



NOTICE OF PUBLIC MEETING
CITY OF ALBANY
CITY COUNCIL and PLANNING COMMISSION
JOINT WORK SESSION
Council Chambers
333 Broadalbin Street SW
Monday, July 25, 2016
5:15 p.m.

OUR MISSION IS

*"Providing quality public services
for a better Albany community."*

OUR VISION IS

*"A vital and diversified community
that promotes a high quality of life,
great neighborhoods, balanced
economic growth, and quality public
services."*

AGENDA

Rules of Conduct for Public Meetings

1. No person shall be disorderly, abusive, or disruptive of the orderly conduct of the meeting.
2. Persons shall not testify without first receiving recognition from the presiding officer and stating their full name and residence address.
3. No person shall present irrelevant, immaterial, or repetitious testimony or evidence.
4. There shall be no audience demonstrations such as applause, cheering, display of signs, or other conduct disruptive of the meeting.

- 5:15 p.m. CALL TO ORDER
- 5:15 p.m. ROLL CALL
- 5:20 p.m. BUSINESS FROM THE PUBLIC
- 5:25 p.m. POTENTIAL DEVELOPMENT CODE AMENDMENTS – Jeff Blaine and Bob Richardson. [Verbal]
Action Requested: Information, discussion, and direction.
- 6:25 p.m. FLOODPLAIN DEVELOPMENT/FEMA REQUIREMENTS – Melissa Anderson. [Pages 2-8]
Action Requested: Information, discussion, and direction.
- 7:15 p.m. BUSINESS FROM THE COUNCIL AND COMMISSION
- 7:25 p.m. CITY MANAGER REPORT
- 7:30 p.m. ADJOURNMENT

City of Albany Web site: www.cityofalbany.net



TO: Albany City Council
Albany Planning Commission

VIA: Wes Hare, City Manager
Jeff Blaine, P.E., Public Works Engineering and Community Development Director **JB**

FROM: Bob Richardson, Planning Manager **RAR**
Melissa Anderson, Project II

DATE: July 20, 2016 for the July 25, 2016, Joint Council/Planning Commission Meeting

SUBJECT: Update on the National Flood Insurance Program and the Endangered Species Act

RELATES TO STRATEGIC PLAN THEME: • A Safe City
• An Effective Government

Action Requested:

No action is requested at this time. This memorandum is for information only.

Discussion:

The purpose of this memorandum is to provide the City Council and Planning Commission information regarding recent activities between National Oceanic and Atmospheric Administration – Fisheries Service (NOAA Fisheries) and the Federal Emergency Management Agency (FEMA) that will result in changes to the National Flood Insurance Program (NFIP), and ultimately Albany's floodplain development criteria. These changes are designed to protect endangered species during the implementation of local floodplain regulations and maintain our community's eligibility in the federally backed FEMA flood insurance program. The changes will flow from the federal agencies to the State of Oregon and ultimately to our community for adoption in local codes. The changes will be implemented over approximately five years in coordination with the Department of Land Conservation and Development (DLCDC).

What Is The ESA/NFIP Issue and Who Does It Involve?

For several years, the National Marine Fisheries Service (NMFS) / National Oceanic and Atmospheric Administration Fisheries Service (NOAA-Fisheries) and the Federal Emergency Management Agency (FEMA) have been working together to identify measures that will reduce negative impacts from the National Flood Insurance Program (NFIP) on salmon, steelhead, and other species listed as threatened under the Endangered Species Act (ESA). For marine and anadromous species, the ESA is administered by NMFS/NOAA-Fisheries. The ESA provides for the conservation of threatened and endangered plants and animals and the habitats in which they are found, and requires federal agencies to ensure that actions they authorize, fund, or carry out do not jeopardize the continued existence of any ESA listed species.

The NFIP provides flood insurance for homeowners and property owners. In Oregon, 260 cities and counties and three Indian tribes participate in the NFIP. The City of Albany is a participating community. The NFIP is administered by FEMA. The DLCDC is designated as Oregon's NFIP coordinating agency. FEMA sets standards for local governments participating in the NFIP, including requirements for local floodplain development ordinances. DLCDC assists local governments with implementation of those standards.

