTE DISPOSAL SYSTEMS

A. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

B. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.

C. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding consistent with the Oregon Department of Environmental Quality.

5.1.4.2 ELECTRICAL, MECHANICAL, PLUMBING, AND OTHER EQUIPMENT

Electrical, heating, ventilating, air-conditioning, plumbing, duct systems, and other equipment and service facilities shall be elevated at or above the base flood level (ANY COMMUNITY FREEBOARD REQUIREMENT) or shall be designed and installed to prevent water from entering or accumulating within the components and to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during conditions of flooding. In addition, electrical, heating, ventilating, air- conditioning, plumbing, duct systems, and other equipment and service facilities shall:

A. If replaced as part of a substantial improvement shall meet all the requirements of this section.

B. Not be mounted on or penetrate through breakaway walls.

5.1.5 TANKS

A. Underground tanks shall be anchored to prevent flotation, collapse and lateral movement under conditions of the base flood.

B. Above-ground tanks shall be installed at or above the base flood level (COMMUNITY FREEBOARD REQUIREMENT) or shall be anchored to prevent flotation, collapse, and lateral movement under conditions of the base flood.

C. In coastal flood zones (V Zones or coastal A Zones) when elevated on platforms, the platforms shall be cantilevered from or knee braced to the building or shall be supported on foundations that conform to the requirements of the State of Oregon Specialty Code.

5.1.6 SUBDIVISION PROPOSALS AND OTHER PROPOSED DEVELOPMENTS

A. All new subdivision proposals and other proposed new developments (including proposals for manufactured dwelling parks and subdivisions) greater than 50 lots or 5 acres, whichever is the lesser, shall include within such proposals Base Flood Elevation data.

B. All new subdivision proposals and other proposed new developments (including proposals for manufactured dwelling parks and subdivisions) shall:

i. Be consistent with the need to minimize flood damage.

ii. Have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage.

iii. Have adequate drainage provided to reduce exposure to flood hazards.

iv. Comply with no net loss standards in section 6.0.

5.1.7 USE OF OTHER BASE FLOOD ELEVATION DATA

A. When Base Flood Elevation data has not been provided in accordance with section **3.2** the local floodplain administrator shall obtain, review, and reasonably utilize any Base Flood Elevation data available from a federal, state, or other source, in order to administer section **5.0**. All new subdivision proposals and other proposed new developments (including proposals for manufactured dwelling parks and subdivisions) must meet the requirements of section **5.1.6**.

B. Base Flood Elevations shall be determined for development proposals that are 5 acres or more in size or are 50 lots or more, whichever is lesser in any A zone that does not have an established base flood elevation. Development proposals located within a riverine unnumbered A Zone shall be reasonably safe from flooding; the test of reasonableness includes use of historical data, high water marks, FEMA provided Base Level Engineering data, and photographs of past flooding, etc… where available. (REFERENCE TO ANY OF THIS TYPE OF INFORMATION TO BE USED FOR REGULATORY PURPOSES BY YOUR COMMUNITY, I.E. BASE LEVEL ENGINEERING DATA, HIGH WATER MARKS, HISTORICAL OR OTHER DATA THAT WILL BE REGULATED TO. THIS MAY BE NECESSARY TO ENSURE THAT THE STANDARDS APPLIED TO RESIDENTIAL STRUCTURES ARE CLEAR AND OBJECTIVE. IF UNCERTAIN SEEK LEGAL ADVICE, **AT A MINIMUM REQUIRE THE ELEVATION OF RESIDENTIAL STRUCTURES AND NON-RESIDENTIAL STRUCTURES THAT ARE NOT DRY FLOODPROOFED TO BE 2 FEET ABOVE HIGHEST ADJACENT GRADE).** Failure to elevate at least two feet above grade in these zones may result in higher insurance rates.

5.1.8 STRUCTURES LOCATED IN MULTIPLE OR PARTIAL FLOOD ZONES

In coordination with the State of Oregon Specialty Codes:

A. When a structure is located in multiple flood zones on the community's Flood Insurance Rate Maps (FIRM) the provisions for the more restrictive flood zone shall apply.

B. When a structure is partially located in a special flood hazard area, the entire structure shall meet the requirements for new construction and substantial improvements.

Additional Recommended Language Provided in Appendix B.

5.2 SPECIFIC STANDARDS FOR RIVERINE (INCLUDING ALL NON-COASTAL) FLOOD ZONES

These specific standards shall apply to all new construction and substantial improvements in addition to the General Standards contained in section **5.1** of this ordinance and the no net loss standards (see Section 6.0).

5.2.1 FLOOD OPENINGS

All new construction and substantial improvements with fully enclosed areas below the lowest floor (excluding basements) are subject to the following requirements. Enclosed areas below the Base Flood Elevation, including crawl spaces shall:

A. Be designed to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters;

B. Be used solely for parking, storage, or building access;

C. Be certified by a registered professional engineer or architect or meet or exceed all of the following minimum criteria:

i. A minimum of two openings;

ii. The total net area of non-engineered openings shall be not less than one square inch for each square foot of enclosed area, where the enclosed area is measured on the exterior of the enclosure walls;

iii. The bottom of all openings shall be no higher than one foot above grade;

iv. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they shall allow the automatic flow of floodwater into and out of the enclosed areas and shall be accounted for in the determination of the net open area; and,

v. All additional higher standards for flood openings in the State of Oregon Residential Specialty Codes Section R322.2.2 shall be complied with when applicable.

5.2.2 GARAGES

A. Attached garages may be constructed with the garage floor slab below the Base Flood Elevation (BFE) in riverine flood zones, if the following requirements are met:

   i. If located within a floodway the proposed garage must comply with the requirements of section 5.2.4;

   ii. The floors are at or above grade on not less than one side;

   iii. The garage is used solely for parking, building access, and/or storage;

   iv. The garage is constructed with flood openings in compliance with section 5.2.1 to equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwater;

   v. The portions of the garage constructed below the BFE are constructed with materials resistant to flood damage;

   vi. The garage is constructed in compliance with the standards in section 5.1; and,

   vii. The garage is constructed with electrical, and other service facilities located and installed so as to prevent water from entering or accumulating within the components during conditions of the base flood.

B. Detached garages must be constructed in compliance with the standards for appurtenant structures in section 5.2.3.6 or non-residential structures in section 5.2.3.3 depending on the square footage of the garage.

5.2.3 FOR RIVERINE (NON-COASTAL) SPECIAL FLOOD HAZARD AREAS WITH BASE FLOOD ELEVATIONS

In addition to the general standards listed in section 5.1 the following specific standards shall apply in Riverine (non-coastal) special flood hazard areas with Base Flood Elevations (BFE): Zones A1-A30, AH, and AE.

5.2.3.1 BEFORE REGULATORY FLOODWAY

In areas where a regulatory floodway has not been designated, no new construction, substantial improvement, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's Flood Insurance Rate Map (FIRM), unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community and will not

result in the net loss of flood storage volume. When determined that structural elevation is not possible and where the placement of fill cannot meet the above standard, impacts to undeveloped space must adhere to the no net loss standards in section **6.1.C**.

5.2.3.2 RESIDENTIAL CONSTRUCTION

A. New construction, conversion to, and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated at or above the Base Flood Elevation (BFE) (ADDITIONAL FREEBOARD FOR YOUR COMMUNITY – RECOMMEND MINIMUM OF 1FT ABOVE BFE).

B. Enclosed areas below the lowest floor shall comply with the flood opening requirements in section **5.2.1**.

5.2.3.3 NON-RESIDENTIAL CONSTRUCTION

A. New construction, conversion to, and substantial improvement of any commercial, industrial, or other non-residential structure shall:

i. Have the lowest floor, including basement elevated at or above the Base Flood Elevation (BFE) (ANY ADDITIONAL FREEBOARD REQUIREMENTS FOR YOUR COMMUNITY); or

ii. Together with attendant utility and sanitary facilities:

a. Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;

b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and,

c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this section based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the Floodplain Administrator as set forth section **4.2.2**.

B. Non-residential structures that are elevated, not floodproofed, shall comply with the standards for enclosed areas below the lowest floor in section **5.2.1**.

C. Applicants floodproofing non-residential buildings shall be notified that flood insurance premiums will be based on rates that are one (1) foot below the floodproofed level (e.g. a building floodproofed to the base flood level will be rated as one (1) foot below.

5.2.3.4 MANUFACTURED DWELLINGS

A. Manufactured dwellings to be placed (new or replacement) or substantially improved that are supported on solid foundation walls shall be constructed with flood openings that comply with section **5.2.1**;

B. The bottom of the longitudinal chassis frame beam shall be at or above Base Flood Elevation;

C. Manufactured dwellings to be placed (new or replacement) or substantially improved shall be anchored to prevent flotation, collapse, and lateral movement during the base flood. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (Reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques), and;

D. Electrical crossover connections shall be a minimum of twelve (12) inches above Base Flood Elevation (BFE).

5.2.3.5 RECREATIONAL VEHICLES

Recreational vehicles placed on sites are required to:

A. Be on the site for fewer than 180 consecutive days, and

B. Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or

C. Meet the requirements of section **5.2.3.4**, including the anchoring and elevation requirements for manufactured dwellings.

5.2.3.6 APPURTENANT (ACCESSORY) STRUCTURES

Relief from elevation or floodproofing requirements for residential and non-residential structures in Riverine (Non-Coastal) flood zones may be granted for appurtenant structures that meet the following requirements:

A. Appurtenant structures located partially or entirely within the floodway must comply with requirements for development within a floodway found in section **5.2.4**;

B. Appurtenant structures must only be used for parking, access, and/or storage and shall not be used for human habitation;

C. In compliance with State of Oregon Specialty Codes, appurtenant structures on properties that are zoned residential are limited to one-story structures less than 200 square feet, or 400 square feet if the property is greater than two (2) acres in area and the proposed appurtenant structure will be located a minimum of 20 feet from all property lines. Appurtenant structures on properties that are zoned as non-residential are limited in size to 120 square feet;

D. The portions of the appurtenant structure located below the Base Flood Elevation must be built using flood resistant materials;

E. The appurtenant structure must be adequately anchored to prevent flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the base flood;

F. The appurtenant structure must be designed and constructed to equalize hydrostatic flood forces on exterior walls and comply with the requirements for flood openings in section **5.2.1**;

G. Appurtenant structures shall be located and constructed to have low damage potential;

H. Appurtenant structures shall not be used to store toxic material, oil, or gasoline, or any priority persistent pollutant identified by the Oregon Department of Environmental Quality unless confined in a tank installed incompliance with section **5.1.5**; and,

I. Appurtenant structures shall be constructed with electrical, mechanical, and other service facilities located and installed so as to prevent water from entering or accumulating within the components during conditions of the base flood.

5.2.4 FLOODWAYS

Located within the special flood hazard areas established in section **3.2** are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of the floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

A. Prohibit encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless:

i. Certification by a registered professional civil engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment shall not result in any increase in flood levels within the community during the occurrence of the base flood discharge; or

ii. A community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that conditional approval has been obtained by the Federal Insurance Administrator through the Conditional Letter of Map Revision (CLOMR) application process, all requirements established under 44 CFR 65.12 are fulfilled, and the encroachment(s) comply with the no net loss standards in section 6.0.

B. If the requirements of section **5.2.4 (A)** are satisfied, all new construction, substantial improvements, and other development shall comply with all other applicable flood hazard reduction provisions of section **5.0 and 6.0**.

5.2.5 STANDARDS FOR SHALLOW FLOODING AREAS

Shallow flooding areas appear on FIRMs as AO zones with depth designations or as AH zones with Base Flood Elevations. For AO zones the base flood depths range from one (1) to three (3) feet above ground where a clearly defined channel does not exist, or where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is usually characterized as sheet flow. For both AO and AH zones, adequate drainage paths are required around structures on slopes to guide floodwaters around and away from proposed structures.

5.2.5.1 STANDARDS FOR AH ZONES

Development within AH Zones must comply with the standards in sections **5.1, 5.2, and 5.2.5.**

5.2.5.2 STANDARDS FOR AO ZONES

In AO zones, the following provisions apply in addition to the requirements in sections **5.1** and **5.2.5**:

A. New construction, conversion to, and substantial improvement of residential structures and manufactured dwellings within AO zones shall have the lowest floor, including basement, elevated above the highest grade adjacent to the building, at minimum to or above the depth number specified on the Flood Insurance Rate Maps (FIRM) (COMMUNITY FREEBOARD REQUIREMENT) (at least two (2) feet if no depth number is specified). For manufactured dwellings the lowest floor is considered to be the bottom of the longitudinal chassis frame beam.

B. New construction, conversion to, and substantial improvements of non-residential structures within AO zones shall either:

i. Have the lowest floor (including basement) elevated above the highest adjacent grade of the building site, at minimum to or above the depth number specified on the Flood Insurance Rate

Maps (FIRMS) (COMMUNITY FREE BOARD REQUIREMENT) (at least two (2) feet if no depth number is specified); or

ii. Together with attendant utility and sanitary facilities, be completely floodproofed to or above the depth number specified on the FIRM (COMMUNITY FREEBOARD REQUIREMENT) or a minimum of two (2) feet above the highest adjacent grade if no depth number is specified, so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. If this method is used, compliance shall be certified by a registered professional engineer or architect as stated in section **5.2.3.3(A)(4)**.

C. Recreational vehicles placed on sites within AO Zones on the community's Flood Insurance Rate Maps (FIRM) shall either:

i. Be on the site for fewer than 180 consecutive days, and

ii. Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or

iii. Meet the elevation requirements of section **5.2.5.2(A)**, and the anchoring and other requirements for manufactured dwellings of section **5.2.3.4**.

D. In AO zones, new and substantially improved appurtenant structures must comply with the standards in section **5.2.3.6**.

E. In AO zones, enclosed areas beneath elevated structures shall comply with the requirements in section **5.2.1**.

5.3 SPECIFIC STANDARDS FOR COASTAL HIGH HAZARD FLOOD ZONES

Located within special flood hazard areas established in section **3.2** are Coastal High Hazard Areas, designated as Zones V1-V30, VE, V, or coastal A zones as identified on the FIRMs as the area between the Limit of Moderate Wave Action (LiMWA) and the Zone V boundary. These areas have special flood hazards associated with high velocity waters from surges and, therefore, in addition to meeting all provisions of this ordinance and the State of Oregon Specialty Codes, the following provisions shall apply in addition to the general standards provisions in section **5.1**.

5.3.1 DEVELOPMENT STANDARDS

A. All new construction and substantial improvements in Zones V1-V30 and VE, V, and coastal A zones (where base flood elevation data is available) shall be elevated on pilings and columns such that:

i. The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated a minimum of one foot above the base flood level; and

ii. The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading values used shall be those associated with the base flood. Wind loading values used shall be those specified by the State of Oregon Specialty Codes;

B. A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of this section.

C. Obtain the elevation (in relation to mean sea level) of the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings and columns) of all new and substantially improved structures and whether or not such structures contain a basement. The floodplain administrator shall maintain a record of all such information in accordance with section 4.2.2.

D. Provide that all new construction and substantial improvements have the space below the lowest floor either free of obstruction or constructed with non- supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system.

For the purpose of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local or state codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:

i. Breakaway wall collapse shall result from water load less than that which would occur during the base flood; and

ii. Such enclosed space created by breakaway walls shall be useable solely for parking of vehicles, building access, or storage. Such space shall not be used for human habitation.

iii. Walls intended to break away under flood loads shall have flood openings that meet or exceed the criteria for flood openings in section 5.2.1.

E. The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Maximum water loading values to be used in this determination shall be those associated with the base flood. Maximum wind loading values used shall be those specified by the State of Oregon Specialty Codes.

F. Prohibit the use of fill for structural support of buildings.

G. All new construction shall be located landward of the reach of mean high tide.

H. Prohibit man-made alteration of sand dunes which would increase potential flood damage.

I. All structures, including but not limited to residential structures, non-residential structures, appurtenant structures, and attached garages shall comply with all the requirements of section 5.3.1 Floodproofing of non-residential structures is prohibited.

5.3.1.1 MANUFACTURED DWELLING STANDARDS FOR COASTAL HIGH HAZARD ZONES

All manufactured dwellings to be placed (new or replacement) or substantially improved within Coastal High Hazard Areas (Zones V, V1-30, VE, or Coastal A) shall meet the following requirements:

A. Comply with all of the standards within section 5.3

B. The bottom of the longitudinal chassis frame beam shall be elevated to a minimum of one foot above the Base Flood Elevation (BFE); and

C. Electrical crossover connections shall be a minimum of 12 inches above the BFE.

5.3.1.2 RECREATIONAL VEHICLE STANDARDS FOR COASTAL HIGH HAZARD ZONES

Recreational Vehicles within Coastal High Hazard Areas (Zones V, V1-30, VE, or Coastal A) shall either:

A. Be on the site for fewer than 180 consecutive days, and

B. Be fully licensed and ready for highway use, on wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

5.3.1.3 TANK STANDARDS FOR COASTAL HIGH HAZARD ZONES

Tanks shall meet the requirements of section 5.1.5 and 6.0.

6.0STANDARDS FOR PROTECTION OF SFHA FLOODPLAIN FUNCTIONS

The standards described below apply to all special flood hazard areas as defined in Section 2.0.

