



Oregon

Kate Brown, Governor

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Mark Carey
Mitigation Division Director
U.S. Department of Homeland Security
FEMA Region X
130 228th Street SW
Bothell, Washington 98021-8627

March 29, 2018

Dear Mr. Carey,

It is unfortunate that I must start this letter by expressing disappointment in the lack of information contained in the *Draft Community Implementation Strategy for the Interim Measures of the April 14, 2016 NMFS Biological Opinion for Oregon*. I am also frustrated that this draft strategy implies that the Biological Opinion (BiOp) sets new standards for ESA compliance that apply to local governments or individual's seeking local floodplain development permits. I am concerned that review of the strategy under the National Environmental Policy Act (NEPA) will not be adequate to remedy numerous concerns the state has regarding FEMA's approach to meting their obligations under the Endangered Species act (ESA).

Lack of information

In a June 20, 2016 letter to Governor Brown, Roy Wright, the Deputy Associate Administrator for FEMA Insurance and Mitigation Branch, stated that FEMA is committed to engaging the State of Oregon throughout the process of BiOp implementation and the development of guidance. Mr. Wright's letter also stated that FEMA planned to work with stake holders and "collaboratively move forward to identify workable implementation solutions." The brief description of FEMA's implementation strategy does little to demonstrate that FEMA is making good on this commitment. The three "compliance options" in the draft strategy seems to be derived from the Reasonable and Prudent Alternative interim measures and the framework for implementation used in Washington State. There is no indication that FEMA has used its discretion, available under ESA Section 7 consultation process, to address specific concerns and comments submitted by the State of Oregon in a letter from Jim Rue to Mark Carey, October 18, 2017.

Deflection onto local governments

Governor Brown expressed concern in a letter to FEMA Administrator Craig Fugate on June 17, 2016 that FEMA delivered an inconsistent, confusing and erroneous message to local governments after the BiOp was published. In particular, Governor Brown objected to the implication that the BiOp requires a direct response from local governments.

Jim Rue to Mark Carey, FEMA Region X

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The draft strategy is based on the premise that the BiOp and the RPA set a new standard for ESA compliance that applies directly to local governments and people seeking local floodplain development permits; a standard of no-net-loss of floodplain functions. Options for NFIP communities described in the draft strategy include: adopting an ordinance that, “meets the criteria specified in the Biological Opinion”; or amending their codes and comprehensive plans using the Biological Opinion and FEMA guidance to “meet or exceed the [BiOp] minimum requirements for habitat protection.” The strategy states that FEMA is offering three options to meet “the new minimum requirements for NFIP participation”, yet the minimum requirements for NFIP participation are set forth in federal rule, and FEMA has not proposed rule amendments as part of this strategy.

FEMA is attempting to transfer its responsibility under the federal consultation onto local governments. The BiOp is a recommendation from one federal agency to another federal agency, and does not by itself create any new requirements on local governments or property owners. The authority for requiring NFIP communities to adopt new floodplain permit review standards and habitat mitigation requirements is unclear.

NEPA review is not a substitute for collaborative process

The draft strategy says that FEMA expects state comments on the draft “will provide the critical feedback necessary to inform FEMA’s determination of future alternatives and the appropriate level of federal environmental review, in accordance with the National Environmental Policy Act”. Unfortunately we cannot provide useful feedback on development of alternatives because so little information was provided.

I am worried that FEMA plans to substitute the formal NEPA review process in place of a collaborative process to develop the implementation plan. The NEPA review process is not suited for developing, revising, and evaluating proposed alternatives against the nuances of local priorities, commitments, and constraints identified in infrastructure, housing, and economic development plans. Before FEMA initiates the NEPA review, the State of Oregon requests an opportunity for multiple rounds of review and input on the alternatives to be considered in the Environmental Assessment or Environmental Impact Statement. This would restore collaboration to the process and improve chances that the NEPA review will result in NFIP program changes that can be implemented by NFIP communities.

Sincerely,



Jim Rue
Director

cc: Lauri Aunan, Office of Governor Kate Brown