



Board of Commissioners

Office: (541) 766-6800

Fax: (541) 766-6893

4500 SW Research Way
Corvallis, Oregon 97333

bentoncountyor.gov

ADDENDUM 1 TO THE AGENDA

BOARD OF COMMISSIONERS MEETING

Tuesday, August 20, 2024, 9 AM

5. Work Session

- 5.3 30 minutes – Update on the National Flood Insurance Program and Endangered Species Act Compliance – Toby Lewis, Community Development

Additional informational.



MEMORANDUM

DATE: August 16, 2024

TO: Benton County Board of Commissioners

FROM: Toby Lewis, Floodplain Administrator – Benton County Community Development

SUBJECT: Update regarding review of draft documents provided by the Federal Emergency Management Agency (FEMA) consistent with a court mandated Biological Opinion for integrating the National Flood Insurance Program (NFIP) and the federal Endangered Species Act (ESA)

Background¹

As approved by the Board in July 2023, Benton County entered into an agreement to cooperate with the US Department of Homeland Security Federal Emergency Management Agency (FEMA) as a Cooperating Agency for the preparation of an Environmental Impact Statement (EIS) and associated technical guidance for the National Flood Insurance Program (NFIP) – Endangered Species Act (ESA) Integration in Oregon.

- Benton County reviewed and commented on two draft documents released by FEMA to Cooperating Agencies (CA).
 - June 11, 2024: Staff discussed the documents and proposed comments with the Board.
 - June 12, 2024: Benton County comments submitted to FEMA regarding the Draft Model Ordinance.
 - June 17, 2024: Benton County comments submitted to FEMA regarding the Draft Environmental Impact Statement.
- **FEMA recently released:**
 - **Two additional draft documents for Cooperating Agency (CA) review and comment** with a request for feedback on clarity of information and opportunities for improvement. *(See memo sections titled “Path C Guidance Document” and “Table 1 – No Net Loss Standards”.)*
 - A Pre-Implementation Compliance Mitigation (PICM) letter to all Oregon Communities. An accompanying interim model ordinance, as well as a habitat assessment guidance document, were also release recently. *(These documents are not draft and are not within the review and comment scope of the CA agreement with FEMA.)*
- FEMA expects to release additional draft documents for CA review and comment throughout the coming months.
- FEMA will finalize all draft documents and then distribute them for public review and comment.

¹ The Reference Information section at the end of this memo identifies (1) key floodplain and habitat functions communities will be required to protect, (2) options available per the interim Pre-Implementation Compliance Mitigation requirements, (3) paths available per the draft final implementation requirements.

Current Timeline

- **August 30, 2024** – Benton County comments due for the *Draft Path C Guidance document* and the *Draft Table 1 – No Net Loss Standards*
- **Late 2024 to early 2025** – Estimated publication of *Draft Environmental Impact Statement*. This will be followed by a public comment period, publication of the final document, and local government implementation of final regulations.
- **December 1, 2024** – Communities notify FEMA of chosen path for Pre-Implementation Compliance Measures (PICM)
- **January 31, 2025** – Communities begin reporting to FEMA on compliance with no net loss of protected habitat standards (based on chosen PICM pathway) for all floodplain development.
- **July 31, 2025** – Deadline for adoption and implementation of interim model ordinance for communities that choose to adopt PICM model ordinance prior to adopting final model ordinance or implementing final compliance pathway.
- **2026 to 2027** – Estimated FEMA timeframe for community implementation of final compliance pathway.

Draft Path C Guidance Document

- **Content**
 - The guidance document is intended to be used by communities electing Path C (Customized Community Plan) for all or part of the jurisdiction.
 - Path C is one of four options for community compliance with the final standards for no net loss of protected habitat in mapped special flood hazard areas.
 - The document includes guidance for development a customized community plan (including existing conditions analysis, proposed community approach, and strategies for implementation) and additional information regarding considerations, riparian buffer zone analysis, habitat conditions assessment, and possible grant and assistance opportunities.
- **Comments**
 - The document is written in a way that is easy to understand and provides guidance on specific examples of possible options for tailoring the model no net loss standards based on three main topics:
 - Community programs that offset floodplain development impacts,
 - Modification of required mitigation ratios or floodplain function protection based on community-specific conditions, and
 - Modification of standard 170-foot riparian zone buffer based on community-specific conditions.
 - Staff recommends FEMA consider rephrasing some wording to clarify that, although some counties or regional agencies may have capacity to assist smaller jurisdictions, this is not a guarantee.
 - Access to funding and capacity to analyze and prepare a Customized Community Plan may still be an issue for city and county jurisdictions.
 - Staff encourages FEMA to continue identifying ways to provide monetary and technical assistance to communities as they evaluate how to implement the no net loss standards.

Draft Table 1 – No Net Loss Standards

• **Content**

- The table is a matrix of mitigation ratios to be used with Oregon model ordinance language.
- The matrix identifies required minimum mitigation ratios for development in mapped special flood hazard areas based on proximity to a waterway, type of proposed development, and type of habitat standard affected.

• **Remaining concerns and requests for clarification:**

- Some of the mitigation ratio table remains unclear.
 - o Do the tree replacement mitigation ratios account for natural mortality of plantings?
 - o What is the assumption for survival rate of tree plantings?
 - o Are replacement trees required to be of equal diameter to removed trees?
 - o Removal of trees for fire hazard prevention remains unaddressed.
- The mitigation ratios, especially regarding tree replacement, continue to appear high.
- Jurisdictions with limited resources may have difficulty implementing the monitoring and enforcement of mitigation requirements.
- Identification of viable on-site and/or off-site mitigation options may be problematic.

Reference Information

• **Key floodplain and habitat functions to protect:**

<i>Maintain</i>	<i>Measurable Metric</i>
Unoccupied space	Volume of space available to store flood water
Water quality	Amount of impervious surface
Riparian vegetation	Trees at least 6 inches in diameter breast height (dbh)

• **Pre-Implementation Compliance Measures options** for implementation of interim compliance requirements:

<i>Option</i>	<i>Description</i>
1	Adopt and implement <i>interim</i> Oregon model ordinance requiring mitigation of development to a no net loss standard
2	Require a habitat assessment and mitigation plan for every development project in the mapped special flood hazard area
3	Prohibit all development in mapped special flood hazard areas

• **Final Oregon National Flood Insurance Program paths** for implementation of final compliance requirements:

<i>Path</i>	<i>Description</i>
A	Adopt <i>final</i> Oregon model ordinance language
B	Document that existing local jurisdiction ordinances achieve no net loss metrics equal to or exceeding the final Oregon model ordinance
C	Community Compliance Plan: Develop a tailored method of no net loss implementation for all or part of local jurisdiction
D	Habitat Conservation Plan