6.1 NO NET LOSS STANDARDS

A. No net loss of the three proxies for the floodplain functions mentioned in Section 1 is required for development in the special flood hazard area that would reduce undeveloped space, increase impervious surface, or result in a loss of trees that are 6-inches dbh or greater. No net loss can be achieved by first avoiding negative effects to floodplain functions to the degree possible, then minimizing remaining effects, then replacing and/or otherwise compensating for, offsetting, or rectifying the residual adverse effects to the three floodplain functions. Prior to the issuance of any development authorization, the applicant shall:

i. Demonstrate a legal right by the project proponent to implement the proposed activities to achieve no net loss (e.g., property owner agreement);

ii. Demonstrate that financial assurances are in place for the long-term maintenance and monitoring of all projects to achieve no net loss;

iii. Include a management plan that identifies the responsible site manager, stipulates what activities are allowed on site, and requires the posting of signage identifying the site as a mitigation area.

B. Compliance with no net loss for undeveloped space or impervious surface is preferred to occur prior to the loss of habitat function but, at a minimum, shall occur concurrent with the loss. To offset the impacts of delay in implementing no net loss, a 25 percent increase in the required minimum area is added for each year no net loss implementation is delayed.

C. No net loss must be provided within, in order of preference: 1) the lot or parcel that floodplain functions were removed from, 2) the same reach of the waterbody where the development is proposed, or 3) the special flood hazard area within the same hydrologically connected area as the proposed development. Table 1 presents the no net loss ratios, which increase based on the preferences listed above.

6.1.1 UNDEVELOPED SPACE

A. Development proposals shall not reduce the fish-accessible and egress-able undeveloped space within the special flood hazard area.

B. A development proposal with an activity that would impact undeveloped space shall achieve no net loss of fish-accessible and egress-able space.

C. Lost undeveloped space must be replaced with fish-accessible and egress-able compensatory volume based on the ratio in Table 1 and at the same flood level at which the development causes an impact (i.e., plus or minus 1 foot of the hydraulically equivalent elevation).

i. Hydraulically equivalent sites must be found within either the equivalent 1-foot elevations or the same flood elevation bands of the development porposal. The flood elevation bands are identified as follows:

(1) Ordinary High Water Mark to 10-year,

(2) 10-year to 25-year,

(3) 25-year to 50-year,

(4) And 50-year to 100-year

ii. Hydrologically connected to the waterbody that is the flooding source;

iii. Designed so that there is no increase in velocity; and

iv. Designed to fill and drain in a manner that minimizes anadromous fish stranding to the greatest extent possible.

6.1.2 IMPERVIOUS SURFACES

Impervious surface mitigation shall be mitigated through any of the following options:

A. Development proposals shall not result in a net increase in impervious surface area within the SFHA, or

B. use low impact development or green infrastructure to infiltrate and treat stormwater produced by the new impervious surface, as documented by a qualified professional, or

C. If prior methods are not feasible and documented by a qualified professional stormwater retention is required to ensure no increase in peak volume or flow and to maximize infiltration, and treatment is required to

minimize pollutant loading. See section **6.2.C** for stormwater retention specifications.

6.1.3 TREES

A. Development proposals shall result in no net loss of trees 6-inches dbh or greater within the special flood hazard area. This requirement does not apply to silviculture where there is no development.

i. Trees of or exceeding 6-inches dbh that are removed from the RBZ, Floodway, or RBZ-fringe must be replaced at the ratios in Table 1.

ii. Replacement trees must be native species that would occur naturally in the Level III ecoregion of the impact area.

6.2 STORMWATER MANAGEMENT

Any development proposal that cannot mitigate as specified in 6.1.2(A)-(B) must include the following:

A. Water quality (pollution reduction) treatment for post-construction stormwater runoff from any net increase in impervious area; and

B. Water quantity treatment (retention facilities) unless the outfall discharges into the ocean.

C. Retention facilities must:

i. Limit discharge to match the pre-development peak discharge rate (i.e., the discharge rate of the site based on its natural groundcover and grade before any development occurred) for the 10-year peak flow using a continuous simulation for flows between 50 percent of the 2-year event and the 10-year flow event (annual series).

ii. Treat stormwater to remove sediment and pollutants from impervious surfaces such that at least 80 percent of the suspended solids are removed from the stormwater prior to discharging to the receiving water body.

iii. Be designed to not entrap fish and drain to the source of flooding.

iv. Be certified by a qualified professional.

D. Stormwater treatment practices for multi-parcel facilities, including subdivisions, shall have an enforceable operation and maintenance agreement to ensure the system functions as designed. This agreement will include:

i. Access to stormwater treatment facilities at the site by the COMMUNITY TYPE (e.g., city, county) for the purpose of inspection and repair.

ii. A legally binding document specifying the parties responsible for the proper maintenance of the stormwater treatment facilities. The agreement will be recorded and bind subsequent purchasers and sellers even if they were not party to the original agreement.

iii. For stormwater controls that include vegetation and/or soil permeability, the operation and maintenance manual must include maintenance of these elements to maintain the functionality of the feature.

iv. The responsible party for the operation and maintenance of the stormwater facility shall have the operation and maintenance manual on site and available at all times. Records of the maintenance and repairs shall be retained and made available for inspection by the COMMUNITY TYPE (e.g., city, county) for five years

6.3 ACTIVITIES EXEMPT FROM NO NET LOSS STANDARDS

The following activities are not subject to the no net loss standards in Section 6.1; however, they may not be exempt from floodplain development permit requirements.

A. Normal maintenance of structures, such as re-roofing and replacing siding, provided there is no change in the footprint or expansion of the roof of the structure;

B. Normal street, sidewalk, and road maintenance, including filling potholes, repaving, and installing signs and traffic signals, that does not alter contours, use, or alter culverts. Activities exempt do not include expansion of paved areas;

C. Routine maintenance of landscaping that does not involve grading, excavation, or filling;

D. Routine agricultural practices such as tilling, plowing, harvesting, soil amendments, and ditch cleaning that does not alter the ditch configuration provided the spoils are removed from special flood hazard area or tilled into fields as a soil amendment;

E. Routine silviculture practices that do not meet the definition of development, including harvesting of trees as long as root balls are left in place and forest road construction or maintenance that does not alter contours, use, or alter culverts;

F. Removal of noxious weeds and hazard trees, and replacement of non-native vegetation with native vegetation;

G. Normal maintenance of above ground utilities and facilities, such as replacing downed power lines and utility poles provided there is no net change in footprint;

H. Normal maintenance of a levee or other flood control facility prescribed in the operations and maintenance plan for the levee or flood control facility. Normal maintenance does not include repair from flood damage, expansion of the prism, expansion of the face or toe or addition of protection on the face or toe with rock armor.

I. Habitat restoration activities.

6.4 RIPARIAN BUFFER ZONE (RBZ)

A. The Riparian Buffer Zone is measured from the ordinary high-water line of a fresh waterbody (lake; pond; ephemeral, intermittent, or perennial stream) or mean higher-high water of a marine shoreline or tidally influenced river reach to 170 feet horizontally on each side of the stream or inland of the MHHW. The riparian buffer zone includes the area between these outer boundaries on each side of the stream, including the stream channel.

B. Habitat restoration activities in the RBZ are considered self-mitigating and are not subject to the no net loss standards described above.

C. Functionally dependent uses are only subject to the no net loss standards for development in the RBZ. Ancillary features that are associated with but do not directly impact the functionally dependent use in the RBZ (including manufacturing support facilities and restrooms) are subject to the beneficial gain standard in addition to no net loss standards.

D. Any other use of the RBZ requires a greater offset to achieve no net loss of floodplain functions, on top of the no net loss standards described above, through the beneficial gain standard.

E. Under FEMA's beneficial gain standard, an area within the same reach of the project and equivalent to 5% of the total project area within the RBZ shall be planted with native herbaceous and shrub vegetation and designated as open space.

Table 1 No Net Loss Standards

Basic Mitigate Ratios	Undeveloped Space (ft^3)	Impervious Surface (ft^2)	Trees (6"<dbh≤20")	Trees (20"<dbh≤39")	Trees (39"<dbh)
RBZ and Floodway	2:1*	1:1	3:1*	5:1	6:1
RBZ-Fringe	1.5:1*	1:1	2:1*	4:1	5:1

Mitigation multipliers					
Mitigation onsite to Mitigation offsite, same reach	100%	100%	100%	100%	100%
Mitigation onsite to Mitigation offsite, different reach, same watershed (5th field)	200% *	200%*	200%*	200%	200%

Notes:

1. Ratios with asterisks are indicated in the BiOp
2. Mitigation multipliers of 100% result in the required mitigation occurring at the same value described by the ratios above, while multipliers of 200% result in the required mitigation being doubled.
    a. For example, if only 500 ft^2 of the total 1000 ft^2 of required pervious surface mitigation can be conducted onsite and in the same reach, the remaining 500 ft^2 of required pervious surface mitigation occurring offsite at a different reach would double because of the 200% multiplier.
3. RBZ impacts must be offset in the RBZ, on-site or off-site.
4. Additional standards may apply in the RBZ (See 6.4 Riparian Buffer Zone)

Floodplain Habitat Assessment and Mitigation

Regional Guidance for Oregon

August 2024

FEMA Region 10

Regional Guidance
For
Floodplain Habitat Assessments
and Mitigation in Oregon

Produced by FEMA - Region 10
August 2024

FEMA
Region 10

For additional information or copies of this guidance:
Federal Emergency Management Agency
Attn: Mitigation Division
Federal Regional Center, Region 10
130 228th St. SW
Bothell, WA 98021-9796
(425) 487-4600
www.fema.gov/regionx/nfipesa.shtm

Contents

Figures

Tables

Acknowledgements

This guidance document was developed by Region 10 of the Federal Emergency Management Agency, as part of its continuing effort to improve floodplain management practices and assist communities in meeting the requirements of the Endangered Species Act.

An earlier version of this document that was written solely for Puget Sound was drafted in 2010 by French & Associates, Ltd., Steilacoom, ESA Adolfson, Seattle, and PBS&J, Seattle, through an arrangement with the Insurance Services Office and the Community Rating System. Extensive edits were completed by FEMA Region 10 in 2013 in a document that was written solely for Puget Sound.

The 2018 Update was prepared by CDM Smith and FEMA Region 10.

The 2024 Update was prepared by FEMA Region 10 to address the interim measures for implementing the Oregon Biological Opinion.

Acronyms

BA	Biological Assessment
BE	Biological Evaluation
BiOp	Biological Opinion
CMZ	Channel Migration Zone
DLCD	Oregon Department of Land Conservation
EFH	Essential Fish Habitat
ESA	Endangered Species Act
FEMA	Federal Emergency Management Agency
FIRM	Flood Insurance Rate Map
FWHCA	Fish and Wildlife Habitat Conservation Areas
HA	Habitat Assessment
HPA	Hydraulic Project Approval
IPaC	Information for Planning and Consultation tool
JARPA	Joint Aquatic Resources Permit Application
JPA	Joint Permit Application
NFIP	National Flood Insurance Program
NMFS	National Marine Fisheries Service
ODEQ	Oregon Department of Environmental Quality
ODSL	Oregon Department of State Lands
RBZ	Riparian buffer zone
RPA	Reasonable and Prudent Alternative
SFHA	Special Flood Hazard Area
USACE	United States Army Corps of Engineers
USFWS	United States Fish and Wildlife Service

1.0 Introduction

1.1 Background

This Regional Guidance is written to assist communities in meeting the requirements and criteria of the Endangered Species Act (ESA) regarding the National Flood Insurance Program (NFIP). Those requirements are described in Biological Opinions (BiOp) issued by the National Marine Fisheries Service (NMFS) April 14, 2016, and the January 2017 errata document that supplements the BiOp for most of the State of Oregon.

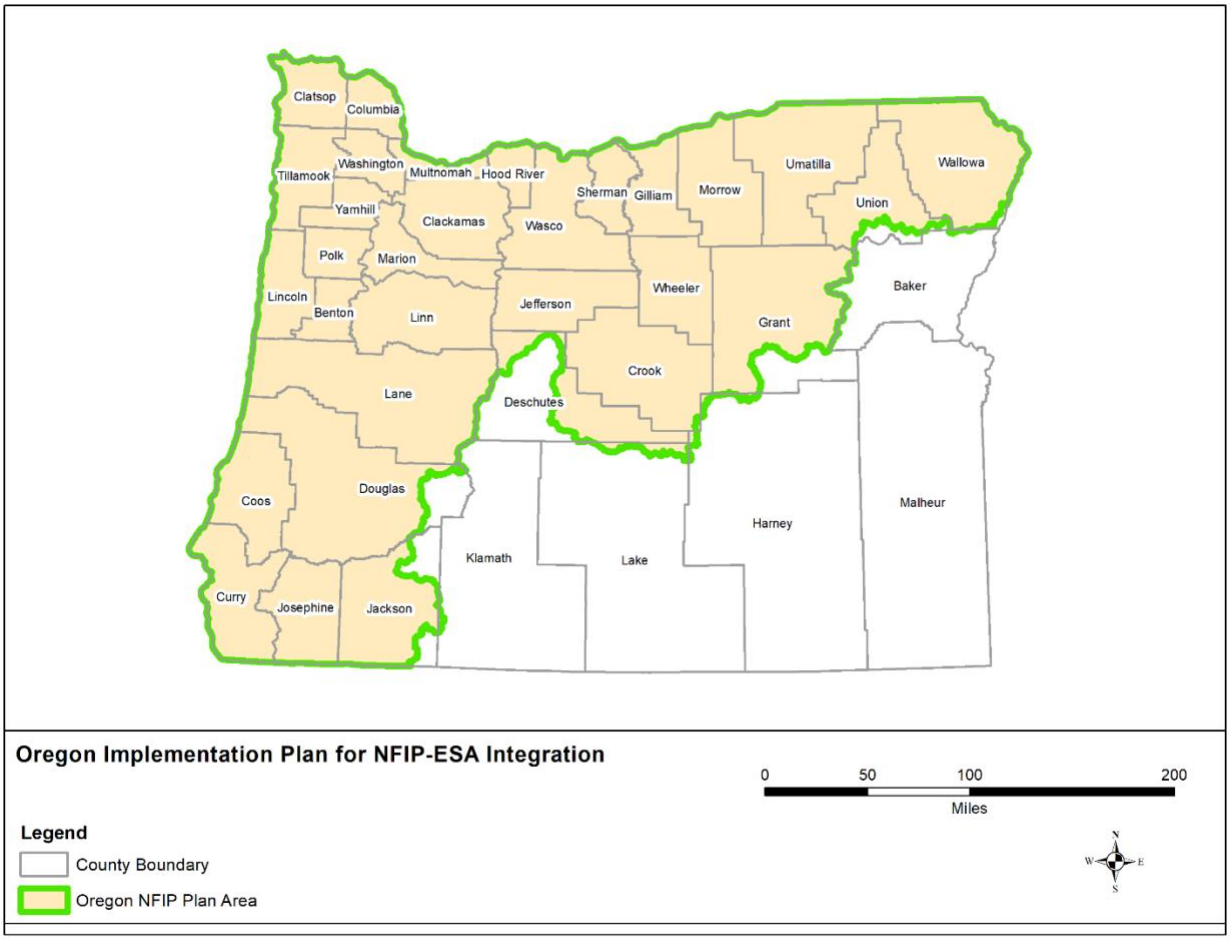


Figure 1 Oregon National Flood Insurance Program Plan Area for Endangered Species Act Integration

This guide is a companion to the BiOp for Oregon and the ESA Consultation Handbook (NMFS and USFWS 1998). It is intended to assist environmental planners, fisheries biologists, and other qualified floodplain and river management professionals who may potentially write or review habitat assessments (HAs). This document focuses on requirements specific to Oregon. It provides information on methods that communities may utilize to assess the impacts of land

management actions on ESA-listed species and their designated critical habitats within the Special Flood Hazard Area (SFHA).

This document is also designed to support the NFIP-ESA 2024 Draft Model Ordinance prepared by the Federal Emergency Management Agency (FEMA) Region 10. This guidance is offered to help communities comply with the interim measures in the Reasonable and Prudent Alternative (RPA) element 2 while FEMA works towards full implementation of the NMFS BiOp.

For further details on the BiOp's requirements, see the BiOp and RPA for Oregon. The Model Ordinance and additional guidance documents are also available from FEMA Region 10.

Communities in Oregon have two options to implement the interim measures of the BiOp: adopting the Model Ordinance under a hybrid programmatic habitat assessment approach or using a permit-by-permit approach. Sections of the Model Ordinance are referenced in this guidance to help the reader match the requirements of the BiOp with NFIP regulations. Additional references included in this guidebook are listed at the end of the document.

The RPAs set forth for Oregon under the BiOp include an expanded timeframe for implementation to account for state-wide implementation and potential changes in FEMA policy and guidance. The RPAs also allow for compensatory mitigation of adverse effects within the SFHA.

This revised 2024 habitat assessment guidance will help jurisdictions assess and document ESA compliance reviews. It is intended to be useful to those jurisdictions who are complying with the requirements of the interim elements of the RPA in Oregon through adoption of the model ordinance.

Regardless of which compliance option is selected, the objective is to avoid adverse effects and ensure no net loss to ESA-listed species and their designated critical habitats by protecting those species and the natural functions of their designated critical habitats.

The preparation of this guidance was informed by technical input from local officials, engineers, natural resource scientists, and planners. It is designed to assist qualified habitat professionals, representing both permit applicants and permit officials, in ensuring that any adverse impacts from actions occurring anywhere within the Oregon Special Flood Hazard Area will be mitigated to a no net loss standard. This guidance is focused on ESA-listed species utilizing habitats in flood-prone areas, including those areas associated with streams, lakes, and marine waters.