In July 2010, the FEMA entered into a settlement agreement with Audubon Society of Portland, North West Environmental Defense Center, the National Wildlife Federation, and Association of Northwest Steelheaders. FEMA accepted the concerns raised by the environmental groups and agreed to initiate consultation with the NMFS. The interagency consultation process between

NMFS and FEMA that followed is required by section 7 of the ESA and is intended to ensure that federal actions do not contribute to habitat loss or increase the risk of species extinction. A biological opinion (or BiOp) is the document produced as a result of the process.

BiOp Results

On April 14, 2016, the NMFS delivered to the FEMA a jeopardy biological opinion (BiOp) on implementation of the NFIP in Oregon. The BiOp includes a set of recommendations for reducing the impact of NFIP related development on salmon.

A BiOp is a scientific judgment about the potential effects of a federal action on an ESA listed species. Although the document is called an "opinion," it has the force of a decision document. FEMA must respond to the findings in the BiOp. This BiOp is a "jeopardy opinion" to which NMFS has attached a set of recommendations, or "Reasonable and Prudent Alternatives" (RPAs) for reducing the impacts of the NFIP on salmon. Essentially, *NMFS has concluded that development in floodplains impacts important habitat, which salmon utilize during flood events, and contributes to in-stream water quality and hydrologic conditions that are unfavorable for fish.*

What's Next?

On May 11, 2016, FEMA and DLCD staff presented a webinar to cities explaining their next steps. DLCD and FEMA are scheduling meetings around the state through the month of July to explain the upcoming processes and how they will impact cities. At these meetings, FEMA will discuss the recommendations they received in the RPAs section of the biological opinion, and the development of an implementation plan with NFIP communities. The focus of the meetings is the interim measures recommended in Element 2 of the RPAs.

FEMA will begin to implement measures within their own programs described in the various elements of the RPA immediately. In some cases, FEMA may choose to substitute strategies that are equally effective at avoiding jeopardy. Some RPA elements concern measures that FEMA can implement directly, such as new floodplain mapping schedules. Other RPA elements anticipate local actions by NFIP communities.

The RPA describes an interim phase that calls for FEMA to direct NFIP-participating communities to implement new floodplain development permitting standards. The second phase calls for FEMA to revise its floodplain management regulations and/or associated guidance and technical documents as needed to implement the RPA's mapping, development, mitigation, and reporting standards. The RPA schedule requires FEMA and the State of Oregon to begin the process immediately and calls for a fully implemented program in five years.

Development Code Impacts and Implementation Timing

Ultimately, NFIP communities in the 31 counties with ESA-listed salmonids, including Albany, will need to increase habitat protections. Development that degrades floodplain functions will face additional regulation. Those activities include clearing of native riparian vegetation; increases in impervious surface; displacement or reduction of flood storage via fill or structures; interruption of habitat forming process; increases of pollutant loading in receiving water bodies; and increases in stormwater. The new expectations will be described by FEMA guidance, which will be drafted over the next several months.

