



MEMORANDUM

TO: Deschutes County Planning Commission

FROM: Nicole Mardell, AICP, Senior Planner
Will Groves, Planning Manager

DATE: September 19, 2024

SUBJECT: Floodplain Ordinance - 2016 Biological Opinion Update

On September 26, 2024, the Deschutes County Planning Commission will receive a presentation on federally required updates to the county's floodplain ordinance, resulting from a federal lawsuit pertaining to endangered species.

I. BACKGROUND

A National Marine Fisheries Service 2016 Biological Opinion (BiOp) is now part of the National Flood Insurance Program (NFIP) in the State of Oregon¹. This Oregon BiOp, which was issued in response to a federal lawsuit, concludes that the Federal Emergency Management Agency's (FEMA) implementation of the NFIP in Oregon is causing jeopardy to 17 Endangered Species Act (ESA) listed species and adverse modification of critical habitat for 16 of those species. This is significant because FEMA provides floodplain development standards that cities and counties must follow to be eligible for flood insurance through the NFIP. Under the BiOp, local jurisdictions will be required to update floodplain development standards for certain areas. Fortunately, Deschutes County has minimal areas impacted by the BiOp, compared to other communities. A map of potentially impacted, privately-owned, floodplain zoned areas in Deschutes County is included as Attachment A.

II. COUNTY IMPACT AND CODE AMENDMENTS

FEMA has been working on an environmental impact statement (EIS) for the NFIP implementation plan in response to the BiOp. FEMA is anticipated to complete the EIS and

¹ Oregon NFIP BiOp or BiOp. NWR-2011-3197.

fully enforce the implementation plan by 2027. On July 16, 2024, FEMA sent information to Oregon cities and counties about how they will respond to ESA requirements within the NFIP prior to full implementation. Communities are required to begin taking action, beginning in December, to protect habitat and achieve no net loss standards² through one of three Pre-Implementation Compliance Measures (PICMs):

1. Prohibit all new development in the floodplain;
2. Incorporate the ESA BiOp model code into the local floodplain ordinance; or
3. 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”.

County staff, in coordination with the Board of County Commissioners, is moving forward on a text amendment to incorporate the ESA BiOp model code into the local floodplain ordinance. This was deemed to be the most efficient process to ensure compliance with the PICMs and provide the most certainty for development projects in affected areas.

Staff is consulting with FEMA and the Department of Land Conservation and Development (DLCD) on this text amendment. In addition to incorporating the ESA BiOp model code, the floodplain ordinance will also be updated to incorporate the most recent changes from the 2019 Department of Land Conservation and Development (DLCD) model floodplain ordinance. This will ensure the County continues to comply with all NFIP requirements.

III. NEXT STEPS

Staff is working on updates to the floodplain ordinance and is expected to initiate the hearings process in late fall/early winter 2024.

Attachments

- A. Map - Affected Properties

² No net loss is defined as any development action resulting in negative impacts to one or more key floodplain functions that are then mitigated or avoided to offset such impacts.