The 2016 BiOp and 2017 errata for the NFIP in Oregon apply to 16 ESA-listed fish species and the Southern Resident killer whale. However, the Model Ordinance and this guidance may also help guide assessment of potential impacts from project actions on bull trout (administered by the U.S. Fish and Wildlife Service [USFWS]), which are currently listed as threatened or endangered. In Oregon, bull trout are found in the Columbia River and many of its tributaries. The

assessment of impacts on other fish species that may become candidates for ESA listing may also be warranted, to ensure that project proposals adequately address their needs if they become formally listed while a project is still underway. This assessment guidance does not, however, provide details on possible methods of how to assess impacts to any ESA-listed wildlife, invertebrate, or plant species that may be present, nor impacts to their habitats.

1.2 Definitions

Three terms are used in this guidance and the Model Ordinance, that may not be the same terms used in a community's regulations: "Riparian Buffer Zone" and "development." These terms are defined in the Definitions section of the Model Ordinance Language (Section 2.0).

The **SFHA** is the land in the floodplain within a community subject to a 1% or greater chance of flooding in any given year. It is shown on the Flood Insurance Rate Map (FIRM) as Zone A, AO, AH, A1-30, AE, A99, AR (V, V1-30, VE).

The **Riparian Buffer Zone** is measured from the ordinary high water line of a fresh waterbody (lake; pond; ephemeral, intermittent, or perennial stream) or mean higher-high water (MHHW) line of a marine shoreline or tidally influenced river reach to 170 feet horizontally on each side of the stream or 170 feet inland from the MHHW. The riparian buffer zone includes the area between these outer boundaries on each side of the stream, including the stream channel. Where the RBZ is larger than the special flood hazard area, the no net loss standards shall only apply to the area within the special flood hazard area. The RBZ-fringe is the remainder of the SFHA that is outside of the RBZ.

Development is any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials. The Oregon BiOp extends that definition to include subdivision of land, removal of vegetation, other alteration of natural site characteristics (including any remnant natural characteristics existing in a degraded site), substantial repairs and improvements, and the maintenance, repair, or remodel of existing buildings, facilities, and utilities when their existing footprint is expanded.

1.3 When to Conduct a Habitat Assessment

Whenever a development project is proposed in the SFHA, the property owner must obtain a floodplain development permit from the community. Certain types of projects can be permitted relatively quickly (see "Allowed Activities" below). Unless a community's floodplain management ordinance lists a project action type as exempt from the requirement to complete an HA (see Section 1.3.1), the project applicant must complete an HA that describes the impact of the proposed development on existing floodplain and instream habitat functions and processes. The scope and detail of that assessment may vary as needed to portray possible impacts for each project. If the anticipated project effects are clearly limited in nature and extent, it may be possible to describe them in a relatively short assessment. The greater the complexity, scope, and/or risk of possible impacts to ESA-listed species or their habitats, the more likely it will be that the HA will need to be an in-depth analysis, to portray impacts and describe planned mitigation, if needed.

1.3.1 No Habitat Assessment Required

There are four general circumstances where an HA would not be required:

1. Projects that are listed as exempt from conducting a habitat assessment in the BiOp for the NFIP in Oregon. These exemptions should be listed in the community's ordinance (exempt situations are listed below).
2. Project actions that are covered under separate consultations under Section 4(d), 7, or 10 of the ESA.
3. Projects under consideration that have already been covered by a full programmatic habitat assessment of all current and reasonably foreseeable future conditions throughout a jurisdiction. (When such an assessment already exists, and the project clearly fits within the nature and scope of those project types that were addressed by it, then the jurisdiction need only document and track how they evaluated its eligibility for coverage by that assessment).

1.3.1.1 No HA Required and No Floodplain Permit Required:

Communities may allow the following activities in the floodplain without requiring a floodplain development permit, provided all applicable federal, state, and local requirements are met. A floodplain permit is not required because these activities do not meet the NFIP definition of "development." Note: local community regulations may be more restrictive than the minimum standards (44 CFR 59).

- Routine maintenance of existing landscaping that does not involve grading, excavation, or filling.
- Removal of noxious weeds, hazard trees, and replacement of non-native vegetation with native vegetation.
- Normal maintenance of above and below ground utilities and facilities, such as replacing power lines and utility poles.

- Normal road maintenance, such as filling potholes, repaving, installing signs and traffic signals, but not including any expansion.
- Normal maintenance of a levee or other flood control facility, as prescribed in the operations and maintenance plan for the facility. Normal maintenance does not include repair from flood damage, any expansion of the prism, face or toe expansion, or the addition of material for protection or armor.
- Plowing and other normal farm practices (other than new structures or filling) on legally existing agricultural areas. Clearing additional land for agriculture will likely require a floodplain development permit and an HA.

1.3.1.2 Floodplain Permit Required and No HA Required

Communities may allow the following activities in the floodplain without an HA, provided a floodplain development permit is obtained and all applicable federal, state, and local requirements are met.

- Normal maintenance, repairs, or remodeling of structures, such as re-roofing and replacing siding, provided such work does not constitute a substantial improvement or repair of substantial damage. To comply, the cost of such work must be less than 50 percent of the market value of the structure(s).
- Activities with the sole purpose of creating, restoring, or enhancing natural functions associated with floodplains, streams, lakes, estuaries, marine areas, habitat, and riparian areas , provided the activities meet federal and state standards and do not include structures, grading, fill, or impervious surfaces.
- Development of open space and recreational facilities, such as parks, trails, and hunting grounds, that do not include structures, fill, impervious surfaces, or removal of more than 5 percent of the native vegetation on the portion of the property located in the SFHA.
- Repair to onsite septic systems, provided ground disturbance is the minimal necessary and best management practices (BMP) are utilized to prevent stormwater runoff and soil erosion.
- Projects that have already received concurrence under another permit or other consultation with the Services, either through Section 7, Section 4d, or Section 10 of the ESA, that addresses the entirety of the project in the floodplain. Examples of other such permits include but are not limited to a U.S. Army Corps of Engineers (USACE) 404 permit.
- Repair of an existing, functional bulkhead in the same location and footprint with the same materials when the Ordinary High-Water Mark (OHWM) is still outside of the face of the bulkhead.

Projects that require a federal permit under Section 404 of the Clean Water Act would likely need to go through an ESA consultation process led by the USACE Regulatory Branch. The Section 404 permit process includes consultation with the U.S. Fish and Wildlife Service (USFWS),

and/or NMFS when a project may influence a federally listed species. Such consultation is required under Section 7 of the ESA. If a project has gone through this Section 7 process with USACE then a local HA would not be required.

A project is deemed to comply with the ESA if a permit applicant has prepared a Biological Evaluation (BE) or a Biological Assessment (BA) and has received concurrence from USFWS and/or NMFS as applicable for the species potentially present (via either a Letter of Concurrence or a BiOp) that covers the full scope of the proposed action. In such cases the additional HA requirements of this guidance are not required (see Section 7.7 of either of the Model Ordinances).

1.4 Habitat Assessment Overview

The habitat assessment needs to describe any impacts to habitat functions due to actions occurring within any part of the SFHA in the BiOps action area communities. The assessment must demonstrate that there will be no net loss to habitat functions in the SFHA.

The impact of a project on habitat functions and processes may be complicated to determine because there is often little or no information on the site's baseline (pre-project) natural features. A habitat assessment is needed to identify those natural functions and to complete an analysis that estimates what effects the proposed action will have on ESA-listed species and their critical habitats.

If the assessment finds that an adverse effect may occur due to impacts from the proposed action on ESA-listed fish species, Southern Resident killer whales, or their designated critical habitats, then the permit applicant must prepare a plan identifying the steps that the applicant will take to modify the proposed action to avoid adverse effects. Avoidance measures should be applied as the first priority. Then, measures to minimize or fully mitigate any unavoidable adverse impacts must be developed and applied to the project. Jurisdictions must be able to document the details of the mitigation plan and identify which mitigation measures are required rather than recommended. They must also be able to monitor and document the implementation and measure the effectiveness of the plan, track any enforcement actions taken, and provide that information to FEMA, if requested.

Any actions that would adversely affect ESA-listed species or their critical habitats within the BiOps action area SFHA must be fully mitigated. In the required descending order of preference, the mitigation sequence is avoidance, minimization, and mitigation. Applicants must explain and document why all preferable forms of mitigation were not practicable before proposing less preferable forms (e.g., mitigation over avoidance).

1.5 Preparing and Reviewing a Habitat Assessment

This guidance provides a step-by-step approach to complete a HA when an assessment is needed. The approach described in the following sections should provide sufficient information to assess

and document the likely effects of a proposed project, but it does not have to be followed exactly as described. However, if a different approach is followed, it must provide sufficient data and analysis to describe baseline conditions and likely effects on ESA-listed species and their designated critical habitat. It must conclude with an effects determination that is well supported by that analysis.

This guidebook is not intended to represent comprehensive instructions for how a jurisdiction should complete a comprehensive "programmatic" HA of existing conditions and impacts of community's regulations across its entire jurisdiction (e.g., conditions within all watersheds in a jurisdiction). However, it helps describe the information that would be needed to complete such an extensive and inclusive programmatic assessment. Communities may conduct programmatic assessments with differing approaches based on their unique land uses, regulatory structure, available maps and data, and community goals. Communities may request technical assistance from FEMA when they draft programmatic habitat assessments or review assessments prepared by others for projects within their jurisdictions.

The guidance is also not intended to provide complete instructions for documentation and justification of how a jurisdiction's existing regulations (and any planned changes to those regulations) comply with all the terms and conditions within the RPAs of the BiOp. It will be the responsibility of the jurisdiction to explain and document that information. This guidance is primarily intended to assist applicants in preparing an HA under the permit-by-permit approach listed in the Pre-Implementation Compliance Measures (PICM). Applicants may seek assistance from their local jurisdiction in preparation of the HA. If the project is complex, it is recommended that applicants begin with conceptual development plans and conduct a preliminary assessment before investing in detailed project plans and specifications. Continued communication with community staff will also help identify issues before significant time and/or money is spent on a project that may require additional mitigation measures or needs to be redesigned or abandoned. It may be appropriate for some communities with limited staff to request assistance from their neighboring jurisdictions, Tribes, or other partners to help assess the adequacy of draft HAs written on their behalf. This guidance document allows for flexibility in the format of many aspects of the HA. Reviewers of draft HAs should be familiar with the range of formats that adequately portray and interpret fisheries population and habitat survey data.

A permit applicant should weigh the cost of preparing an assessment and mitigation plan, should one be needed, against the cost of locating the project outside the SFHA. It may cost less in time and money to simply avoid the SFHA

2.0 Conducting the Assessment

The process to adequately identify and address the impacts a proposed project may have on habitat within the floodplain is described in the following sections. In circumstances where an approved habitat assessment (Steps 1 through 4) determines that if no impacts on habitat functions

associated with ESA-listed species will occur, development of a mitigation plan is not necessary. However, most activities within the SFHA that require a HA are highly likely to have impacts on habitats associated with ESA-listed species. The first few steps are to describe the project area, area of potential effects (which may be larger), and whether any listed species potentially occur in that area. If ESA-listed species potentially occur within the area where project effects may occur, then the potential impacts on those species must be determined. When habitat impacts are identified, a mitigation plan must be prepared for the project, in accordance with Steps 5 and 6.

2.1 Step 1. Describe the Project Area

The project area is generally the parcel or parcels being developed. In some cases, the project may extend to a larger area, such as when a road to the parcel is to be built or improved, or when the effects of several interrelated or interdependent proposed land development actions are considered together. Step 1 should produce two documents – the project area description and a project area map.

2.1.1 Project Area Description

If an Oregon State Joint Permit Application (JPA) form has been prepared for the project, it will include the general project area description information that would be included as part of the habitat assessment. An approval under Section 401 of the Clean Water Act is required from the Oregon Department of Environmental Quality (ODEQ) and/or a removal-fill permit is required from the Oregon Department of State Lands (DSL). However, the JPA may not adequately describe all the natural functions, and habitat support processes, species distribution characteristics, hydrologic variables, and/or water quality effects that need to be addressed in a habitat assessment. At a minimum, an Oregon State JPA form would include the following information:

- **Location information:**
    - Street address
    - City and County
    - Township, section, and range
    - Latitude and longitude
    - Tax parcel number(s) of the project location
    - Type of ownership of the project (Federal, State, or locally owned public lands; tribal lands; privately owned lands)
- **Water resource information:**
    - Watershed name
      Watershed Assessment Unit or HUC12 codes. Information on Oregon's Watershed

Assessment Units can be found at the Oregon Department of Environmental Quality (DEQ) Oregon 2024 Integrated Report Frequently Asked Questions and the mapping webpage at:
Oregon Explorer HUC codes for the Pacific Northwest region can be found at the U.S. Geological Survey site: https://water.usgs.gov/GIS/wbd_huc8.pdf.

- Names and descriptions of the water bodies in which work will occur, including water type. For more information on water type and a map that designates the types for major water bodies, see the Oregon State Water Resources Department water typing page:
(http://www.oregon.gov/ODF/Documents/WorkingForests/WaterClassificationTechNote1.pdf)

- Coastal Management Areas are associated with the coasts of Oregon, as managed by the Oregon Coastal Zone Management Program.

- Critical Areas associated with streams, designated by the local jurisdiction pursuant to the Transportation and Growth Act in Oregon. Critical areas management information should include the critical areas designation and a description of the extent of jurisdiction.

- **Fish and Wildlife Habitat Areas**

  - Designated Goal 5 resources include riparian areas, wetlands, wildlife habitat, and natural areas in or near the project area.

2.1.2 Project Area Map

The second item needed for Step 1 is a map, drawn to scale that shows the following:

- Parcel(s) boundaries
- Full analysis area
- Area of the finished project (including roads)
- Any additional area(s) that will be disrupted during construction (including access routes, staging areas, and areas to be re-graded or filled)
- All water bodies
- Site topography, soils, and geology
- Fish and Wildlife Habitat Conservation Areas/Goal 5 resources
- Existing native vegetation by vegetation community zones. For example, a map could distinguish areas with existing coniferous forest cover from areas with shrub cover and areas with grass cover.
- Boundaries of the following regulatory areas (see Section 3 of the Model Ordinance)

  - Special Flood Hazard Area

- Floodway (if available)
- Riparian buffer zone (RBZ)
- Channel Migration Zone (CMZ) (where available)

- Depths of the 10- and 100-year floods at representative locations. These only need to be provided when flood data is available from existing studies for the community.

2.2 Step 2. Describe the Project Area's Habitat

In Step 2 of the habitat assessment, the applicant describes the existing habitat conditions of the project area. Tasks 2.2.1 and 2.2.2 of Step 2 are largely based on existing scientific information regarding species use and current habitat functions in the project area.

2.2.1 Background Research

In order to adequately describe current population and habitat conditions, Step 2 starts with a review of existing sources of information relevant to threatened or endangered species and their habitats in or near the project area. There may be thorough inventories already available. The following sources should be checked, and appropriate sections referenced as needed:

- Critical areas inventory maps, best available science consistency studies, flood control and floodplain management plans, watershed analyses, and habitat studies that may be available from the community's planning or environmental protection department.
  - The following sources may be helpful: Conservation Strategy Areas; Coastal Zone Management Program
- Natural area studies that may be available from the community's parks and/or natural resources departments.
- NMFS distribution of threatened and endangered Species (www.nwr.noaa.gov)
- NMFS designated critical habitat maps (www.nmfs.noaa.gov/pr/species/criticalhabitat.htm)
- USFWS Information for Planning and Consultation tool (IPaC) at https://ecos.fws.gov/ipac/location/index
- USFWS critical habitat maps (http://criticalhabitat.fws.gov/ and (www.fws.gov/pacific/bulltrout/)
- USFWS National Wetland Inventory mapper (https://www.fws.gov/wetlands/data/Mapper.html)
- USFWS and NMFS habitat recovery plans, when published for ESA listed species in the project vicinity
  - USFWS: (www.fws.gov/pacific)

- NMFS: (www.nwr.noaa.gov)

- U.S. Department of Agriculture, Natural Resource Conservation Service soil survey maps (http://websoilsurvey.nrcs.usda.gov/app/)
- Oregon Department of Fish and Wildlife threatened and endangered species list (http://www.dfw.state.or.us/wildlife/diversity/species/threatened_endangered_candidate_list.asp)
- Oregon Department of Fish and Wildlife Crucial Habitat Database (http://dfw.state.or.us/maps/compass/data.asp)
- Oregon State Department of Environmental Quality Water Quality Assessment (http://www.oregon.gov/deq/wq/Pages/WQ-Assessment.aspx)
- Oregon Native Fish Conservation and Recovery Plans
- Stream surveys conducted by tribes or federal, state, or local agencies. Such surveys may contain detailed information on habitat conditions and fish species presence from redd surveys or from snorkeling or electroshocking surveys. Other recent projects near the project area may also have collected stream survey or other habitat data.

2.2.2 Protected Species Identification

The review of the existing research should identify all federally listed species, designated critical habitats, Essential Fish Habitat (EFH) as defined by the Magnuson-Stevens Fishery Conservation and Management Act, affected EFH species, and Fish and Wildlife Habitat Conservation Areas or Conservation Strategy Areas, that occur in or near the project area. Species or habitats that have the potential to be negatively impacted on a direct, indirect, or cumulative basis by proposed ground-disturbing actions need to be described. The appropriate spatial and temporal scales for each form of potential impact must also be identified and briefly explained. Further discussion of potentially measurable or observable impacts, and the appropriate spatial and temporal scales for an effects analysis is presented later in this guidebook.