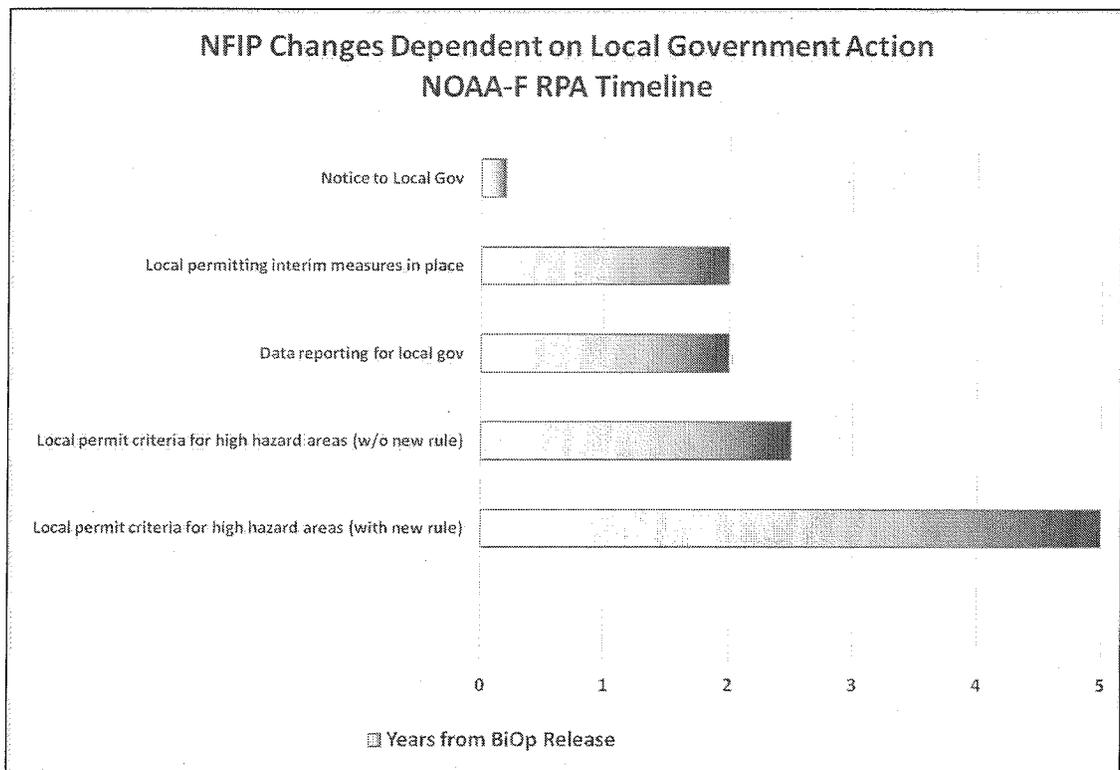
FEMA expects communities and local governments to respond to the findings that floodplain development can harm salmon by applying habitat review criteria to floodplain development applications. The DLCD will actively work with local governments and FEMA as FEMA implements NFIP revisions in Oregon.

This assistance may include:

- Workshops and presentations
- Guidance
- Model codes
- Grants & Technical assistance

It will take some time for DLCD to fully review the BiOp and RPA documents and provide a synopsis of possible changes to FEMA's floodplain mapping protocol and NFIP floodplain permitting standards. As new NFIP standards or guidance come on line, compliance on the part of NFIP communities will be evaluated during periodic Community Assistance Visits (aka "audits").

The State of Oregon has provided the following graphic depicting the tentative schedule for changes to local regulations resulting from the process:



Conclusion:

City staff will continue to monitor the process and participate with DLCD in the development of statewide interim measures and techniques for the annual reporting of flood plain development. More information for the Council, Planning Commission, and the public will be disseminated as it becomes available.

Budget Impact:

None

MA:rk

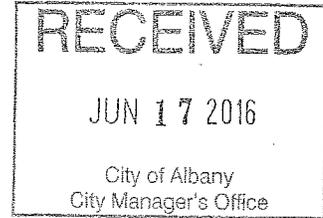
Attachments (1)



FEMA

June 13, 2016

Honorable Mayor Sharon Konopa
PO Box 490
Albany, OR 97321



Dear Honorable Mayor Konopa,

In 2009, the U.S. Department of Homeland Security's Federal Emergency Management Agency (FEMA) was sued by the Audubon Society of Portland, the National Wildlife Federation, the Northwest Environmental Defense Center, and the Association of Northwest Steelheaders for failure to consult under Section 7 of the Endangered Species Act (ESA) with respect to the effects of the implementation of the National Flood Insurance Program (NFIP) on certain ESA-listed species in the state of Oregon. On July 12, 2010, the United States District Court, District of Oregon at Salem, required FEMA to consult with the National Marine Fisheries Service (NMFS) on impacts the NFIP was having on ESA listed species. FEMA complied by submitting a Biological Assessment in July of 2011 to NMFS, which concluded the NFIP may affect, but does not adversely affect, the ESA-listed species considered in the assessment.

