



**DAN JOHNSON**  
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

## MEMORANDUM

TO: Clackamas County Board of County Commissioners (BCC)  
FROM: Dan Johnson, Director, Department of Transportation and Development  
RE: National Flood Insurance Program PICM Response Letter  
DATE: November 26, 2024

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**REQUEST:** Authorize staff to sign and submit the attached draft response letter (Attachment 1) notifying the Federal Emergency Management Agency (FEMA) that the County will be delayed in its compliance with the requirement to implement “Pre-Implementation Compliance Measures (PICM)” as part of the National Flood Insurance Program (NFIP).

**BACKGROUND:** At a Board policy session on November 7, 2024, staff provided detailed information regarding changes to FEMA’s implementation of the NFIP. The changes are intended to protect certain fish and marine species listed under the Endangered Species Act (ESA).

Most Oregon municipalities, including the County, have been directed to select and implement a PICM in their floodplain development permit process by December 1, 2024. Staff explained the risk of non-compliance, including potential FEMA enforcement action that could put at risk the County’s NFIP certification.

At the policy session, the Board directed staff to:

- Conduct detailed technical and legal analysis of two of the three PICM options: the model code and the site-by-site habitat assessment
- Submit a draft PICM implementation schedule to FEMA
- Return to the Board for a policy session as close to the Federal Emergency Management Agency’s December 1 deadline as feasible to share the findings and consider selection of a pre-implementation compliance measure. (This session is now scheduled for December 18.)

FEMA has directed affected local jurisdictions to submit a response to FEMA by December 1, 2024, that identifies the selected PICM. The attached draft response letter informs FEMA that the County will not be able to select and implement a PICM by the December 1 deadline. This draft response raises a noncompliance risk to the County’s NFIP certification. To mitigate the risk of FEMA enforcement, the draft letter details actions County staff has taken to date to explore compliance options. This draft letter is modeled after a response letter that the Washington County Board Chair sent to FEMA on November 5, 2024. In addition, the draft letter identifies an interim approach to maintaining ESA compliance when authorizing development in the floodplain.

**RECOMMENDATION:** Staff respectfully recommends the Board authorize staff to sign and submit the attached letter to FEMA.

Attachment 1: Draft Letter to FEMA

Attachment 2: Draft FEMA PICM Implementation Schedule

November 29, 2024

John Graves, CFM  
Floodplain Management and Insurance Branch Chief  
FEMA Region X  
130 228th St. SW  
Bothell, WA 98021

Sent only via email to: [FEMA-R10-MIT-PICM@fema.dhs.gov](mailto:FEMA-R10-MIT-PICM@fema.dhs.gov)

**RE: Clackamas County NFIP PICM Selection**

Dear Mr. Graves:

Under the direction of the Board of Clackamas County Commissioners, I write to you regarding FEMA's mandate to adopt and implement a Pre-Implementation Compliance Measure (PICM) approach by December 1, 2024. This letter is notification that Clackamas County intends to pursue either PICM Pathway 1 – adoption of FEMA model floodplain ordinance language into our development code or PICM Pathway 2 – require a habitat assessment and mitigation plan for development on a permit-by-permit basis. However, we will not be able to meet the December 1 deadline for the following reasons:

- Implementing any of the PICM pathways will require substantive changes to our floodplain-related land use regulations.
- Neither FEMA's model ordinance nor its habitat assessment guidance appears to meet Oregon's land use planning requirements for 'clear and objective standards' for residential development. Resolving this conflict will take additional time.
- Clackamas County's land use ordinance process takes a minimum of three months *after* the proposed regulations have been drafted, due to a combination of state-mandated public and agency notifications and public hearing requirements adopted into our zoning code.

We are hopeful that the Oregon Department of Land Conservation and Development (DLCD) will work with FEMA to assess the model ordinance and the habitat assessment guidance to determine how the provisions can be modified to work within the legal framework of Oregon land use laws. Given the number of jurisdictions subject to the new FEMA requirements, this approach is the most efficient method of implementing the new requirements in a manner that can withstand challenge under Oregon law. In the alternative, however, our staff will

evaluate the feasibility of amending the model code text to be clear and objective while achieving the 'no net loss' standard required by FEMA. We need FEMA's support in this effort.

Clackamas County seeks to be a collaborative partner with FEMA and will comply with the PICM requirement as soon as practicable. To that end, several of our staff have attended the technical sessions offered by FEMA on the model code and permit-by-permit pathways. In addition, the Board held a policy session on the PICM pathways on November 7, 2024, and directed staff to:

- Conduct detailed technical and legal analysis of the model code and site-by-site habitat assessment PICM pathways
- Submit a draft PICM implementation schedule to FEMA (see attached)
- Return to the Board for a policy session as close to FEMA's December 1 deadline as feasible to share the findings and consider selection of a PICM. Selection of a PICM would begin the public process for amendment of the county's Special Flood Hazard Area development regulations. (This policy session is now scheduled for December 18, 2024.)

FEMA has directed that participating communities must default to the permit-by-permit approach on December 1, 2024; however, Clackamas County has determined that code amendments are required to implement that option. To ensure that our community remains in compliance with the National Flood Insurance Program until our code is amended, Clackamas County intends to condition floodplain development permits on the applicant obtaining a determination directly from National Marine Fisheries Service (NMFS) for compliance with the Endangered Species Act, including Section 10 of the Act, as appropriate.

Sincerely,

Dan Johnson  
Director

Attachment: Draft FEMA PICM Implementation Schedule

Clackamas County  
Draft FEMA PICM Implementation Schedule

Task	Outcome	Date
Board of County Commissioners Policy Session	Select a PICM pathway	12/18/2024
Identify needed edits to make the chosen PICM clear and objective	Proposed edits for FEMA staff review	12/19/2024 - 1/3/2024
Planning Commission Study Session	Provide background on Biological Opinion and PICMs	1/13/2025
Prepare draft code amendments	Public-notice-ready draft code amendments to implement chosen PICM	1/21/2025 - 2/7/2025
Provide notice	Notify affected property owners, community planning organizations, DLCD and other interested parties of public hearing dates. Provide access to draft code amendments. Receive public testimony on proposed code amendments and provide a recommendation to the Board of County Commissioners	2/13/2025
Planning Commission Public Hearing	Receive public testimony and make an oral decision on proposed code amendments	3/24/2025
Board of County Commissioners Public Hearing	Amends development code and initiates 21-day appeal period to Oregon Land Use Board of Appeals	4/23/2025
Board of County Commissioners Adoption of Written Order		5/8/2025