The table below is an example of how species presence and ESA status of populations and Critical Habitat could be presented. Additional columns could also be inserted to list the status of EFH and other categories when present and convenient to describe in a tabular format.

Occurrence of Listed Species and Critical Habitat in or Near the Project Area. (Sample Display)				
Common Name	Scientific Name	ESA Status	Jurisdiction	Critical Habitat
Lower Columbia River Chinook salmon	*Oncorhynchus tshawytscha*	Threatened	NMFS	Yes
Lower Columbia River coho salmon	*O. kisutch*	Threatened	NMFS	Yes
Lower Columbia River steelhead	*O. Mykiss*	Threatened	NMFS	Yes
Southern Resident killer whale	*Orcinus orca*	Endangered	NMFS	Yes

Table 1. Sample Species Status Table for a Habitat Assessment

Check with the NMFS and USFWS data sources described in Section 2.1 of this document to obtain general maps of the distribution of ESA-listed or proposed species, listed critical habitats, and any areas designated Essential Fish Habitat. Please note that the maps of potential fish distribution at these websites are not necessarily the most detailed or accurate maps that exist. The regional or local offices of NMFS, USFWS, tribes, or local land management agencies may be able to provide more accurate maps based on recent fish and habitat surveys, including known migration barriers.

EFH species are managed by NMFS. On the west coast of the United States there are three EFH salmon species that potentially occur in freshwater systems, namely pink, coho, and Chinook salmon. If project actions may potentially negatively impact estuarine and marine systems, numerous species of ground fish and coastal pelagic fishes that are listed under EFH may also need to be considered.

This task should summarize the biological and ecological information that will be needed for the habitat assessment. Appropriate information on species life histories, habitat, and distributions, as well as other data necessary for species survival or possible recovery, must be included to provide sufficient background for the analyses in later sections. It is important to note that even though the 2016 BiOp for Oregon focuses on salmon and EFH species managed by NMFS, all threatened or endangered plant and animal species in or near the project area need to be addressed. If other ESA-listed species are present or are potentially present, it may be necessary to conduct additional surveys and assessments beyond those described in this guidance.

Several sources of existing information are listed above in Section 2.2.1. When a document contains relevant information, that information can simply be cited by page-specific reference. Other sources include the locally developed Best Available Science (BAS) documentation reports; the state's Growth Management Act that requires each community to prepare such

reports for their critical area standards. Additional references are provided below as examples of the general format and guidance on how some agencies conduct biological assessments.

- The U.S. Army Corps of Engineers' ESA *Consultation Initiation Template* (USACE 2007) [http://www.spk.usace.army.mil/Portals/12/documents/regulatory/pdf/ESA_Template_Guidance. pdf]

- *Making Endangered Species Act Determinations of Effect for Individual or Grouped Actions at the Watershed Scale* (NMFS 1996). [http://www.nwr.noaa.gov/Publications/Reference-Documents/upload/matrix_1996.pdf]

- Oregon Department of Transportation *Biological Assessment and Guidance Document* (ODOT 2005). [http://cms.oregon.gov/ODOT/HWY/GEOENVIRONMENTAL/docs/BAWritingDocument.pdf]

Currently, the Northwest Region of NMFS does not formally recommend use of any specific template for Biological Assessments (other than the 'Analytical Process' for some specific land management actions like timber sales on Federal lands). The Region instead allows the potential use of a variety of formats.

HAs must describe existing habitat and species population conditions for each ESA-listed species that may occur in the area of potential effects. The HA should describe the habitat functions that potentially support ESA-listed species in or near the action area. It must then describe the potential impacts of the proposed actions on individuals of each species, populations of those species, and their habitats. The detail and extent of each assessment will vary by the nature and scope of the proposal and the potential for negative impacts.

This section's narrative should include, but not necessarily be limited to, descriptions and discussions of the following topics:

i. Factors of decline
   a. Historical pressures on the species
   b. Current pressures on the species
   c. Limiting factors for recovery of the species
ii. Local empirical information (if available)
   a. Current local population information
   b. Ongoing monitoring programs (if any)
   c. Population trend of the species

A summary of the habitat needs for each protected species should follow its description. This section of the narrative should identify and describe the key factors that are important to each

protected species. These factors include the Primary Constituent Elements (PCEs) for those species with designated critical habitat. PCEs are the key habitat components that an ESA-listed species needs to survive in an area (see example in the box). For each listed species, PCEs are described in the corresponding Federal Register publication for its designated critical habitat. The PCEs must be described when critical habitat may potentially be affected. In those cases where designated critical habitat is not present near the project action area, describing the available habitat in terms of the PCE components is still a recommended means to concisely describe existing habitat features. Not all PCEs for a species may apply to a project. In the example below, PCEs related to the ocean environment would not apply to the project if the project area is on a freshwater stream.

Example Primary Constituent Elements

(Chinook salmon and steelhead trout, 50 CFR Part 226, Federal Register / Vol. 70, No. 170 / Friday, September 2, 2005)

1. Freshwater spawning sites with water quantity and quality conditions and substrate supporting spawning, incubation and larval development.
2. Freshwater rearing sites with water quantity and floodplain connectivity
3. Freshwater migration corridors free of obstruction
4. Estuarine areas free of obstruction
5. Nearshore marine areas free of obstruction
6. Offshore marine areas with water quality conditions and forage, including aquatic invertebrates and fishes, supporting growth and maturation.

2.2.3 Site Investigation

Tasks 2.2.1 and 2.2.2 give the applicant guidance on where to look and what to look for regarding species potentially present at the site. Following completion of the first parts of Step 2, a site visit is usually needed to determine if there are habitat areas in the project area with which identified species have a "primary association." "Habitats of primary association" include critical habitat components (which could be PCEs), which, if altered, may reduce the likelihood that the listed species will be able to continue to live and reproduce in the area over the long term. A site visit and determination of site-specific conditions is generally necessary to determine what actual impacts on ESA-listed species, EFH, and associated habitats may occur from a proposed project.

For example, identification of Chinook salmon habitat areas of primary association should look for those PCEs listed in the box. A description of the riparian and instream habitat conditions that exist both upstream and downstream of the project action area would also be needed.

This description of existing baseline habitat functions must, at a minimum, include those habitat functions that are listed in the BiOp on the NFIP in Oregon. These functions are described in the next section on the habitat narrative. In addition, it is especially important to note the locations

and distances from the proposed project area relative to any stream reaches that may potentially support ESA-listed species or contain designated critical habitat.

The description of habitat and general conditions in the project area should also identify existing modifications to the project site within the floodplain, including existing structures, roads, impervious areas, and graded or filled areas. Any existing modification that has impaired habitat functions and/or habitats of primary association should be described (as discussed in the next section). If the project includes activities to restore the habitat in these modified areas, it could help the assessment conclude that there will be no adverse effects on habitat due to the project (see also Task 2.3.3 of Step 3).

The Oregon Department of Fish and Wildlife, through its conservation strategy includes additional actions that have the potential to result in impaired habitats. The site investigation should look for and describe these modifications when they are present. In general, actions that have the potential to result in impaired habitats involve one or more of the following:

- coastal development and associated construction
- shoreline armoring
- alteration of hydraulic regimes
- dredging and dredged materials disposal
- aquaculture
- global climate change
- habitat isolation
- the removal of riparian vegetation (except for the removal of noxious plants)

Furthermore, RPA element 2 identified in the Oregon BiOp requires communities within the implementation plan area to identify a riparian buffer zone (RBZ) that is measured 170 feet horizontally from the ordinary high-water mark of perennial or intermittent streams, including the area between these outer boundaries on each side of the stream, including the stream channel or 170 feet inland from a MHHW. Development in the RBZ must adhere to additional performance standards to comply with NFIP-ESA integration efforts as outlined in section 2.5.3.

2.2.4 Habitat Narrative

The findings of the field investigation are used to prepare a description of the habitat areas of primary association that will need to be protected. The narrative for this part of the assessment report needs to describe the presence and existing quality of the natural features that relate to the PCEs for all the species and habitat areas that were identified in Tasks 2.2.2 and 2.2.3. The habitat narrative must include descriptions of the site's floodplain storage capabilities, water quality, and riparian vegetation. As described in the final paragraph of Task 2.2.2, PCEs are the key habitat components required for an ESA-listed species, as identified in the final rules that were published in the Federal Register when a species was listed. The narrative must identify what habitat

functions are still relatively intact and which are impaired by previous site and/or area (e.g., sub-watershed, watershed, or basin scale) modifications.

The BiOp for the NFIP in Oregon states that within the SFHA all development impacts on natural floodplain functions must be mitigated. The mitigation standards should identify the specific development activities that require mitigation including the following activities.

1) The addition of fill, structures, levees, or dikes, which reduces flood storage and fish refugia, impedes habitat forming processes, and increases flow volume and velocity. The latter erodes stream banks and beds and alters peak flow timing, which increases the risk of injury to redds, fry, and alevin.

2) The addition of impervious surfaces, which reduces hyporheic function and stream recharge, increases stormwater runoff, pollutant loading, water temperature, velocity, and scour, and modifies peak and base flows.

3) Vegetation removal, which reduces shade, detrital input, velocity refuge, and habitat complexity, and increases stormwater runoff and erosion.

4) Bank armoring, which reduces instream habitat values and impedes habitat forming processes.

The site investigation and resulting habitat narrative must also include a description of the proposed action and existing habitat conditions even when the action is outside of the High Hazard Area.

It is possible that there may be limited information available from the sources identified in Tasks 2.2.2 and 2.2.3. The habitat narrative must note the sources of data and information, and clarify which statements are based on scientific reports and data, and which statements are based on the professional opinion of the author. This is one of the most vital aspects of the assessment, and is required for reviewers to evaluate the basis and relative confidence of statements, related to current conditions and estimated environmental effects.

The variables listed below should be considered to ensure that the assessment covers all the required factors. In most cases, the analysis scale will be small and only address a small contiguous action area. However, some projects may include multiple sites in multiple watersheds. The extent and detail needed for the assessment will vary by the nature, scope, and scale of the proposed action. In many cases, the project will not have the potential to affect many (or any) of the habitat functions listed below. When that is the case, the assessment simply needs to clarify why the project does not have any significant potential to degrade some or all variables. The list below is intended to assist jurisdictions in considering all possible impacts on aquatic habitat and ESA-listed fish species, due to major land management actions. The list includes questions that should be answered in the HA with additional guidance on how to address them.

Primary Constituent Elements (PCEs)

These are identified in the final rules that designate critical habitat for listed threatened and endangered species (see the NMFS and USFWS critical habitat map links within the References and Resources section to access final rules for ESA listed species). For example, for an inland site with Chinook salmon habitat (see box on page 18), the first three sections of the habitat narrative would cover freshwater spawning sites, freshwater rearing sites, and freshwater migration corridors. In those cases where designated critical habitat is not present near the project action area, describing available habitat in terms of the PCE variables is still recommended to concisely depict key habitat features. Even if designated critical habitat is not present on a site, there still may be suitable habitat for the species and the species may be present. If suitable habitat is present, then the potential for impacts to the species from project activities needs to be evaluated. The distance and locations of the nearest designated critical habitat, relative to the project area also need to be listed, so that the potential for projects to impact these mapped areas can be evaluated (e.g. via sediment transport). Water quality, floodplain connectivity and storage, and riparian vegetative community are three PCEs of particular importance within the Oregon implementation plan area, as they have been identified as key floodplain functions by the 2016 BiOp.

Water Quality

- Does the proposed action include any activities (e.g. grading, stormwater, or road construction) that may have any potential to cause measurable degradation to water quality variables within the action area, and how was this assessed?
- If so, which water quality variables would be affected? Water quality variables that should be considered include: turbidity, pH, total dissolved gas (percent of saturation), bacteria, toxics, and pollutants. In Oregon, the numeric standards for turbidity, pH, total dissolved gas, and bacteria vary by location depending on the state's designated uses for salmon and charr fish species listed for the river reach in question (i.e., spawning, rearing, and/or migration). These states have also adopted narrative criteria to supplement the numeric criteria for some variables. The narrative criteria are statements that describe the desired water quality goal, such as waters being "free from" pollutants including oil and scum, color and odor, and other substances that can harm people and fish.
- Is there any potential for the project to result in not meeting state water quality standards for any water quality variables (over any temporal scale) within the defined action area? If so, which variables? How was the action area selected, and how was the assessment conducted?

  Reaches of streams that are known to be impaired and to not meet water quality criteria for one or more variables are required to be listed under section 303(d) of the Clean Water Act (CWA). If a river reach is not included on one of these lists, it does

not necessarily ensure that it meets all water quality standards for all variables. It may simply mean that no sampling (if any has occurred) has demonstrated that it does not meet standards. Data on water quality variables may be extremely limited or non-existent for many streams and river reaches. Water body segments only become listed via documented and repeated violations that are estimated to have likely been human-caused.

Jurisdictions in Oregon should advise the Oregon Department of Environmental Quality regarding any water quality data that they are aware of, in addition to what is cited in the current 303(d) list for a specific river reach. Information on the 303(d) list is found at: Department of Environmental Quality : EPA Approved Integrated Report : Water Quality : State of Oregon.

Water body segments (i.e., stream reaches, lakes, marine waters) that appear on the 303(d) list require the preparation of a plan to restore water quality, which often takes the form of a Total Maximum Daily Load (TMDL) study. Habitat assessments should include consideration of the status of water quality in the project action area and evaluate whether the project proposal has any potential to further degrade any variables, including any that are already listed as not meeting State standards.

- If there is any potential for degradation of any water quality variables, what are the estimated effects on ESA-listed fish species and/or their designated critical habitats within the action area, and how was this assessed? In addition, what is the maximum estimated spatial scale, and maximum time period when any possible impacts on ESA-listed fish species and/or their designated critical habitats might occur?

Water Temperature and Dissolved Oxygen

- Does the proposed action include any actions or regulations that may cause measurable changes in water temperature or changes in levels of dissolved oxygen (DO) in any locations, and how was this assessed?
- If there is any potential for measurable impacts, is there any potential for water temperature or DO (over any temporal scale) to not meet State water quality standards within the action area(s)? [see Water Quality section above for hyperlinks to standards in Washington and Oregon].
- If there is any potential for measurable impacts, what is the estimated effect (at all temporal scales) on ESA-listed fish species, and how was this assessed?
- If there is the potential for measurable impacts, what is the maximum estimated spatial scale and locations (including any downstream effects) and maximum time period when impacts on ESA-listed fish species may occur?

Low Flow Hydrologic Regimes (including hyporheic flows)

- Does the proposed action include any actions that could potentially cause changes to the magnitude, duration, or recurrence intervals of low summer baseflows at any locations, over any temporal scale, and how was this assessed?
- If there is any potential for changes, what impact would those changes have on ESA-listed fish species or their designated critical habitats in the project action area, and what is the maximum estimated spatial and temporal scale of those effects?

High Flow (flood) Hydrologic Regimes

- Does the proposed action include any actions that could potentially cause changes to the magnitude, duration, or recurrence intervals of the 10-, 50-, or 100-year flood flows in any location, and how was this assessed?
- If there is any potential for changes in flood flows, what effect would those changes have on ESA-listed fish species and/or their designated critical habitats in the project action area, and what is the maximum estimated spatial and temporal scale of those effects?

  Site flood dynamics and hydrology must be assessed to varying degrees, to ensure that the analysis is adequate and appropriate, for the nature of the proposed action and the habitat resources potentially at risk. Flood flow depths, volumes, velocities, and flow paths have an important effect on the way habitat is formed. The habitat assessment narrative should describe these factors with an emphasis placed on the effects of flood events on habitats. Tributary streams, seeps, stormwater outfalls, waterways that pass through the project site, and other water sources should be identified and described. This discussion may rely on and reference other flood and site hydrology studies prepared for the project and should be focused on how flood dynamics and hydrology impact local habitat areas.

  A semi-quantitative or qualitative assessment of water quantity should usually be sufficient for projects limited in scope, scale, and overall potential to result in negative impacts on ESA-listed fish populations and their critical habitats. Projects with more potential for measurable or observable negative impacts will sometimes require more rigorous examination of hydrologic or sediment regimes, based on best available data, including correlations to existing gage stations. They may also require more intensive field surveys and possibly 1- or 2- dimensional flow modeling to describe water velocities, likely extents of inundation, and possible changes to instream and riparian habitat due to future flood events.

Flood Velocities

- Does the proposed action include any actions that could potentially cause increases in water velocities in streams or rivers during high flow events, and how was this assessed?

- If there are any potential for increases in high flow velocities, is there also any potential for measurable increases in streambed or stream bank shear or velocities in fish habitat units (e.g., pools, glides, side-channels) that provide refugia for ESA-listed species from high velocities within the channel over any temporal scale at any locations? How was this estimated?
- If there is any potential for changes in flood velocities, what impact would those changes have upon ESA-listed fish species and/or their designated critical habitats in the project action area, and what is the maximum estimated spatial and temporal scale of effects?

Sediment Delivery (erosion) and Sediment Regime (in-stream transport)

- Does the proposed action include any actions that could potentially increase rates of surface erosion, delivery of sediments to water bodies, or total loading (volumes) of sediment transported in rivers that provide habitat for ESA-listed species? How was this assessed?
- If there is any potential for sediment increases, what impact would those changes have on ESA-listed fish species and/or their designated critical habitats in the project action area, and what is the maximum estimated spatial and temporal scale of those effects?