On April 14, 2016, NMFS provided a Biological Opinion in which they concluded that the implementation of the NFIP in Oregon jeopardizes the continued existence of 18 ESA listed species and adversely modifies their critical habitat. Federal agencies are prohibited by the ESA from causing jeopardy to ESA-listed species or adversely modifying the designated critical habitat of such species. Although the NMFS Biological Opinion's determination is written for FEMA, the Endangered Species Act (ESA) applies to everyone, whether a federal agency, state agency, local jurisdiction, or individual. We all have a legal responsibility to ensure our actions do not cause a take (harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct) to threatened or endangered species. Under Section 9 of the ESA, actions or decisions enacted by you and your officials are subject to this take prohibition regardless of federal involvement. Additionally, any person can be subject to criminal or civil penalties for causing a take of threatened or endangered species. NMFS considers the issuance of floodplain development permits that do not avoid or compensate for detrimental impacts on ESA-listed species or their critical habitat as noncompliant with the Endangered Species Act. NMFS identifies certain private floodplain development activities as harmful to listed species, including the addition of fill, structures, levees and dikes, the addition of impervious surfaces, removal of vegetation, and bank armoring. NMFS has determined that these activities impair natural floodplain functions and thereby negatively impact the survival and recovery of ESA-listed species.

With a jeopardy determination, NMFS is obligated to provide a Reasonable and Prudent Alternative (RPA), which are program changes to the NFIP that will allow the program to be implemented in a manner that avoids jeopardy to ESA-listed species and adverse modification

of their critical habitat. For details on these program changes, please see the RPA attached to this letter or the complete NMFS Biological Opinion at <http://www.westcoast.fisheries.noaa.gov/habitat/conservation/index.html>.

As envisioned by NMFS, the RPA is intended to be implemented in stages, with two different sets of program changes that will need to be implemented by FEMA and the NFIP participating communities. The first set of program changes are interim measures found in Element 2 of the RPA, which must be implemented within 2 years of the issuance of the Biological Opinion (April 14, 2018). These measures will remain in place until FEMA and the participating communities implement the second set of program changes (Elements 3-6 of the RPA), which are the permanent program changes to the NFIP required by the RPA. NMFS requires the interim measures in Element 2 to be superseded by the permanent floodplain management criteria in RPA Element 4 that do not require regulatory revisions (such as revising the Code of Federal Regulations) by January 1, 2019. All elements of the RPA that do not necessitate regulatory revisions are to be implemented by September 15, 2019 and complete implementation, including regulatory revisions, is required to occur by January 1, 2021.

The NMFS Biological Opinion authorizes a certain amount of jeopardy or adverse modification to ESA-listed species or their habitat during the time necessary for FEMA and participating NFIP communities to implement the complete RPA. During this interim time and until all permanent RPA elements are in place, your community may either choose to voluntarily impose a temporary moratorium on all floodplain development that adversely impacts ESA listed species or their habitat, or voluntarily implement the interim measures found in RPA Element 2. Oregon DLCDC and FEMA will develop guidance to help your community implement these interim requirements.

FEMA and Oregon DLCDC will be inviting you and other interested stakeholders to participate in workgroups to identify options and methods that communities can implement, with respect to the RPA. These implementation options may include guidance, training, and technical assistance. One example is the development of a model ordinance that would meet FEMA's minimum criteria while also incorporating the requirements of the RPA. Once this model ordinance is finalized, it will be shared with all interested communities.

