



Note from DLCD:

The Federal Emergency Management Agency (FEMA) sent this draft to DLCD for a preliminary review prior to the start of the formal review through the National Environmental Policy Act (NEPA). FEMA has given DLCD until July 31, 2018 for this review. This document is still a draft, and local governments do not need to enact any amendments to their floodplain ordinance until FEMA makes a final decision through the NEPA process.

From an initial review of this *Checklist for Programmatic Compliance*, it is disappointing that it does not reflect the recommendations generated through the DLCD NFIP BiOp Workgroups or state recommendations sent to FEMA in October 2017. The checklist also implies that local governments are obligated to adopt standards described in the Reasonable and Prudent Alternative (RPA). Since the BiOp and RPA do not create new federal standards, this implication is troubling.

The draft contains little new information; therefore the input received from the workgroups will be used to develop a response to FEMA. During the NEPA process, the workgroups may be reconvened to gather input from local governments, depending on the available time and utility of offering additional comments to FEMA.

Floodplain Management and the Endangered Species Act Checklist for Programmatic Compliance of Oregon Interim ESA Implementation

2018 DRAFT



FEMA Region 10

DRAFT Implementation Plan, Appendix B

Community Checklist
for the
National Flood Insurance Program
and the
Endangered Species Act

DRAFT



FEMA
Region 10

For additional information or copies of this guidance:

Federal Emergency Management Agency
Attn: Mitigation Division
Federal Regional Center, Region 10
130 228th St. SW
Bothell, WA 98021-9796
(425) 487-4600
www.fema.gov/regionx/nfipesa.shtm

Oregon NFIP-ESA

Draft Plan and appendices were developed by FEMA in preparation for NEPA review

Biological Opinion Checklist

A community may choose to demonstrate that their local ordinances, processes, and written procedures meet or exceed the performance standards set forth in the Biological Opinion Reasonable and Prudent Alternative elements 2 and 5 in addition to the minimum requirements of the NFIP program.

The community must show where its regulations, processes, and procedures meet the minimum criteria for the NFIP (44 CFR 59 – 60) and the Endangered Species Act (as clarified by the Biological Opinion, RPA elements 2 and 5). The checklist for the minimum NFIP requirements starts on page **16**.

This checklist is for the ESA/Biological Opinion criteria. The requirements are abbreviated here. The full requirements are found in the Biological Opinion and the errata sheets. The recommended regulatory language is in the noted sections of the NFIP ESA Model Ordinance. If the community already has adopted the provision, the ordinance section or other regulatory reference should be entered in the third column. If the community's regulations do not fulfill the provision, the noted language in the NFIP ESA Model Ordinance can be used.

If a community believes that their ordinances, processes, and written procedures meet the no adverse effect standard of the Reasonable and Prudent Alternative, yet do not meet the specific performance criteria as set forth in that Reasonable and Prudent Alternative, then the community may submit their language to FEMA along with any background documentation (i.e. best available science) and rationale for why the stated language meets the performance standard for FEMA to review. FEMA will conduct a review of the documentation and provide technical assistance or a concurrence letter to the community once the review is complete.

Biological Opinion Provision	ESA Reference	Model Ordinance Section	Community Regulations Citation	Community Comments and Explanations
1. Activities Affected All “development” in the areas affected must comply with these provisions. The BiOp added the last two phrases to the NFIP definition of “development:” any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, storage of equipment or materials, subdivision of land, <u>removal of substantial amounts of vegetation, or alteration of natural site characteristics.</u>	Oregon BiOp 2.8.3	Section 2. Definitions		
2. Definitions Use definitions as written in model ordinance	OR BiOp 2.8.3	Section 2		
3. Regulatory Data				
A. Area to be regulated in the mapped Special Flood Hazard Area on Effective Flood Insurance rate map	RPA 2.A	3.2		
B. Utilize the Floodway as designated on effect FIRM	RPA 2.A	3.3E		
C. Riparian Buffer Zone (RBZ) defined as the area 170 feet perpendicular from the ordinary high water mark	RPA 2.B	3.4		
D. Channel migration Zone	RPA 2.A.i	3.5 3.6.D		
E. Requests to revise flood hazard data (LOMC)	RPA 3.D	3.6		