Stream Substrate

The quality, quantity, and general distribution of substrate particle size needs to be described in those cases where there is the potential for spawning, rearing, feeding, or refugia substrate habitat to be degraded by project actions. In some cases, this may include impacts from transport of sediments downstream from the project site.

If the proposed action has the potential to deliver significant quantities of fine-sediments to stream reaches in designated critical habitat or in those areas that may otherwise provide potential habitat to ESA-listed species, the percent fines (e.g. per ?) would need to be estimated and the analysis methods described. This information is required to describe current habitat conditions and estimate how (if) any additional inputs of fine sediments may degrade the current quality of stream substrate habitat.

In those cases where sediment impacts may be a significant concern, it may also be necessary to fully describe current substrate conditions in those stream reaches that could be impacted. If this is the case, the description should include the general range of substrate types that currently exist across each different channel type in potentially affected stream reaches.

The specific questions that need to be addressed are:

- Does the proposed action include any actions that could potentially cause increased rates of aggradation of fine or coarse sediments on potential substrates

for spawning, feeding, rearing, or migration? How was this assessed?

- If there is any potential for increased sedimentation, what impact would those changes have on ESA-listed fish species and/or their designated critical habitats in the project action area, and what is the maximum estimated spatial and temporal scale of effects?

Floodplain Connectivity and Storage

Disconnecting a river from its floodplain impacts several other functions that directly affect the quality and quantity of habitat that supports ESA-listed species. Disconnection affects the potential for natural lateral migration and hydrologic connectivity between the stream and its floodplain. It also affects groundwater systems and the production and utilization of organic matter by riparian and aquatic communities.

Hydrologic connections provide temporary storage of floodwaters, while also providing key off-channel habitats and a source of water during dry summer base-flow periods. Many urbanized watersheds have lost these functions to varying degrees. If the stream is largely disconnected from its floodplain, the stream ecosystem cannot maintain its biological diversity, nor can it recover from major episodic disturbances. Some of these diverse habitat types also provide refuge from high velocity flows during flood events (see discussion below).

The habitat assessment needs to describe the current condition of floodplain connections and processes. This can usually be accomplished in a brief narrative via a combination of a site visit and examination of aerial photography and FIRM maps (if they exist). Some of the conditions that should be noted include, but are not necessarily limited to, the extent of the channel migration zone, general channel geometry in potentially affected stream reaches, including the distribution and size of riffles and pools, and identification of any side-channels and tributaries. Specific questions that need to be addressed include:

- Does the proposed action include any actions that could potentially affect the extent and level of the connection of stream channels to their floodplain? How was this assessed?
- If there is any potential for changing the extent or level of floodplain connectivity, what impact would those changes have upon ESA-listed fish species and/or their designated critical habitats in the project action area, and what is the maximum estimated spatial and temporal scale of effects?

Refugia for ESA-listed Fish Species from High Velocity Flows

- Does the proposed action include any actions that could potentially affect the location, extent, or quality of refugia from high velocity flows available for ESA-listed fish

species in side channels and other areas across the floodplain when over-bank flows occur? How was this assessed?

- If there is any potential for changes in the extent or quality of refugia, what impact would those changes have upon ESA-listed fish species and/or their designated critical habitats in the project action area, and what is the maximum estimated spatial and temporal scale of those effects?

Riparian Vegetative Community

The riparian vegetation along a stream provides many functions including bank stability, food input to streams, nutrient cycling, potential for recruitment of large woody debris to streams, shade, buffering of sediment and pollutants. The habitat assessment should include, but not necessarily be limited to, a description of existing conditions throughout any mapped channel migration area. Freshwater riparian conditions should be characterized by describing conditions as they relate to the riparian habitat functions. The habitat functions affected by riparian communities include water temperature control, recruitment of large woody debris, filtering of sediment and pollutants, erosion control, bank stability, and influence on microclimatology.

Characterization of marine shoreline conditions should be consistent with guidance from state agencies, such as the Oregon's Department of Land Conservation and Development (DLCD) Coastal Management Program. Questions that should be addressed include:

- Does the proposed action include any actions that could potentially degrade the quantity or quality of the riparian vegetative community? How was this assessed?
- If the project has any potential to affect riparian vegetation, describe the general species, sizes, areas, and percent cover of the existing levels of riparian vegetation as well as the percent cover resulting from the proposed action.
- If there is any potential for degradation of the riparian vegetative community, how would:
    - The extent, rate, and quality of nutrient cycling, buffering, food input from terrestrial sources to streams (i.e. allochthonous food), and recruitment of large woody debris be impacted?
    - The extent and quality of bank stability and stream shading to be impacted?
- If there is any potential for degradation of some of the functions that the riparian community provides, what impact would those changes have on ESA-listed fish species and/or their designated critical habitat in the project action area, and what

is the maximum estimated spatial and temporal scale of those effects?

2.2.5. Habitat Area Map

Once all habitat areas of primary association are identified and described, they should be delineated on a map. The map should be at the same scale as the project area map (Task 2.1.2) to facilitate comparison of the habitat to be protected with the extent of the Special Flood Hazard Area, Floodway, the riparian buffer zone, and other relevant features such as watercourses and wetlands.

2.3 Step 3. Describe the Project

There are two key parts of the project that need to be described at this stage of the assessment report: 1) the final project, i.e., what the area will look like and how it will be used when the project is completed; and 2) the construction process that will be followed to get there. The description of the final project should be covered first. Measures taken by the proponent to avoid, minimize, replace, or compensate (the descending order of preference of the mitigation sequence) for degradation to the habitat functions must be described in enough detail to allow assessment of all the effects of the proposed action. It needs to be clear whether each measure is required, or if it is only recommended. It can't be assumed that recommended actions will occur, so their potential positive impacts should not be part of the assured result.

As described for Task 2.1.1, if an Oregon State JPA form has been prepared for the project, it will include general project description information, but usually additional information will be needed for the habitat assessment. More information regarding the Oregon application process and JPA form template can be found at the Oregon Department of State Lands website at: http://www.oregon.gov/DSL/WW/Pages/Permits.aspx.

If the information that is already being provided in the JPA includes the level of detail described in this guidance, then the community may accept the application form as sufficient for the project description. If a JPA has not been prepared for the project, the project area description should, at a minimum, include the information included in Tasks 2.3.1 and 2.3.2 of this section.

2.3.1 Final Project

All features of the proposed completed project must be described. This includes, but is not necessarily limited to:

- A summary of the project, including all features that will be present when construction is finished
- Project category (industrial, commercial, residential, institutional, transportation, recreational, maintenance, agriculture, or environmental restoration)
- A description of the general design, location relative to nearest water bodies, and general dimensions of the footprints of any structures and facilities including, but not

necessarily limited to: buildings, boat launches, docks, pilings, fences, roads, bridges, culverts, trails, roads, or paved areas

- Detailed descriptions of all structures or facilities that would potentially impact water bodies or wetlands including, but not necessarily limited to: aquaculture, buoys, mining, bank stabilization, channel modifications, culverts, dams, levees, ditches, fishways, moorage, or outfall structures
- Above and underground utilities
- Water supply
- Wastewater disposal
- Stormwater management facilities
- Non-native landscaping

The level of detail needed for these descriptions will vary according to the nature, scope, and scale of the project, and its location relative to ESA-listed species and their potential habitats. Assessments should include as much information as is needed to adequately describe and estimate potential environmental effects. In some cases, there may be little or no potential for adverse effects; therefore, in those cases, it may require relatively less information and discussion to document potential effects.

Project details, nearby stream courses, and any key floodplain features need to be mapped, and those features should be shown on the project area map(s) (Task 2.1.2). Maps should show how project details relate to stream conditions appearing on the habitat area map(s) (Task 2.2.5).

There should also be a description of:

- Any ongoing activities that will be conducted at the site after construction is complete.
- Any ongoing activities that will affect adjacent areas, including, but not necessarily limited to, increases in traffic, stormwater runoff from the site, and noise, and changes air quality.

2.3.2 Construction Process

At a minimum, the description of the construction methods should cover the following points:

- Land clearance (areas to be cleared and native vegetation that will be removed)
- Any work in-water, including a description of the methods and materials used
- Grading and filling
- Stormwater management measures to be taken during construction
- Utility installation (including any on-site wastewater treatment)
- Methods and techniques for construction of structures, including buildings, roads,

bridges, paved areas, retaining walls, shoreline modifications, and types of equipment to be used

- Construction phasing and anticipated construction timing
- Mobilization and staging plans
- Temporary construction access and staging areas

Maps and a timeline should be included to show where and when each activity will occur.

2.3.3 Protection Measures

There are several federal, state, and local regulatory requirements that require development projects to include measures that avoid, minimize, replace, or compensate for negative effects on populations or habitat functions due to project impacts. The applicant may propose additional measures. The habitat assessment must list the protective measures that will be implemented and clarify which are required and which are recommended. All required and recommended measures should be described. They could include, but are not necessarily limited to, the examples below:

- Preserving a setback area from any disturbances, or any other measures that avoid negative impacts on ESA-listed species or their habitats.
- Drainage/erosion control plans to be implemented during construction.
- Post-construction stormwater and erosion control plans.
- Use of low impact development techniques (which may eliminate or reduce runoff from areas to be developed).
- Any other measures that minimize negative impacts on ESA-listed species or their habitats.
- Actions to implement wetland mitigation plans.
- Any other measures proposed to reduce potential negative impacts during or after construction is complete, such as sedimentation basins, should be included and described as part of the project design and included in the project timeline.
- Compensatory storage provisions to replace lost floodplain storage[1] that demonstrate that they will not potentially strand fish.
- Any other forms of on-site or off-site compensation for degradation of habitat functions that support ESA-listed species.
- A description of any adaptive management program that will be utilized. This should

[1] Compensatory floodplain storage requirements are included in Section 7.6 of the Model Ordinance. This section requires that compensatory storage areas must be graded and vegetated to allow fish passage during flood events without creating fish stranding sites. Areas of compensatory flood storage should be designed to create floodplain habitat whenever feasible. Compensatory storage should not be used in areas prone to avulsions because lowering floodplain elevations or digging pits in these areas may increase the probability of an avulsion.

include, but not necessarily be limited to, a description of what monitoring would be conducted to track both implementation and effectiveness of mitigation measures, what would trigger adaptive measures, what those measures would be, and what method will be used to determine if they are sufficient and successful.

Adaptive management refers to a structured, iterative process intended to enable decision-making under conditions that include some uncertainty. The goal is to reduce that uncertainty over time by monitoring project site conditions before, during, and after construction, as well as the effectiveness of project design elements and mitigation measures. Possible components of an adaptive management plan include, but are not necessarily limited to, the following topics.

- How monitoring and resultant possible changes in project management (e.g., variations in mitigation measures) are based on spatial and temporal scales of analysis that are appropriate for the project in question, and how the basis for those scales is explained. This includes the location(s), duration, and frequency of monitoring.
- Why the variables selected for monitoring are appropriate and practical to track project impacts and the effectiveness of best management practices and mitigation measures.
- How monitoring results can and will be used in a direct way to decide what, if any, changes need to be made to achieve the desired future condition for the project. For many projects the desired future condition is obvious and can be easily stated. For more complex projects, the minimum parameters needed to adequately define the desired future condition will need to be determined and clearly described.
- How adaptive changes to the project would be based on existing best management practices and best available science to the greatest extent possible.

2.4 Step 4. Assess the Environmental Effects

The habitat assessment must analyze the direct and indirect effects of the proposed action on ESA-listed species and their aquatic, riparian, and floodplain habitat areas identified in Step 2, as well as the cumulative effects of future actions that are reasonably certain to occur. Primary factors to be considered in the assessment include, but are not necessarily limited to, the following considerations:

- The proximity of the action to individuals of the species present, habitat management units, or designated critical habitat units. This includes assessing the likelihood of measurable or observable impacts on fish or their designated critical habitats based on the relative location(s) of the action and nearby populations and habitats. For example, habitats located well downstream of an action that is expected to deliver significant volumes of sediment to a stream near the project site may still be measurably impacted

if those sediments may be routed (transported) downstream to areas of concern. The appropriate temporal and spatial scales of analysis will vary by the variables of concern and nature of the project and must be described in the assessment.

- The spatial distribution of an action over one or more action areas or sub-watersheds. The analysis should consider the accumulated effects of impacts in multiple locations and/or cumulative effects due to the combination of project effects added to the effects of other nearby, reasonably foreseeable future, non-federal actions.
- The timing of the proposed action relative to sensitive periods of the lifecycles of any potentially impacted ESA-listed species, and how that timing may result in negative impacts.
- The nature, scale, scope, and duration of the effects of the proposed action on the sub-population size, growth and survival, life cycle, diversity, isolation, and genetic integrity of ESA-listed species that could potentially be affected. Assessments should include as much information as is needed to adequately describe these population variables. In some cases, there may be little or no potential for adverse effects with respect to these variables, so relatively little discussion will be needed.
- The nature, scale, scope, and duration of the effects of the proposed action on the PCEs of any designated critical habitat, including any direct, indirect, interdependent, interrelated, or cumulative effects. In freshwater systems, PCEs generally include adequate water quality, water quantity, and substrate (free of fine sediments) for spawning, incubation, and larval development, floodplain connectivity for rearing, and stream channels free of man-made obstructions (obstructions may include physical, water temperature, or chemical barriers). The habitat assessments should include as much information as is needed to adequately estimate potential effects on these habitat variables. In some cases, there may be little or no potential for adverse effects on these variables, so relatively little discussion will be needed.
- There are three potential categories of effect on designated critical habitat that relate to the duration of the effect: 1) a short-term events where effects reduce to negligible levels soon after construction activities cease; 2) actions that may result in sustained long-term negative effects that are measurable or observable after the proposed action is completed; and 3) actions that cause permanent changes, resulting in a new threshold (condition) for some population or habitat functions of an a ESA-listed species and/or its critical habitat. Note that ‘Short-term’ effects will never persist more than one year beyond the duration of construction duration (e.g., removal of native vegetation due to construction that is replaced within one year), and in the case of significant inputs of sediment or pollutants, may not persist for more than a few hours to a few days at most.
- The frequency of any negative impacts due to the proposed action, described as the mean number of events per an appropriate time basis for the proposed action. This rate must then be compared against best available data on the estimated recovery rates of

any potentially affected species to assess how those species would likely be impacted by multiple disturbances (if such occurs). The duration of each event may vary. A recurring event of short duration will in some cases result in a smaller net impact than a single event of a much longer duration, but the opposite may also be true depending on the nature of the disturbance.

- The severity of any negative effects on ESA-listed fish or their designated critical habitats that may potentially occur due to the actions of the proposed project. In this context severity is not analogous to intensity or scale, but it is closely related. With a "severe disturbance," affected fish would take a longer time to recover, due to both the intensity of effects as well as the cumulative effects of the other variables described above.

2.4.1 Types of Environmental Effects

The References and Resources section at the end of this document lists resources that have additional guidance for the assessment of environmental effects. The habitat assessment should assess direct, indirect, and cumulative effects.

Direct effects: According to ESA rules and regulations, direct effects occur at or very close to the time of the action itself. Examples include, but are not limited to: construction noise disturbance, loss of habitat, or sedimentation that results from the construction activity. Direct effects include the effects of interrelated actions. Such actions are part of the proposed action and depend on the proposed action for their justification. Direct effects also include interdependent actions, which are activities that have no independent utility apart from the action under consideration. Neither interdependent nor interrelated actions would occur 'but for' the implementation of the proposed action.

The discussion of direct effects must include information on the temporal and spatial limits of the effects, species tolerances, severity of effect, mortality, and other forms of take (including harm) and expected habitat loss as a result of the proposed action. Identification of the appropriate estimated temporal and spatial scales of potential impacts are key to assessing environmental consequences. It is recommended that a table or list of appropriate scales for each pertinent issue (e.g., possible erosion and delivery of sediments to stream channels, water pollutants, changes in instream or riparian habitat, changes in hydraulics, etc.) be created to document appropriate scales of analysis for the nature and location of the proposed action. Habitat assessments only need to address those habitat functions and processes that the project has the potential to affect, while also explaining (as briefly as is practicable) why those are the only functions that may be impacted.

The direct impacts a project might have on a habitat area include, but are not limited to:

- Permanent clearing and grading of any habitat area
- Temporary clearing and grading of any habitat area during construction
- Permanent structures, pavements, etc., constructed within or placed within a habitat

area

- Modification of a stream channel or side channel, including bank stabilization measures and removal or changes to large woody debris (other than stream restoration efforts)
- Diversion of water that will change the hydrologic or sediment regime in the project action area

Indirect effects: Indirect effects are also caused by or result from the proposed action; however, they are likely to occur later in time. They may occur outside of the area directly affected by the action. Indirect impacts include, but are not limited to:

- Disrupting high or low stream flows, including impacts from stormwater runoff
- Contributing to sedimentation that fills in substrate
- Blocking a corridor that connects habitat areas
- Increases in water temperature or degradation of chemical or biologic water quality parameters through removal of riparian vegetation or other actions
- Disturbance of riparian vegetation (for example, clearing vegetation to the edge of a forested riparian area)
- Moving or removing large woody debris
- Destabilizing banks or altering natural lateral or vertical channel migration or channel forming processes
- Degrading wetland areas through disturbance of adjacent vegetation or modification of hydrology

Cumulative effects: Under the National Environmental Policy Act (NEPA) cumulative effects include the lingering effects of past and current actions (as depicted in the environmental baseline) that overlap in time and space with the proposed action, as well as estimates of the effects of future state, federal, tribal, local, or private actions that are reasonably certain to occur in the action area. However, under the ESA's distinct definition, cumulative effects include the effects of foreseeable future state, tribal, local, or private actions that are reasonably certain to occur in the project action area, but federal actions (i.e. actions permitted or partially funded by one or more federal agencies) are not part of the assessment nor are any past projects.

