



## STAFF REPORT

### Planning Commission

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**Meeting Type:** Planning Commission (Legislative Public Hearing)  
**Meeting Date:** June 30, 2025  
**From:** Patrick Depa, Senior Planner  
Kelly O'Neill Jr., Development Services Director  
**Subject:** Chapter 17.60 – Flood and Slope Hazard (FSH) Overlay District Text  
Amendments (File No. 25-030 DCA - FEMA PICM Code Modifications)

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#### **DECISION TO BE MADE:**

Hold a legislative public hearing to review and take comments on the proposed code amendments to Title 17, Chapter 17.60 – Flood and Slope Hazard (FSH) Overlay District of the Sandy Municipal Code and make a recommendation to the City Council.

#### **APPLICABLE COUNCIL GOAL:**

- **6.9:** Ensure compliance with state legislative and regulatory mandates through code amendments that are responsible and reflect the community's values.

#### **BACKGROUND / CONTEXT:**

The City of Sandy has floodplain regulations that apply to development within the Flood and Slope Hazard (FSH) Overlay District. The Flood and Slope Hazard (FSH) Overlay District regulations are in Chapter 17.60 of the City of Sandy Municipal Code. The FSH Overlay District is an overlay zone classification defining areas subject to periodic flooding or inundation which can result in property harm or loss, disruption of public services, hazards for public health, or added expense for public services.

Compliance with floodplain development regulations is reviewed through the land use review and building permitting process, with review responsibility by the Development Services Department and Public Works Department. The City's Floodplain Administrator for the City of Sandy is the Development Services Director. All conditions and restrictions of land use established by Chapter 17.60 are in addition to such restrictions and conditions as may be imposed and established in underlying zoning districts.

The City has adopted FEMA's 100-year floodplain maps. Anyone may view the floodplain layers on the FEMA website under - [Flood Map Service Center](#) - that shows the City of Sandy's map area number as **41005C0094E** that became effective on January 18, 2019. The City of Sandy uses the combination of the Flood and Slope Hazard (FSH) Overlay District and FEMA's 100-year floodplain as the basis for determining flood hazard.

Pursuant to the result of a 2007 lawsuit and a 2016 Biological Opinion from National Marine Fisheries Services, FEMA must develop reasonable alternatives to its current floodplain regulations and

implement changes to the National Flood Insurance Program (NFIP), to address takings of Endangered-Species Act (ESA) - listed species (Attachment 1). Since the City of Sandy participates in the NFIP, the City has mandatory compliance requirements. The City of Sandy's ongoing participation in the NFIP is critical, as it provides access to flood insurance for property owners, renters, and businesses. In the City of Sandy there are currently twelve (12) NFIP policies in force representing \$2,887,000 in coverage.

The first stage of FEMA's compliance plan begins with Pre-Implementation Compliance Measures, or PICMs. Local governments participating in the NFIP were required to inform FEMA of their selection of one of the three following PICM options by December 1, 2024:

1. Adopt the FEMA model ordinance;
2. Require a habitat assessment and mitigation plan for development on a permit-by-permit basis; or
3. Prohibit development in the Special Flood Hazard Area.

Based on input and recommendations from the City Attorney, City staff sent FEMA the selection to assess floodplain development requests on a permit-by-permit basis on November 18, 2024. Included in that correspondence was that the City would adopt new municipal code language by FEMA's final compliance deadline of July 31, 2025. City staff, with the City Attorney's direction, have drafted amendments to Sandy Municipal Code 17.60 Flood Slope Hazard (FSH) Overlay District (Attachment 2, Exhibit A) to implement the permit-by-permit review option in a clear and objective manner.

In addition to the usual notices provided in conjunction with a legislative land use hearing, City staff provided individual Measure 56 notices to all affected property owners in accordance with ORS 227.186. The Measure 56 notice was sent on June 9, 2025.

Staff have included some additional information on what the FEMA terms and requirements mean.

### **What is a mitigation assessment?**

A mitigation assessment must achieve three goals:

1. Describe the existing site conditions where the proposed development and impacts are expected to occur.
2. Describe the project and its impact to the floodplain functions within the Special Flood Hazard Area.
3. Identify mitigation required to achieve no net loss.

The intention of a mitigation assessment is to demonstrate compliance with the Endangered Species Act (ESA) and the Pre-Implementation Compliance Measures requirements. ESA compliance measures require No Net Loss of three (3) floodplain functions essential to the survival of ESA-listed species under the jurisdiction of National Marine Fisheries Service within the implementation area, the establishment of riparian buffer zones (RBZ) measured from the Ordinary High-Water Mark (OHWM) of a fresh waterbody and the Mean Higher-High Waterline (MHHW) from a tidally-influenced waterbody, and beneficial gain requirement for development that is located within the RBZ.

### **What does 'No Net Loss' mean?**

No net loss is defined as any development action resulting in negative impacts to one or more key floodplain functions (i.e. floodplain storage, water quality, and vegetation) that are then mitigated or avoided to offset said impacts. No net loss is primarily achieved through mitigation, but practicing avoidance and minimization can lessen the impact of development and the amount of mitigation required to achieve compliance.

## **When is a mitigation assessment required?**

A mitigation assessment is required whenever a development project is proposed in the Special Flood Hazard Area in the City of Sandy. Under the permit-by-permit approach the property owner must obtain a permit for development within the floodplain. The mitigation assessment must identify existing site conditions before development occurs, describe the impact of the proposed development on existing floodplain and instream habitat functions, and identify mitigation required to achieve no net loss.

## **What projects and activities are exempt from 'No Net Loss' standards?**

1. Maintenance of structures, such as re-roofing and replacing siding, provided there is no change in the footprint or expansion of the roof of the structure;
2. Street, sidewalk, and road maintenance, including filling potholes, repaving, and installing signs and traffic signals, that do not alter contours (this does not include expansion of paved areas);
3. Maintenance of landscaping that does not involve grading, excavation, or fill;
4. Routine agricultural practices such as tilling, plowing, harvesting, soil amendments, and ditch cleaning that does not alter the ditch configuration provided the spoils are removed from a special flood hazard area or tilled into fields as a soil amendment;
5. Routine silviculture practices (harvesting of trees), including hazardous fuels reduction and hazard tree removal so long as root balls are left in place;
6. Removal of noxious weeds and hazard trees, and replacement of non-native vegetation with native vegetation;
7. Maintenance of above ground utilities and facilities, such as replacing downed power lines and utility poles provided there is no net change in footprint;
8. Maintenance of a levee or other flood control facility prescribed in the operations and maintenance plan for the levee or flood control facility;
9. Habitat restoration activities; and,
10. Pre-Emptive removal of documented susceptible trees to manage the spread of invasive species.

## **BUDGET IMPACT:**

City Attorney charges

## **RECOMMENDATION:**

Staff recommend that the Planning Commission hold a public hearing, discuss the proposed code modifications, and provide staff with a motion to forward to the City Council.

## **SUGGESTED MOTION LANGUAGE:**

I move to recommend that the City Council approve the proposed text amendments to Title 17, Chapter 17.60 – Flood and Slope Hazard (FSH) Overlay District as presented in Attachment 2.

## **LIST OF ATTACHMENTS / EXHIBITS:**

- Attachment 1. FEMA Community PICM Letter to City of Sandy
- Attachment 2. Ordinance No. 2025-16
  - Exhibit A. Code Amendments
  - Exhibit B. Findings