

# CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

## Policy Session Worksheet

**Presentation Date:** 12/18/24

**Approx. Start Time:** 10:00 am

**Approx. Length:** 30 minutes

**Presentation Title:** National Flood Insurance Potential Compliance Measures

**Department:** Transportation and Development

**Presenters:** Dan Johnson, DTD Director, and Jennifer Hughes, Planning Director

### WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

Staff is requesting direction on whether to proceed with implementation of new requirements associated with continued National Flood Insurance Program (NFIP) participation and if so, which option to select.

### EXECUTIVE SUMMARY:

At a Board policy session on November 7, 2024, staff provided detailed information regarding changes to the Federal Emergency Management Agency's (FEMA) implementation of the NFIP. New regulations on development in the Special Flood Hazard Area (SFHA) are intended to protect certain fish and marine species listed under the Endangered Species Act (ESA). Final implementation of the changes is anticipated in 2027. However, earlier this year FEMA directed most Oregon municipalities, including the County, to select and implement a pre-implementation compliance measure (PICM) in their SFHA development permit process by December 1, 2024. Non-compliance could put at risk the County's NFIP certification, which carries significant consequences.

At the November 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 FEMA's December 1 deadline as feasible to share the findings and consider selection of a pre-implementation compliance measure.

During a November 26, 2024, issues session, the Board approved a letter to FEMA that explained the "next steps" listed above, established a draft schedule that would result in implementation of a PICM in May 2025, and identified an interim approach (i.e., from FEMA's December 1 deadline until implementation of a PICM) to maintaining ESA compliance when authorizing development in the SFHA.

Based on staff review of FEMA's model code and the site-by-site habitat assessment guidance and attendance at multiple technical webinars hosted by FEMA, staff now recommends that the County **proceed with a modified version of the model code**. This option is not without concern but represents the best of the several problematic options provided by FEMA.

During the webinars, FEMA staff noted that under the model code or the site-by-site habitat assessment option, the result for development is intended to be the same. Based on this guidance, staff is focused on relative ease of implementation and compatibility with Oregon land use law.

Both PICM options present administrative challenges; however:

- Adoption of specific code provisions will provide a clearer road map for staff and applicants.
- Applicants likely will need to retain consultant services for both options, but the site-by-site habitat assessment approach likely would require these to a greater degree.
- Under the site-by-site habitat assessment approach, it would be advisable for the County to retain a third-party reviewer with the necessary professional expertise to review the habitat assessments submitted by applicants. There are additional administrative costs associated with executing and managing this type of contract.

Oregon land use law requires that the county adopt and apply only “clear and objective” standards to the review of housing development in urban areas. This requirement will be extended to many rural areas on July 1, 2025. As drafted, neither the model code nor the site-by-site habitat assessment process is clear and objective. However, FEMA staff has signaled a willingness to accept local modifications to the model code to make it clear and objective, provided that the required “no net loss” standard for three identified floodplain functions is maintained. Staff anticipates that it will be challenging to achieve this balance; however, the challenge would be greater with the site-by-site habitat assessment approach.

**FINANCIAL IMPLICATIONS (current year and ongoing):**

Is this item in your current budget?  YES                       NO

What is the cost? To be determined but includes existing staff time and public notice cost.

What is the funding source? Existing program funding

\*This project will require assigning staff time to this project in lieu of other work.

**STRATEGIC PLAN ALIGNMENT:**

- How does this item align with your Department’s Strategic Business Plan goals?

The project aligns with the Long-Range Planning program’s purpose of providing land use and transportation plan development, analysis, coordination, and public engagement services to residents; businesses; local, regional, and state partners; and County decision-makers so they can plan and invest based on a coordinated set of goals and policies that guide future development.

- How does this item align with the County’s Performance Clackamas goals?
- It aligns with the Performance Clackamas goal to **Honor, utilize, promote and invest in our natural resources.**

**LEGAL/POLICY REQUIREMENTS:**

FEMA has advised that the County must select and implement one of the PICMs to remain compliant with the requirements for continued participation in the NFIP. In addition, the Biological Opinion leading to the new requirements determined that the NFIP in its current form is inconsistent with the ESA. Regardless of NFIP participation, the County may be subject to the ESA as it relates to development in the SFHA. Finally, there are concerns that aspects of PICM implementation are inconsistent with provisions in Oregon land use law.

The net result is that the county is placed in a difficult position. The staff recommendation is intended to minimize this difficulty to the extent feasible. Additional legal analysis by the Office of County Counsel and coordination with FEMA and state agencies may provide clearer guidance as this project progresses.

**PUBLIC/GOVERNMENTAL PARTICIPATION:**

Public notice will be provided as required by law for proposed amendments to the Comprehensive Plan and the ZDO that come before the Planning Commission or Board for consideration at public hearings. The public will have the opportunity to comment on proposed amendments at public hearings before the Planning Commission and the Board.

**OPTIONS:**


1. Initiate amendments to the Clackamas County Comprehensive Plan and Zoning and Development Ordinance to implement FEMA’s model code for achieving “no net loss” of three floodplain functions for development in the Special Flood Hazard Area, including modifications necessary to ensure that the code as applied to housing is clear and objective
2. Initiate amendments to the Clackamas County Comprehensive Plan and Zoning and Development Ordinance to implement the site-by-site habitat assessment PICM option
3. Direct staff to do no further work at this time

**RECOMMENDATION:**

Staff recommends Option 1:

Initiate amendments to the Clackamas County Comprehensive Plan and Zoning and Development Ordinance to implement FEMA’s model code for achieving “no net loss” of three floodplain functions for development in the Special Flood Hazard Area, including modifications necessary to ensure that the code as applied to housing is clear and objective

**SUBMITTED BY:**

Division Director/Head Approval   
Department Director/Head Approval \_\_\_\_\_  
County Administrator Approval \_\_\_\_\_

For information on this issue or copies of attachments, please contact Jennifer Hughes @ 503-742-4518.