Project assessment cannot be segmented under either NEPA or ESA. It is not permitted to break the project down into small segments that may have low levels of impacts when considered separately. The entire scope of the direct, indirect, interdependent, and interrelated actions must be considered, including any possible lingering effects that may overlap with other reasonably foreseeable projects that could result in cumulative effects in the area(s) defined for analysis.

Permit officials are required to review the cumulative effects of all projects when the proposed action has the potential to produce any measurable or observable negative effects. The cumulative effects section should not simply be a list of other projects. It must in some manner describe the estimated accumulated impacts of future projects that are reasonably certain to occur, superimposed upon the baseline of current conditions and the expected impacts of the proposed action.

2.4.2 Report Format

There is no single required format for a NFIP habitat assessment, but such assessments must contain sufficient information and analysis to fully describe the impacts of the proposed action on ESA-listed species and their habitats. Similarly, neither NMFS nor USFWS (often jointly referred to as the 'Services') requires a specific format that biological assessments must follow. The main reference that the Services refer to and recommend applicants fully comply with is the Consultation Handbook (NMFS, USFWS 1998). Endangered Species Consultation Handbook (noaa.gov)

The Handbook is a large document that includes chapters and appendices that stress the contents (versus format) needed in a biological assessment, along with examples of such assessments. However, there are also several examples of formats sometimes employed by various agencies that may be helpful for jurisdictions to reference as they can supplement the recommendations in this guidance. One format often used in the Pacific Northwest is the Matrix of Pathways and Indicators (NMFS 1996 and USFWS 1998). This approach assesses both the current condition and the estimated effect of the proposed action on 18 'indicators' of population and habitat conditions that fall under six broader 'pathway' categories. This approach is useful because it breaks down the assessment into a repeatable, manageable number of specific topics.

The only significant difference between the NMFS and USFWS versions is that the suggested thresholds for when the current condition of an indicator is 'properly functioning', 'at risk', or 'not properly functioning' varies between the Services. The narrative for the matrices emphasizes that these specific threshold metrics do not need to be used and can be replaced by other metrics that are more appropriate for the watershed in question, if the deviation can be explained.

The outline below is a variation on the U.S. Army Corps of Engineers (USACE) Biological Assessment Template guidance regarding how to describe the effects of a proposed action in a biological assessment. It is included in the Endangered Species Section of USACE Permit Guidebook online resource at: http://www.nws.usace.army.mil/Missions/CivilWorks/Regulatory/PermitGuidebook.aspx. All the components of this USACE outline must be covered in some manner, but the format may vary.

A. Direct effects
    1. First PCE (e.g., freshwater spawning sites)
    2. Second PCE (e.g., freshwater rearing sites)

3. Third PCE (e.g., freshwater migration corridors)
4. Additional PCEs as appropriate
5. Essential Fish Habitat designated by the National Marine Fisheries Service
6. Fish and Wildlife Habitat Conservation Areas
7. Vegetation communities and habitat structures
8. Water quality
9. Water quantity, including flood and low flow depths, volumes, and velocities
10. The channel's planform pattern and migration processes
11. Spawning substrate, if applicable
12. Floodplain refugia, if applicable

B. Indirect effects - see the list on the previous pages of this document and include consideration of indirect effects with respect to items A.1 through A.12, above, that are applicable to the proposed project
C. Effects from interdependent and interrelated actions
D. Cumulative Effects
E. Effects determinations – see following section
F. Summary

2.4.3 No Net Loss Determination

Actions in the SFHA of the implementation plan area will have a May Affect -- Not Likely to Adversely Affect (NLAA) determination. However, the RPAs set forth in the 2016 BiOp and 2017 errata allow for compensatory mitigation of adverse effects within the SFHA through abidance with no net loss standards. No net loss is a standard where adverse impacts must be avoided or offset through mitigation so that there is no net change in function from the condition when development begins. The no net loss standards ensure that the implementation of the NFIP avoids jeopardy of listed species and adverse modification of habitat, including essential fish habitat (EFH) under the jurisdiction of NMFS within the plan area. They apply to three floodplain functions (i.e., floodplain storage, water quality, and riparian vegetation) essential to the survival of the 16 ESA-listed fish species and Southern Resident killer whale in the plan area.

2.4.4 Preparing the Mitigation Plan

The following sections (Steps 5 and 6) provide guidance on preparing a mitigation plan, including reference to any other pertinent habitat-specific restoration and mitigation guidance materials developed for the area under consideration. The final objective of floodplain habitat mitigation is to ensure that there is no adverse effect on quality or quantity of natural habitat functions and processes within the Special Flood Hazard Area through no net loss standards. Step 6, Task 2.6.1

of this guidance provides guidance on mitigation objectives to achieve no net loss, including specific requirements for mitigation within riparian buffer zones and through the remainder of the SFHA.

For many development proposals, the permit conditions and mitigation actions required to meet other local and state permit requirements may also provide sufficient mitigation for the impacts identified through Step 4 of this guidance. In such instances, permit conditions and required mitigation actions may overlap to serve as mitigation for impacts on floodplain habitats, as required by the local floodplain management ordinance. However, the conditions and mitigation proposed, must be sufficient to mitigate for all floodplain habitat impacts, in order to meet the objective of no adverse effect on habitat for ESA-listed species.

2.5 Step 5. Review Mitigation Alternatives (Mitigation Sequencing)

There are three major types of mitigation approaches to rectify an adverse effect. In descending order of preference and effectiveness they are: avoidance, minimization, and mitigation. This mitigation sequence hierarchy requires minimization of those impacts that can't be avoided and directs that any impacts remaining after taking steps to minimize shall be fully mitigated. On-site, in-kind compensation is preferred over off-site and/or out-of-kind compensation. The necessity for use of the latter must be explained and justified. Successful mitigation is dependent upon adequate monitoring of both the actual (versus planned) implementation of mitigation measures as well as the effectiveness of those measures to accomplish the stated objectives in the Mitigation Plan (see Step 6 below). The results of that monitoring may trigger adaptive management to accomplish those goals.

2.5.1 Avoidance

Avoidance of adverse effects is the preferred approach. FEMA recommends that new land development actions remain outside of the SFHA. Avoidance prevents additional adverse effects on aquatic and riparian habitats, while also precluding any risks to public safety and property from increased frequency, duration, or magnitude of flooding that would possibly result from further development in the floodplain. Avoidance also largely eliminates the expense of adhering to no net loss within the SFHA. The permit applicant should strongly consider relocating or redesigning proposed projects to minimize the impacts on floodplain habitat functions and the corresponding need for a mitigation plan.

Communities should consider disincentivizing development within the floodplain. Many communities currently use a variety of strategies to encourage conservation of sensitive areas by allowing for development at a more intense level in other areas. These measures are usually implemented through provisions of a zoning ordinance or separate development regulations. Here are three incentives for floodplain conservation that some jurisdictions use:

1. Providing density incentives to individual property owners: A density incentive or

density credit system would allow specified land uses to occur at a more intense level within the portion of a parcel outside of the floodplain as compensation for conservation of flood-prone areas within the parcel. For example, if a 20-acre parcel is zoned for one acre lots and half of the parcel is in the floodplain, the community might consider allowing the ten "dry" acres to be developed with half acre lots, allowing the developer to still construct 20 homes. This would allow for a higher density of development in a portion of the property and would require the remaining, high-habitat-value floodplain to be conserved as a dedicated tract. This strategy is similar to the approach of clustering development, which is provided as a case study in Figure 6-3 of the FEMA 480 manual "Floodplain Management Requirements" and is often used in planned unit developments. Under either the density incentive or density credit approach, the overall project does not exceed the development density allowed by the zoning district.

2. Transfer of development rights: Transfer of development rights (TDR) programs allow for the transfer of development density from one parcel of land (with some conservation value, such as a floodplain or wetland) to another parcel or area that is planned for higher density development. Implementation and administration of TDR systems has proven challenging in many circumstances due to the required coordination in establishing density receiving and density giving areas and the required negotiation to set density credit values. However, a community, regional, or watershed-based TDR system may be a successful strategy for floodplain avoidance.
3. Tax relief for conservation lands: Tax relief is a financial incentive proven to help discourage development of sensitive lands. Such systems could provide an additional venue to encourage conservation of floodplain lands. However, tax relief systems generally do not provide permanent protection for natural resources as they often are terminated when the property ownership transfers.

2.5.2 Minimization

If the entire project cannot avoid some development within the SFHA, it may be able to minimize the physical area and magnitude of impacts on the three floodplain functions. Some ideas for minimizing impacts include:

- Elevating structures in the SFHA on posts and piers to reduce the amount of fill/structure volume below the BFE.
- Reducing the amount of new impervious surface and using pervious surfaces where possible.
- Reducing the number of trees with a dbh of 6 inches or larger to be removed.

Many adverse effects result from degradation of natural processes or functions caused by actions during the construction period. Some best management practices to avoid these types of problems include, but are not necessarily limited to:

- Perform all work in dry weather and/or during the dry season.
- Incorporate erosion and sedimentation control measures.
- Use vegetable oil-based hydraulic fluids in all equipment working in water.
- Prepare and train crews on a spill prevention and pollution control plan and require that all equipment needed to contain a possible spill is available on-site before construction activities begin.
- Store, stage, and refuel equipment outside the riparian buffer zone.
- Inspect equipment daily for leaks.
- Time specific phases of work to occur during "species work windows," when the species are not present or will not be affected.

2.5.3 Mitigation

Mitigation must be conducted for any loss to floodplain storage, water quality, and riparian vegetation in the SFHA. This is commonly measured through an increase in fill or structures below the BFE, an increase in impervious surfaces, and the removal of trees 6 inches dbh or higher. Mitigation may include both natural methods (e.g., replanting of trees) or engineered methods (e.g., green infrastructure) depending on the floodplain function impacted.

Mitigation is recommended to occur on the same site and reach as which the impact occurs. Mitigation that does not occur within the same reach as where impacts occurred is subject to higher ratios that increase mitigation required to achieve no net loss. Mitigation must occur within the same watershed (i.e., within the same 10-digit hydrologic unit code area) and the same jurisdictional boundaries as the impact. For communities within the plan area of Oregon's BiOp, FEMA requires that all development in the SFHA to be mitigated to achieve no net loss of the natural floodplain functions of floodplain storage, water quality, and vegetation through the ratios below.

Basic Mitigate Ratios	Undeveloped Space (ft^3)	Pervious Surface (ft^2)	Trees (6"<dbh≤20")	Trees (20"<dbh≤39")	Trees (39"<dbh)
Floodway and/or RBZ	2:1	1:1	3:1	5:1	6:1
RBZ-Fringe	1.5:1	1:1	2:1	4:1	5:1
Mitigation multipliers					
Mitigation onsite to Mitigation offsite, same reach	100%	100%	100%	100%	100%
Mitigation onsite to Mitigation offsite, different reach, same watershed (5^{th})	200%	200%	200%	200%	200%

Table 2: Mitigation Ratios Required to Achieve No Net Loss

Mitigation multipliers of 100% result in the required mitigation occurring at the same value described by the ratios above, while multipliers of 200% result in the required mitigation being doubled.

- For example, if only 500 ft^2 of the total 1000 ft^2 of required pervious surface mitigation can be conducted onsite and in the same reach, the remaining 500 ft^2 of required pervious surface mitigation occurring offsite at a different reach would double as a result of the 200% multiplier.

In instances where pervious surface replacement is not possible, mitigation can be achieved through infiltration of stormwater using low impact development (LID) or green infrastructure practices (e.g., rain gardens, bioswales). Or, where pervious surface replacement is not possible, due to impermeable soils or high-water tables, then through stormwater detention, to ensure no increase in peak volume of flow, followed by treatment to minimize pollutant loading.

In addition to higher mitigation ratios established by the no net loss standards, development in the RBZ is subject to the following conditions and performance standards:

- Habitat restoration activities in the RBZ are considered self-mitigating and are not subject to the no net loss standards described above.
- Functional-dependent uses are subject to the no net loss standards for development in the RBZ. Ancillary features in the RBZ (including manufacturing support facilities) are subject to the beneficial gain standard in addition to no net loss standards.
- Any other use of the RBZ requires a greater offset to achieve no net loss of floodplain functions, on top of the no net loss standards described above, through the beneficial

gain standard.

- Under FEMA's beneficial gain standard, an area within the same reach of the project and equivalent to 5% of the total project area within the RBZ, shall be planted with native herbaceous and shrub vegetation and designated as open space.

2.5.4 Select the Best Approach

Selecting the best mitigation approach for the proposed project is an iterative process. Avoidance should be considered first as the preferred choice. If work must be done in a sensitive area, the project proponent should consider the costs of restoration and compensation. If those costs are too high, then avoidance should be reconsidered.

Selecting the best mitigation approach should be done in conjunction with the local, state, and federal regulatory offices for technical assistance regarding the discussion of preliminary project designs and assessment of environmental effects. Assistance from these sources, as well as possible review and assistance from neighboring tribal representatives, can greatly aid in designing an appropriate sequence of mitigation of actions. Early and periodic meetings with appropriate regulatory agencies will increase the likelihood that a mitigation plan will meet all regulatory requirements and can reduce total project costs and the probability of schedule delays during the approval process.

2.6 Step 6. Prepare the Mitigation Plan

2.6.1 Objective

As noted in Step 5, the objective of the mitigation plan is to assure that actions are taken to sufficiently and appropriately mitigate for negative impacts on ESA-listed populations and the natural functions and processes that support their habitats. The mitigation plan needs to provide sufficient detail to demonstrate how this will be done, using avoidance, minimization, replacement (rectify), and/or compensatory measures.

For all mitigation, the final plan (construction level detail) should not be drafted until the local permitting office(s), in coordination with state and federal agencies, as necessary, has agreed that the conceptual mitigation plan would meet the objectives. Coordination with local permitting officers will ensure that the scope of the planned mitigation will be commensurate with the scale of the impacts and will meet the objectives identified above.

2.6.2 Format

Many communities have established formats that they have used to document mitigation plans within environmental or biological assessments. These formats are likely adequate for purposes of the NFIP. In Oregon, refer to Chapter 3 of *Wetland Mitigation Banking Guidebook for Oregon: Approval Process and Documentation*. For detailed guidelines regarding what to include in a mitigation plan.

Here is an example mitigation plan outline:

1. Introduction, background, objectives
2. The project area, with map (taken from Step 1 of the assessment)
3. The project area's habitat, with map (taken from Step 2 of the assessment)
4. Project description (taken from Step 3 of the assessment)
5. Impact on habitat (taken from Step 4 of the assessment)
6. Alternatives considered (taken from Step 5, this should note why some alternatives, especially avoidance, were not selected)
7. Mitigation concept (an overall explanation of the measures)
8. Construction measures
    a. Grading plan, with existing and post-construction topographical maps
    b. Construction methods (e.g. equipment to be used)
    c. Construction schedule
9. Permanent measures
    a. Surface water management
    b. Vegetation plan
    c. Permanent buffer areas
    d. Etc.
10. Post-construction monitoring and maintenance plan
11. Bond arrangements

2.6.3 Minimum Standards

At a minimum, the mitigation plan's components 7, 8, 9, 10, and 11 of the outline above, should be consistent with the mitigation guidance requirements of the Army Corps of Engineers, and Chapter 3 of *Wetland Mitigation Banking Guidebook for Oregon: Approval Process and Documentation*. In Oregon, mitigation plans must also be consistent with the community's critical areas regulations or Goal 5 implementation plans. If there are inconsistencies between these requirements, the standards that provide the highest level of environmental protection and the greatest likelihood of mitigation success take precedence.

3.0 Reviewing Habitat Assessments and Mitigation Plans

This section provides guidance for the local permit official. The following strategies may be used to ensure that habitat assessments and mitigation plans are prepared by a qualified individual or company and meet the intent of the Model Ordinance and this guidance.

Establishing a List of Qualified Professionals: The community could provide a list of qualified professionals who have experience in the area to developers and landowners. Another strategy for ensuring that qualified professionals are used could include developing qualification criteria for authors of habitat assessments and mitigation plans; see the box below for an example of qualifying criteria.

Public Comment Period: After habitat assessments and mitigation plans are submitted, the permitting official may require a public comment period before assessment conclusions and/or mitigation plans are approved. This approach could include a requirement that a public notice be posted in a publication of record. The intent of the public comment period would be to ensure that interested third parties would have ample opportunity to review and comment on proposed projects. This could alert the local permit official to issues or impacts not adequately addressed by an assessment or mitigation plan.

Third Party Review: The community may establish a system of third-party review(s) by qualified consultants or agencies. Third party review is frequently implemented by local jurisdictions for other environmental permits and approvals. The cost of third-party review could be passed on to the applicant. This may require establishment of a third-party review system in the local ordinance. Establishing a system of third party review could augment internal review within the local jurisdiction. Another option that may work for certain jurisdictions could be formalizing a system of internal review where qualified staff would determine the adequacy of submitted materials.

Example Qualification Criteria

The following criteria could be used by a community as part (likely not all) of the minimal criteria needed to conduct habitat assessment to ensure assessments and mitigation plans are prepared by a qualified consultant:

> *Reports and plans shall be prepared by persons who have a minimum of a bachelor's degree in wildlife or fisheries habitat biology, or a related degree in a biological field from an accredited college or university with a minimum of four years' experience as a practicing fish or wildlife habitat biologist.*

Qualifying criteria should include further specifications for all wildlife, fisheries, habitat, and environmental professionals that could be relied upon to address the broad array of habitats and conditions that occur in flood-prone areas.