The RPA comprises six elements or sections, and a full copy of the RPA is provided as an attachment to this letter. Element 1 involves notice, education, and outreach regarding the outcome of FEMA's consultation with NMFS on the implementation of the NFIP in Oregon. This letter is part of that requirement for FEMA to provide Notice of the Biological Opinion and RPA. RPA Element 1 encourages communities to send data or information on locally identified flood-related hazards due to erosion or inundation, including anticipated flooding patterns influenced by build-out, climate change or sea level rise, which are not currently reflected on effective Flood Insurance Rates maps (FIRMs) to the FEMA Region X office by August 12, 2016. In addition, the RPA recommends that substantially improved and new structures (as defined in the RPA) placed in the Special Flood Hazard Area should be elevated by methods other than fill, and that proponents of projects that involve adding fill exceeding 50 cubic yards should pursue CLOMR-Fs prior to LOMR-Fs to ensure ESA compliance is obtained prior to undertaking floodplain development. This element also requires FEMA to

provide guidance to communities regarding elevating structures in a manner that minimizes the adverse effects to natural floodplain functions. For information on elevating structures, please see the attached Frequently Asked Question document - Elevating Structures Without Fill.

In Element 2 of the RPA, NMFS has laid out a set of Interim Measures expected to be implemented within 2 years and requires that all development in the SFHA be mitigated to achieve no net loss of natural floodplain functions. Element 2 includes requirements for mitigation ratios, impervious surfaces, stormwater, floodplain management standards, riparian buffers, LOMCs and CLOMCs, and floodplain development permit reporting. FEMA will be working to provide you with guidance regarding how to achieve the requirements listed in RPA Element 2.

Additionally, to help minimize the time and effort imposed upon your staff resulting from the floodplain development permit reporting requirement, FEMA intends to use a Microsoft Excel based reporting tool that will be sent to each community to track all new development occurring in floodplains. Once the interim RPA requirements are in place, if communities issue floodplain development permits without reporting said development or without mitigating for adverse effects on ESA listed species or their habitat, FEMA will be required, in coordination with NMFS acting under their own authority, to initiate appropriate enforcement action.

Element 3 requires use of revised mapping protocols and methodologies for the stated purpose of improving the identification of special hazard areas. The RPA also requires several additions to the Flood Insurance Rate Maps, including the future conditions floodplain, erosion zones, and channel migration zones.

Element 4 requires revisions to the floodplain management criteria to, among other things:

- Include a generally applicable ESA performance standard;
- Prohibit almost all development in an area known as the High Hazard Area (floodway, V-Zone, LiMWA, erosion zone);
- Prohibit re-drawing of the floodway to accommodate floodplain development;
- Require a 60 year erosion setback area with very limited uses (agricultural, open space, temporary structures); and
- Significantly restrict subdivisions of lots.

Element 4 also requires extensive compensatory mitigation requirements in the areas where floodplain development is not otherwise prohibited. FEMA will be working to provide you with guidance regarding how to achieve the requirements listed in RPA Element 4.

Element 5 requires data collection and describes reporting requirements needed to accurately track floodplain development impacts and RPA implementation. Element 6 speaks to compliance and enforcement requirements of the RPA and the associated timelines for compliance.

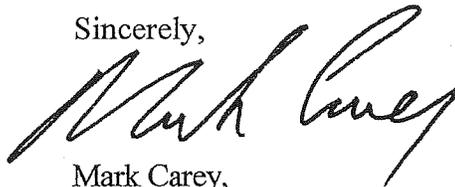
FEMA recognizes that many of you have already been implementing measures that compensate/mitigate floodplain development actions affecting ESA-listed species and their habitat. However, for others, these requirements may pose an additional workload on your

June 13, 2016

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community. We will work diligently with you, State resource agencies, and NMFS to offer guidance and resources that will help facilitate this transition. We will keep you advised and look forward to working with interested stakeholders to develop our strategy for implementation. If you have any questions, please email FEMA-R10-ESAcumments@fema.dhs.gov or contact Scott Van Hoff, Senior NFIP-ESA Specialist at 425-487- 4677.

Sincerely,



Mark Carey,
FEMA Region X Mitigation Division Director

cc: FPA
State NFIP Coordinator
Kim Kratz, NMFS

Attachments: Oregon NFIP Reasonable and Prudent Alternative (RPA)
FAQ- Elevating Without Fill

SVH: jg