4. Administrative Procedures				
<p>A. The application for a floodplain development permit to include a site plan that shows:</p> <ol style="list-style-type: none"> 1. The nature, location, dimensions and elevations of the property in question; 2. Names and location of all lakes, water bodies, waterways, and drainage facilities within 300 feet of the site; 3. The boundaries of the SFHA, floodway, RBZ and CMZ, delineated in accordance with Section 3. 4. The proposed drainage system including, but not limited to, storm sewers, overland flow paths, detention facilities, and roads; 5. Existing and proposed structures, fill, pavement and other impervious surfaces, and sites for storage of materials; 6. All wetlands; 7. Existing native vegetation and proposed revegetation. 8. If the proposed project involves grading, excavation or filling, the site plan shall include proposed post-development terrain at one-foot contour intervals. 		4.2		
<p>B. The application shall include a description of the extent to which a water body, including its shoreline, will be altered or relocated as a result of the proposed project, as well as proposed mitigation measures to offset potential adverse effects.</p> <ol style="list-style-type: none"> 1. A description of how potential adverse effects will be mitigated to the greatest extent feasible, with the objective of achieving no net loss or beneficial gain of natural floodplain functions. 2. A description of long-term performance monitoring procedures and assurances to ensure that the mitigation will function in perpetuity. 	<p>RPA 2.A.i.b 5.A</p>	4.2.E		

<p>C. The application shall include acknowledgement that the applicant will apply for all necessary permits required by federal, state, or local laws. The application shall include written acknowledgement that the applicant understands that the final certification of use or certificate of occupancy will be issued only if the applicant provides copies of the required federal, state, and local permits or letters stating that a permit is not required. The floodplain development permit is not valid if those other permits and approvals are not obtained prior to any ground disturbing work or structural improvements.</p>	<p>RPA 2.A.i.b 5.A</p>	<p>4.2.F</p>		
<p>D. Communities shall maintain records of the following data</p> <ol style="list-style-type: none"> 1. The amount of fill or structural displacement of flood storage, and the amount of compensatory storage measured by volume and area (both surface area and cross-sectional area). 2. The amount of new impervious surface and any project change in the timing, velocity or peak flows of stormwater runoff and the types and amounts (if applicable) of mitigation provided. 3. The area in which clearing and/or grading occurred (e.g. within the HHA, SFHA or AFCFH). 4. The number of trees equal to or greater than six inches diameter at breast height (dbh) removed and the number and timing of trees planted to meet mitigation requirements. 5. If a project disconnects land from the floodplain (e.g. by accreditation of levees or recognition of non-accredited levees), identify the type of project and the amount of land disconnected from the floodplain. 	<p>RPA 5.A</p>	<p>4.5.G</p>		

<p>6. If a project reconnects land to the floodplain (e.g. the removal or setback of a levee), identify the type of project and amount of land reconnected to the floodplain.</p> <p>7. The location of the project and of the corresponding mitigation (e.g. within the SFHA, CMZ, or RBZ).</p>				
<p>5. Standards for Habitat Protection</p> <p>The community must demonstrate that any proposed development in the area does not adversely affect water quality, water quantity, flood volumes, flood velocities, spawning substrate, and/or floodplain refugia for listed salmonids <u>Or</u> demonstrate that all direct, indirect, and cumulative adverse effects have been fully mitigated in accordance with the mitigation ratios in RPA 2.A</p>	<p>RPA 2.A.i,ii App.2.8-C</p>	<p>Section 7</p>		
<p>A. Non-Development Activities</p> <p>Activities that do not meet the definition of “development” are allowed in the SFHA without the need for a floodplain development permit under this ordinance, provided all other federal, state, and local requirements are met. The following are examples of activities and uses not considered development or “man-made changes to improved or unimproved real estate.”</p> <ol style="list-style-type: none"> 1. Routine maintenance of landscaping that does not involve grading, excavation, or filling; 2. Removal of noxious weeds and hazard trees and replacement of non-native vegetation with native vegetation; 3. Normal maintenance of structures, such as re-roofing and replacing siding, provided such work does not qualify as a substantial improvement; 	<p>RPA Errata page 5</p>	<p>7.1</p>		

<ol style="list-style-type: none"> 4. Normal maintenance of above ground utilities and facilities, such as replacing downed power lines and utility poles; 5. Normal street and road maintenance, including filling potholes, repaving, and installing signs and traffic signals, but not including expansion of paved areas; 6. Normal maintenance of a levee or other flood control facility prescribed in the operations and maintenance plan for the levee or flood control. Normal maintenance does not include repair from flood damage, expansion of the prism, expansion of the face or toe or addition for protection on the face or toe with rock armor; and 7. Agricultural and forestry practices that do not involve, filling, grading, or construction of levees or structures on land in the SFHA and in existence as of the effective date of this ordinance. 				
<p>B. Activities Allowed with a Floodplain Permit</p> <p>The following activities are allowed in the SFHA without the analysis required in Section 7.5 or the habitat impact assessment required under Section 7.7, providing all other requirements of this ordinance are met, including obtaining a floodplain development permit:</p> <ol style="list-style-type: none"> 1. Repairs or remodeling of an existing structure, provided that the repairs or remodeling are not a substantial improvement or a repair of substantial damage and do not exceed the existing footprint of the structure. 2. If the structure is in the floodway, there shall be no change in the dimensions perpendicular to flow without a floodway analysis. 	RPA 2.B	7.2		