3.1 Review Checklists

Permit staff could develop a review checklist for assessment and mitigation plan submittals. A checklist would likely need to be tailored to specific types of development activity due to the site

and habitat-specific nature of habitat assessments and mitigation plans. See the worksheet attached to this guidance document for an example of a review checklist.

4.0 References and Resources

4.1 Federal and State Regulations and Guidance

National Flood Insurance Program- Endangered Species Act Integration in Oregon, FEMA Region 10. https://www.fema.gov/about/organization/region-10/oregon/nfip-esa-integration

CRS Credit for Habitat Protection, FEMA, 2010. http://training.fema.gov/EMIWeb/CRS/

Endangered Species Consultation Handbook, National Marine Fisheries Service, 1998. https://media.fisheries.noaa.gov/dam-migration/esa_section7_handbook_1998_opr5.pdf

Endangered Species Act (ESA) Section 7(a)(2) Jeopardy and Adverse Modification of Critical Habitat Biological Opinion, ESA Section 7(a)(2) "Not Likely to Adversely Affect" Determination, and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Implementation of the National Flood Insurance Program in the State of Oregon. April 14, 2016. https://media.fisheries.noaa.gov/2022-01/2016-04-14-fema-nfip-nwr-2011-3197.pdf

Mitigation guidance and JPA permit information, Oregon State Department of Lands. http://www.oregon.gov/DSL/WW/Pages/Permits.aspx

National Flood Insurance Program Floodplain Management Requirements A Study Guide & Desk Reference for Local Officials, FEMA 480, 2005. https://library.floods.org/cgi-bin/koha/opac-detail.pl?biblionumber=5219

4.2 Maps and Databases

Critical habitat maps:

National Marine Fisheries Service: http://www.nmfs.noaa.gov/pr/species/criticalhabitat.htm

U.S. Fish and Wildlife Service: http://criticalhabitat.fws.gov/

Forest Water Typing System, Oregon State Water Resources Department. http://www.oregon.gov/ODF/Documents/WorkingForests/WaterClassificationTechNote1.pdf

Threatened and Endangered Species List, Oregon Department of fish and Wildlife. http://www.dfw.state.or.us/wildlife/diversity/species/threatened_endangered_candidate_list.asp

Oregon Natural Heritage Program, Oregon State University Institute for Natural Resources. http://inr.oregonstate.edu/orbic

Washington and Oregon State Soil Survey data, see the USDA Natural Resource Conservation Service maps or online *Web Soil Survey*. http://websoilsurvey.nrcs.usda.gov/app/

Regional Guidance for Hydrologic and Hydraulic Studies in Support of the Model Ordinance for Floodplain Management under the National Flood Insurance Program and the Endangered Species Act, FEMA Region 10, 2010. https://www.fema.gov/pdf/about/regions/regionx/draft_handh_guide.pdf

4.3 Water Quality and Quantity

Section 401 Water Quality Certification: Post-Construction Stormwater Management Plan Submission Guidelines, State of Oregon Department of Environmental Quality, 2016, https://www.oregon.gov/deq/wq/wqpermits/Pages/Section-401.aspx

Standards for surface water quality in Oregon State, Department of Environmental Quality. http://www.oregon.gov/deq/wq/Pages/WQ-Standards.aspx

Routine Road Maintenance | Water Quality and Habitat Guide, Best Management Practices, State of Oregon Department of Transportation, 2020. http://www.oregon.gov/ODOT/GeoEnvironmental/Pages/Stormwater.aspx

Oregon State Water Quality Assessment, Department of Environmental Quality. http://www.oregon.gov/deq/wq/Pages/WQ-Standards.aspx

Water level data:

- U.S. Geological Survey: http://wa.water.usgs.gov/data/

4.4 Mitigation

Engineering with Nature − Alternative Techniques to Riprap Bank Stabilization, FEMA Region 10, 2009. https://www.fema.gov/pdf/about/regions/regionx/Engineering_With_Nature_Web.pdf

Habitat Conservation Planning Handbook, US Fish & Wildlife Service and National Marine Fisheries Service, 1996. https://www.fws.gov/library/collections/habitat-conservation-planning-handbook

Pu*rpose of Mitigation and Mitigation Steps in Oregon State,* Oregon State Department of State Lands. http://www.oregon.gov/dsl/WW/Pages/Mitigation.aspx

Wetland Mitigation Banking Guidebook for Oregon: Approval Process and Documentation, Oregon Division of State Lands, 2000, http://oregonexplorer.info/data_files/OE_topic/wetlands/documents/mitbank_guidebk.pdf

A Guide to the Removal-Fill Permit Process: Compensatory Mitigation Planning, Oregon Division of State Lands, 2016, https://www.oregon.gov/dsl/wetlands-waters/Documents/Removal_Fill_Guide.pdf

Oregon Aquatic Habitat: Restoration and Enhancement Guide, Oregon Plan for Salmon and Watersheds, 1999, https://digital.osl.state.or.us/islandora/object/osl:16552

4.5 Additional References

Invasive species information: Oregon Department of Agriculture. http://www.oregon.gov/ODA/programs/Weeds/Pages/AboutWeeds.aspx

Low Impact Development, Oregon Environmental Council. http://www.oeconline.org/tag/low-impact-development/

Congress of the United States
Washington, DC 20515

August 22, 2024

The Honorable Deanne Criswell
Administrator
Federal Emergency Management Agency
500 C St. SW
Washington, D.C. 20024

Dear Administrator Criswell,

We are writing to reiterate concerns about the Federal Emergency Management Agency's (FEMA) proposed strategy to implement changes to the National Flood Insurance Program (NFIP) in Oregon, specifically regarding a new compliance requirement that communities need to select Pre-Implementation Compliance Measures (PICMs) well before FEMA makes final recommendations. NFIP is a life-saving federal program, and its administration and changes must be undertaken with the utmost care and evenhanded judgment.

All of our offices have heard serious concerns from small business leaders, local elected officials, affordable housing advocates, and economic development groups. We want to emphasize that the implementation of permitting programs is carried out primarily at the local level, and the leaders in the affected communities have valuable insights. FEMA must lead by listening to and working collaboratively with local and state officials to craft policies that can be implemented effectively and sustainably.

Our offices have heard significant concerns from these communities about the decision to abruptly cease processing Letters of Map Revision – Based on Fill (LOMR-F) and Conditional Letters of Map Revision – Based on Fill (CLOMR-F) on August 1st, 2024, with little to no notice. The timing of this action leaves communities scrambling to comply with FEMA's plan to reach compliance with the National Marine Fisheries Service's (NMFS) 2016 Biological Opinion ("BiOp") and its Reasonable and Prudent Alternatives (RPAs).

We do not doubt the necessity of enhanced conservation efforts, including protection of Oregon's declining salmon population. The worsening wildfire intensity and smoke pollution is also an urgent reminder of the scale of the climate crisis. Communities across the state share these concerns and the fundamental drive to protect the unique environment in which we live.

We respectfully request that you make several key changes to FEMA's revised timeline. We ask that FEMA provide an additional 90 days for Oregon jurisdictions to consider the three proposed "Pre-Implementation Compliance Measures," changing the December 1st, 2024 selection date to

March 1st, 2025. Accordingly, the automatic adoption of the permit-by-permit PICM should also be delayed until at least March 1st, 2025 and accompanied by collaborative action with the state to demonstrate compatibility with state land use law.

Additionally, FEMA should develop a pathway for continued review of LOMR and CLOMR cases during this period as it finalizes its Environmental Impact Statement. The pause to these processes initiated on August 1st was not sufficiently noticed to communities and future timeline changes should be announced with significantly greater notice. If applicants need additional consultation and technical assistance, FEMA should make staff available to assist.

We also request that you fully consider the State of Oregon's request that FEMA add a pathway for the state to develop and adopt a statewide regulatory package that achieves compliance with the "no net loss" standard. Allowing state agencies with the staff and expertise to develop a policy that is consistent statewide would reduce capacity and cost burdens for local governments and simplify integration of any new requirements with existing state land use law.

Finally, we request a written explanation of the decision-making process that led to the PICM taking effect well before the completion of the Environmental Impact Statement. Providing community members with a clear understanding of this process is key to maintaining transparency and demonstrating consistency with the NEPA process.

We remain committed to a collaborative path forward that responds to the dual imperatives of economic stability and environmental preservation. We appreciate FEMA's shared commitment to these goals and thank you for your full and fair consideration of our concerns. For any questions, please contact Espen Swanson in Congresswoman Bonamici's office at Espen.Swanson@mail.house.gov; Ree Armitage in Senator Ron Wyden's office at Ree_Armitage@wyden.senate.gov; Gustavo Guerrero in Senator Jeff Merkley's office at Gustavo_Guerrero@merkley.senate.gov; Olivia Wilhite in Congresswoman Val Hoyle's office at Olivia.Wilhite@mail.house.gov or Alexander O'Keefe in Congresswoman Andrea Salinas' office at Alexander.OKeefe@mail.house.gov.

Sincerely,

Suzanne Bonamici
Member of Congress

Ron Wyden
United States Senator

Jeffrey A. Merkley
United States Senator

Val Hoyle
Member of Congress

Andrea Salinas
Member of Congress

Earl Blumenauer
Member of Congress

Modifications to the Implementation of the National Flood Insurance Program in Oregon

Floodplain Managers Pre-Scoping Meeting | March/April 2023

FEMA

NATIONAL FLOOD INSURANCE PROGRAM

Oregon Implementation Plan for NFIP-ESA Integration

FEMA's response and proposed implementation approach for the 2016 Biological Opinion on the National Flood Insurance Program in Oregon

DRAFT, October 2021

FEMA

Agenda

- Meeting Purpose
- Background on the NFIP
- Overviews of the Endangered Species Act (ESA) and National Environmental Policy Act (NEPA)
- Oregon NFIP Implementation
- NEPA Process
  - Schedule
  - Proposed Action
  - Purpose and Need
  - Alternatives
  - Potential Impacts
- Providing Comments

NATIONAL FLOOD INSURANCE PROGRAM

Purpose of today's floodplain managers' meeting

1. Inform floodplain managers about the National Environmental Policy Act (NEPA) review for upcoming changes to implementation of the National Flood Insurance Program (NFIP) in Oregon
2. Describe the Environmental Impact Statement (EIS) process, including the Proposed Action, Purpose and Need, and Alternatives
3. Receive comments on the Proposed Action and Alternatives

Congress created the NFIP via the National Flood Insurance Act (NFIA) of 1968, following devastating flooding in the 1960s

- The NFIP reduces future flood damage by requiring minimum floodplain management standards and provides protection for property owners against potential flood losses through insurance
- The purpose of the NFIP is to minimize the long-term risks to persons and property from the effects of flooding, and reduce the escalating costs of flood damages to taxpayers
- The NFIP is administered by the Federal Emergency Management Agency (FEMA)

FEMA

Today, flooding continues to be the single greatest source of damage from natural hazards in the United States

- The NFIP serves as the foundation for national efforts to reduce the loss of life and property from flood disasters, both through insurance and key “noninsurance activities” including mapping flood hazards, disseminating flood-risk information, and setting minimum floodplain management standards
- Implementation of the NFIP is estimated to save the nation roughly $1.6 billion annually through avoided flood losses

NATIONAL FLOOD INSURANCE PROGRAM

NFIP from the National Flood Insurance Act (NFIA) of 1968

- Quid pro quo program
- FEMA makes flood insurance available if
  - Communities voluntarily agree to regulate development in the floodplains using the minimum floodplain management standards
- Over 22,500 communities participate (states, Tribes, cities, towns, counties)
- FEMA does not regulate local land use; the Constitution reserves that right for the states

FEMA

Federal Role

- Updated maps
- Establish development/ building standards
- Provide flood insurance coverage
- Oversee programmatic implementation of the NFIP including training, technical assistance, and enforcement

Community Role

- Establish higher regulatory standards (opt)
- Adopt/enforce local floodplain management ordinances
- Issue or deny development/building permits
- Development oversight

NATIONAL FLOOD INSURANCE PROGRAM

When do I need a permit under the NFIP?

1. Is the project happening in the Special Flood Hazard Area (SFHA) / i.e., Regulatory Floodplain?

2. Does the project meet the definition of Development?

44 CFR 59.1 *Development* means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

FEMA

NATIONAL FLOOD INSURANCE PROGRAM

Overview of the Endangered Species Act (ESA)

Section 7(a)(1) of the ESA requires Federal agencies to use their authorities to carry out programs that protect and conserve endangered and threatened species and their habitats

Section 7(a)(2) of the ESA requires Federal agencies to ensure that any action they authorize, fund, or carry out is unlikely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of their habitat

The ESA is implemented by the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS).

Oregon ESA consultation history

Biological Opinion (BiOp)

- Document issued by the Services reviewing the proposed action
- NMFS has completed two BiOps in FEMA Region 10 regarding implementation of the NFIP (WA & OR)
- Both resulted in jeopardy determinations

Reasonable and Prudent Alternatives (RPA)

- Additional report issued with a BiOp when a jeopardy opinion is made
- Describes alternatives to implementing the proposed action that meet ESA compliance
- Each WA & OR BiOp included an RPA as guidance to FEMA on alternative methods for implementing the NFIP locally

Overview of 2016 NMFS NFIP jeopardy finding for Oregon

- In 2016, NMFS released a Biological Opinion (BiOp) on the NFIP's effects on threatened or endangered species in Oregon's watersheds (Action Area)
  - State of Oregon, two tribal nations, and 260 communities across 36 counties
- The BiOp tasked FEMA to modify **NFIP implementation in Oregon such that development actions in the floodplain result in "no net loss" to key habitat functions**
  - Flood storage
  - Water quality
  - Riparian vegetation

"No Net Loss" means mitigate on-site, within the same reach, or in the same watershed with different mitigation ratios

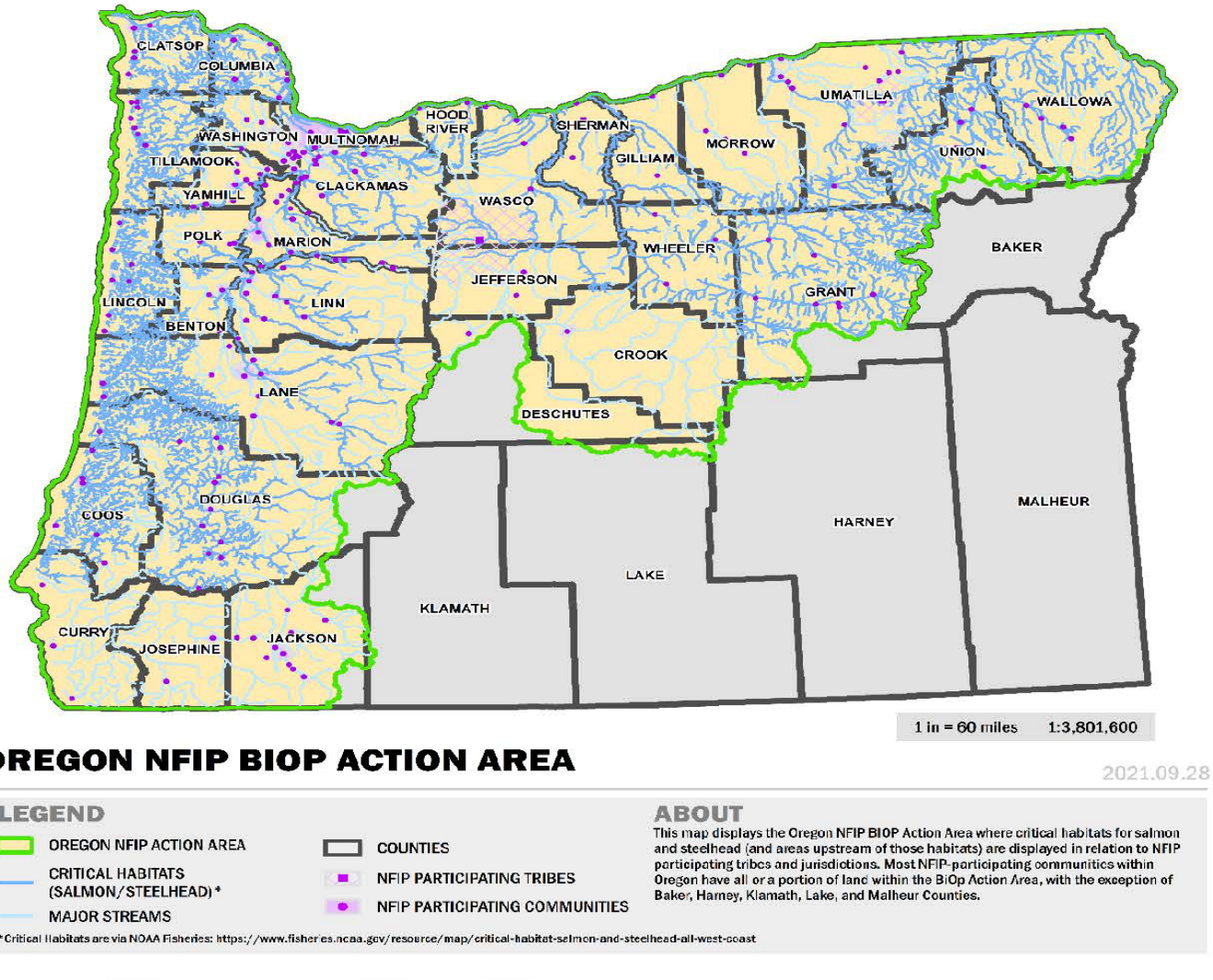
- 2019-2021, FEMA—with DLCD and other stakeholders—developed the **2021 Oregon Implementation Plan for NFIP-ESA Integration**

FEMA

NATIONAL FLOOD INSURANCE PROGRAM

Implementation (Action) area

- Overlap: Six Salmon and Steelhead Recovery Domains
- NFIP current or future participating communities
- Mapped or future mapped Special Flood Hazard Area



FEMA

NATIONAL FLOOD INSURANCE PROGRAM

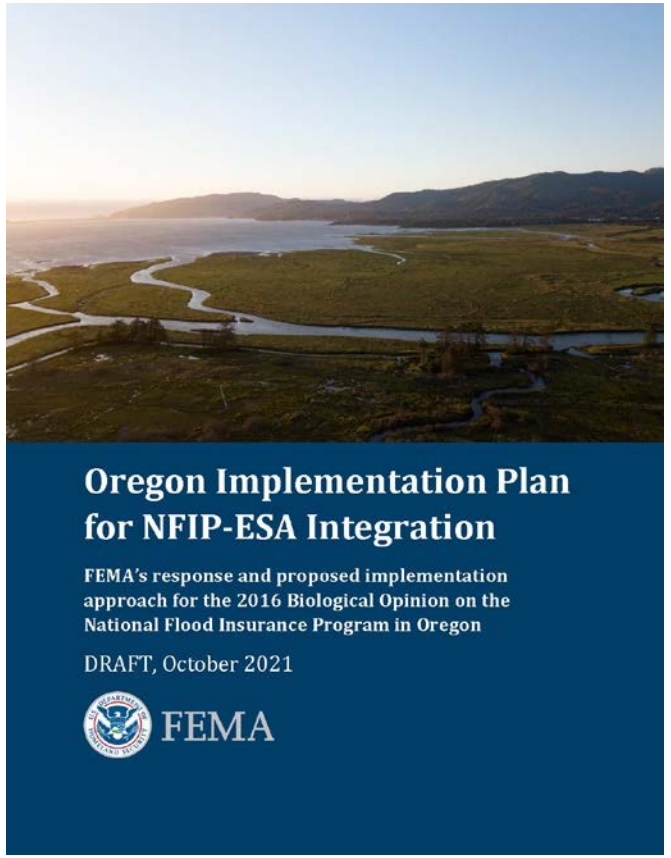
The Plan outlines the actions FEMA plans to take to ensure Oregon NFIP implementation is compliant with the ESA and 2016 BiOp…

FEMA's development of the Oregon Implementation Plan included stakeholder input throughout the process:

- Large stakeholder workshops
- Small discussion groups
- Briefings with state & federal agencies

Actions include changes to:

- Information provided to communities
- Mapping products
- Reporting requirements for participating communities



FEMA plans to analyze the Oregon Implementation Plan under NEPA via an EIS to evaluate its potential impacts

FEMA

NATIONAL FLOOD INSURANCE PROGRAM

...as well as four paths communities can take to meet the "no net loss" standard

A

Adopt a **model ordinance** that contains the required elements

B

Complete and submit to FEMA **an ordinance checklist** to demonstrate that new and/or existing local policies address the required elements

C

Complete and implement an **approved community compliance plan**, developed by the local community and approved prior to implementation by FEMA (in coordination with NMFS) as meeting the "no net loss" goal at the community level (e.g., ESA 4(d) limit)

D

Complete and implement a **community-level habitat conservation plan**, as outlined in Section 10 of the ESA

Clarifications

- Does not require a floodplain development permit where not previously required.
- Does not apply to agriculture, dairy, silviculture, and other forest practices that do not involve filling, grading, or construction of levees or structures.
- Does not prohibit development in the SFHA.
- No restriction or mitigation for maintenance, repair, or remodel of existing buildings, facilities, and utilities *within their existing footprints*.
- Not a one-size fits all solution; each community can select one or more pathways today and can change in the future.
- Pathways B and C allow for a community-specific analysis to account for local floodplain values, different buffer zones, and other unique local conditions .

Oregon Implementation Plan timeline

Litigation to Planning

2009: Audubon Society et al. vs FEMA

2016: Jeopardy opinion, ESA BiOp RPA

2018: DRRA extension (3 yrs)

2019 to 2021:
Implementation Planning

Moving toward Implementation

Spring 2021: Draft approach & stakeholder input

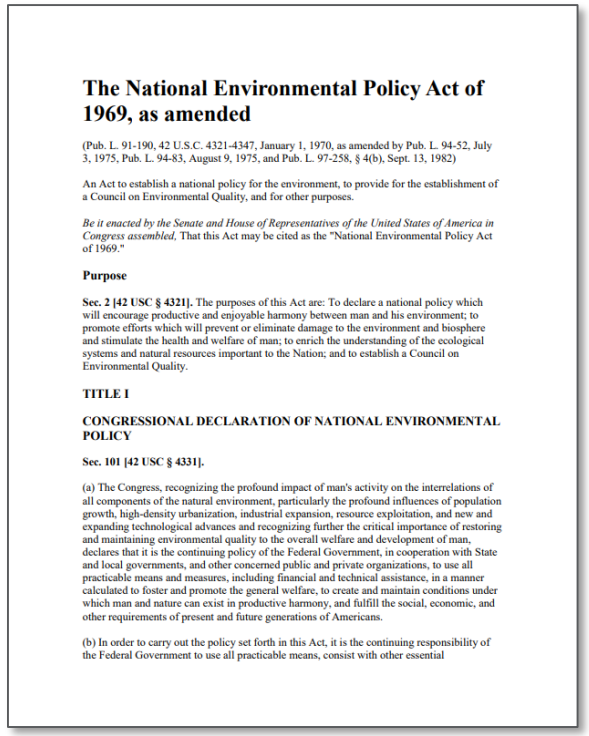
Fall 2021: Final draft Implementation Plan & feedback

2022-2024: NEPA Review Process

Est. 2025+: Community Implementation

Overview of the National Environmental Policy Act (NEPA)

- Requires Federal agencies to evaluate potential environmental impacts as part of their planning and decision-making process
  - Prepare an Environmental Impact Statement (EIS) for actions that have the potential for significant effects on the natural, physical, or human environment
  - Effects include ecological, aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative
- FEMA is preparing an EIS for the Implementation Plan as impacts to communities will likely be significant



The National Environmental Policy Act of 1969, as amended

(Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, § 4(b), Sept. 13, 1982)

An Act to establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Environmental Policy Act of 1969."

Purpose

Sec. 2 [42 USC § 4321]. The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I

CONGRESSIONAL DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

Sec. 101 [42 USC § 4331].

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consist with other essential

Purpose and need

Per the BiOp, FEMA must implement the NFIP within the Action Area so as not to jeopardize listed species and their critical habitats

- To align with the BiOp's intent, FEMA developed an Implementation Plan outlining the actions the agency will take in Oregon to ensure NFIP implementation is consistent with the ESA
- The actions outlined in the Implementation Plan are the "**Proposed Action**" that FEMA plans to analyze under NEPA to determine its impacts
- FEMA will also consider **Alternatives** to the Proposed Action that could meet the Purpose and Need, as well as a **"No Action" alternative** to outline what would occur if no changes were made to the program

Note that the No Action alternative is insufficient to meet the Purpose and Need but must be analyzed per NEPA regulations.

FEMA

NATIONAL FLOOD INSURANCE PROGRAM

Alternatives

- In addition to the Proposed Action and "No Action" alternatives, the EIS will consider a range of reasonable alternatives for NFIP implementation in Oregon
- Each alternative analyzed will contain measures and actions (options) that allow communities to meet the no net loss standard
  - For example, 5 acre minimum for a subdivision

FEMA welcomes comments from the public and stakeholders on potential alternatives or options to consider in this process.

FEMA is seeking input on information, studies, and analyses concerning impacts that may result from the Proposed Action or alternatives

Specifically, FEMA requests comments on:

1. Potential adverse or beneficial effects that the Proposed Action could have on biological resources, including species and their habitats
2. Potential adverse or beneficial effects that the Proposed Action could have on physical resources and floodplain functions
3. Potential adverse or beneficial effects that the Proposed Action could have on socioeconomics
4. Other possible reasonable alternatives to the Proposed Action that FEMA should consider to achieve the no net loss of floodplain function performance standard

Providing comments

All comments must be postmarked by
TBD (anticipated mid-May 2023)

- Provide verbal comments during today's meeting, or future scoping meeting
- Submit comments at regulations.gov following the instructions in the NOI
- Send written comments via email to: **FEMA-R10-ESAcomments@fema.dhs.gov**
- Submit written comments by mail to:

  Ms. Science Kilner, Regional Environmental Officer
  FEMA Region 10
  130 228th Street SW
  Bothell, WA 98021

- We will compile all comments received to analyze and scope the EIS analyses; a summary of the scoping comments will be included in the Draft EIS
- Visit https://www.fema.gov/about/organization/region-10/oregon/nfip-esa-integration

FEMA

NATIONAL FLOOD INSURANCE PROGRAM

Next steps

FEMA

NATIONAL FLOOD INSURANCE PROGRAM

Achieving no net loss requires mitigation for development

Under the draft Implementation Plan, any development actions that result in a “loss” to one or more of the BiOp’s key floodplain functions must either be mitigated for or avoided:

Floodplain Function	*Examples of Potentially Harmful Development Activities*
Flood Storage	*Placement of fill*
Water Quality	*Addition of impervious surface*
Riparian Vegetation	*Removal of existing vegetation*

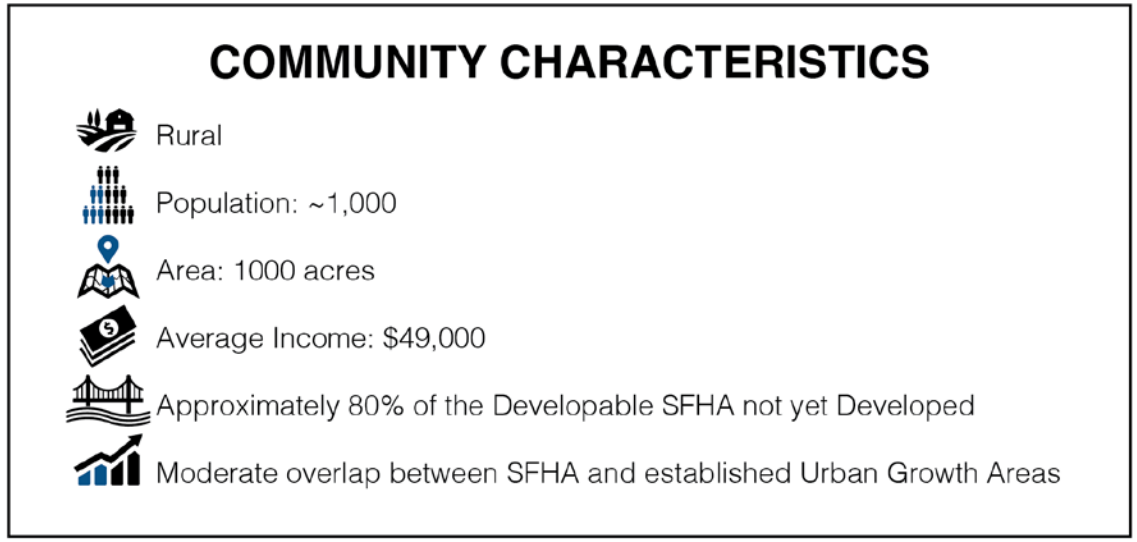
FEMA conducted preliminary analyses of the potential impacts of additional mitigation or avoidance to three ‘model’ Oregon Communities:

- Urban
- Suburban
- Rural

FEMA

NATIONAL FLOOD INSURANCE PROGRAM

Sample model community analysis – rural community



…consider development activities for:*

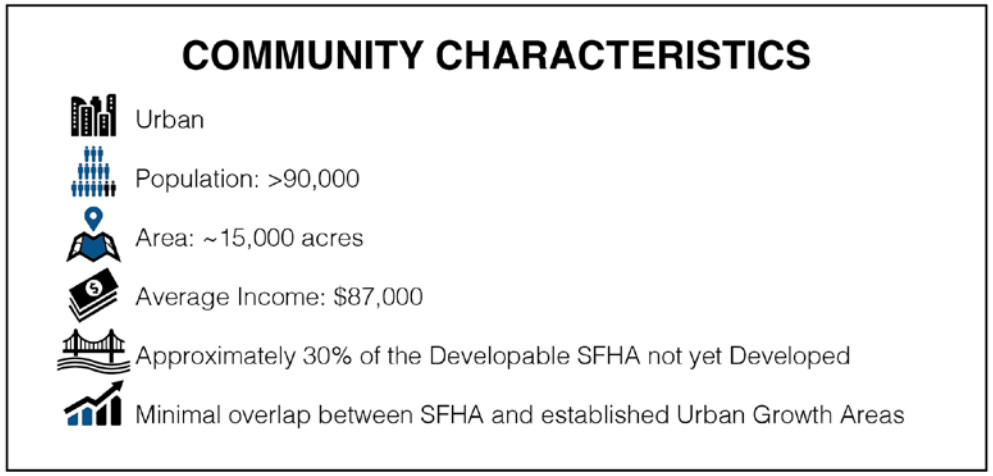
- Dairy farm cowshed expansion
- Single family home expansion
- High school wing expansion
- *Pave gravel trail*
- *Expand school parking lot*

FEMA

** Not Included: Normal ag & forestry practices; maintenance, repair, road resurfacing; lawn care, gardening, removal of hazard trees & noxious weeds*

NATIONAL FL INSURANCE PRO

Sample model community analysis – urban community



...consider development activities for:*

- Dairy farm cowshed expansion
- Multi-family building expansion
- Elementary school wing expansion
- Single family home expansion
- Airport cargo shed construction

FEMA

** Not Included: Normal ag & forestry practices; maintenance, repair, road resurfacing; lawn care, gardening, removal of hazard trees & noxious weeds*

NATIONAL FL INSURANCE PRO

Food for thought when considering what input to provide:

- How would the need to ensure no net loss of the 3 floodplain functions affect program administration?
- How might the Plan affect your community?
- Would some demographic groups be impacted more than others?
- Considering impacts on different stakeholders, what other impacts does FEMA need to consider?

Floodplain Function	*Examples of Potentially Harmful Development Activities*
Flood Storage	*Placement of fill*
Water Quality	*Addition of impervious surface*
Riparian Vegetation	*Removal of existing vegetation*

FEMA

NATIONAL FLOOD INSURANCE PROGRAM

Significant Impacts (From the published Notice of Intent)

Based on the Oregon NFIP BiOp, the DLCD stakeholder work groups, and the Oregon NIFIP Implementation Planning Group process, FEMA initially expects the proposed action to benefit natural floodplain functions, threatened and endangered species habitat, and essential fish habitat.

FEMA also **initially expects** the proposed action to **potentially significantly impact communities, individuals, and businesses** that intend on developing in the floodplain.

FEMA anticipates that there **may be adverse indirect impacts** to community land use planning, economics, social structures, development plans, minority, low-income populations, Tribes, infrastructure, agriculture, aquaculture, energy production and transmission, and transportation.

FEMA

Tentative Planning Commission Work Program

(Scheduling and timing of agenda items is subject to change)

July 8, 2024 — Work Session

- Water System Master Plan Update (*Carryover from June 24, 2024 work session*)
- Public Outreach Plan and Web Updates for City Center Revitalization Plan

July 22, 2024 — Work Session

- Work Session on File# 1-CP-24/1-Z-24, Implementing the Yaquina Bay Estuary Management Plan
- Updated Schedule for South Beach Island Annexation Project

August 12, 2024 — CANCELLED

August 26, 2024 — Work Session

- Comprehensive Plan Streamlining Project Sample Chapter (Beth Young)
- Review Federal Emergency Management Agency (FEMA) National Flood Insurance Program (NFIP) Endangered Species Act Pre-Implementation Requirements

August 26, 2024 — Regular Session

- File #3-Z-23, Hearing on Amendments to Ord #2222 to Implement Adjustment Provisions of Governor's Housing Bill (SB 1537)
- File #1 CP-24/1-Z-24, Hearing on Comp Plan/Zoning Amendments Implement the Updated Estuary Management Plan

September 9, 2024 — Work Session

- Update on State of Oregon Housing Needs Analysis Rulemaking
- Scope of Work for Updating Newport's System Development Charge Methodology

September 9, 2024 — Regular Session

- Placeholder for File 1-UGB-24, Public Hearing on Warren UGB Minor Amendment Request
- Placeholder for Appeal of 1-MRP-24, Reconfiguration of 5th Street Lots

September 23, 2024 — Joint Commission / Council Work Session

- City Center Revitalization Plan Market Analysis and Planning for Public Event No. 1

September 23, 2024 — Regular Session

- Placeholder for Public Hearing on Appeal of

October 14, 2024 — Work Session

- Comprehensive Plan Streamlining Project Full Document (Beth Young)
- Placeholder for Discussion on Nye Beach Parking / ePermitting Outreach
- Web Map Updates with New Aerial Imagery and Lidar Information

October 14, 2024 — Regular Session

- Public Hearing File #1 & 2-PD-24, Wilder Remainder Phase (Planned Development, Final Development, Preliminary Subdivision Plat)