<p>3. Activities with the sole purpose of creating, restoring, or enhancing natural floodplain functions provided the activities do not include structures, grading, fill, or impervious surfaces.</p> <p>4. Development of open space and recreational facilities, such as parks, trails, and hunting grounds, that do not include structures, fill impervious surfaces, or removal of more than 5% of native vegetation on that portion of the property within the Special Flood Hazard Area.</p> <p>5. Repair to onsite septic systems provided the ground disturbance is the minimum necessary.</p>				
<p>C. Compensatory Mitigation Standards</p> <p>1. The <i>(floodplain administrator)</i> shall use the most restrictive data available for the 10-year floodplain (where a Flood Insurance Study has been performed), the floodway (if designated), the CMZ (if designated), or if none of those areas have been designated by FEMA, then within all portions of the RBZ that are within the SFHA.</p> <p>2. New development shall not reduce the effective flood storage volume or vegetative cover or increase the amount of impervious area within the Special Flood Hazard Area. A development proposal with an activity that would impact the three natural floodplain functions above shall provide compensatory mitigation to achieve no net loss of natural floodplain functions as outlined below.</p>	RPA 2.A	7.5		

<p>3. In the larger of the 10-year floodplain (as determined by a Flood Insurance Study), the floodway, or the CMZ within the limits of the SFHA, the following mitigation standards apply:</p> <p>a. Lost flood storage area at a ratio of 2 to 1.</p> <p>b. Tree removal at a ratio of 3 to 1 for trees equal to or exceeding 6-inch DBH.</p>				
<p>In the remainder of the floodplain within the SFHA limits, the following mitigation standards apply:</p> <p>a. Lost flood storage area at a ratio of 1.5 to 1.</p> <p>b. Tree removal at a ratio of 2 to 1 for trees equal to or exceeding 6-inch DBH</p>	RPA 2.A.ii	7.5.C		
<p>4. Stormwater and drainage features shall incorporate low impact development techniques that mimic pre-development hydrologic conditions, when technically feasible.</p>	RPA 2.A.iii.b	7.5.D		
<p>5. Addition of new impervious surfaces must be mitigated by removing an equal amount of impervious surface and/or by increasing infiltration of stormwater using low impact development or green infrastructure practices. When neither of these methods is possible, stormwater detention is required to ensure no increase in peak volume or flow, and treatment is required to minimize pollutant loading</p>	PRA 2.A.iii.a,b, and c	7.5.D		

<p>6. Displaced flood volume. Provide compensatory storage for displacement of flood storage volume/loss of accessible floodplain refugia for listed fish due to fill or structural displacement. This balanced cut and fill requirement applies to all floodplain development except habitat restoration activities. When mitigating lost storage by creating compensatory storage, the compensatory storage must be:</p> <ul style="list-style-type: none"> a. Hydrologically connected to the waterbody which is the flooding source, b. Designed so that there is no increase in velocity, c. Designed to fill and drain in a manner that does not trap fish, d. Within the same <i>hydraulic reach</i>* as the proposed development to minimize impact to affected fish populations, e. Measured in one foot elevation increments relative to the amount and location of fill placed, and f. Provided at a 1.5 to one ratio laterally, or greater, in order to guarantee no loss of beneficial floodplain functions, including conveyance g. Any compensation off site must clearly provide a greater benefit to listed species 	<p>2.A.i.a 4.F App. 2.8.C</p>	<p>7.5.B,C</p>		
<p>D. Riparian Buffer Zone Permitted uses within the RBZ include: (1) water-dependent uses, (2) habitat restoration activities, (3) activities that result in a beneficial gain for the species or habitat, and (4) activities that will have no adverse effects on listed species or habitat, i.e., activities that will not degrade or limit natural floodplain functions in any way (See Section 7.2). Mitigation is required for development types (1) and (3) above</p>	<p>RPA 2.B</p>	<p>7.6</p>		

<p>E. Habitat Impact Assessment</p> <p>Unless allowed under Sections 7.1 and 7.2 of the model ordinance, a permit application to develop in the SFHA shall include an assessment of the impact of the project on federal, state, or locally protected species and habitat, water quality, and aquatic and riparian habitat. The assessment shall be:</p> <ol style="list-style-type: none"> 1. For Projects funded, authorized, or carried out by a federal Agency, A Biological Evaluation or Biological Assessment developed per 50 C.F.R. § 402.12 to initiate federal interagency consultation under Endangered Species Act section 7(a)(2); or 2. Documentation that the activity fits within Section 4(d) of the Endangered Species Act; or 3. Documentation that the activity fits within a Habitat Conservation Plan approved pursuant to Section 10 of the Endangered Species Act, where any such assessment has been prepared or is otherwise made available; or 4. An assessment prepared in accordance with <i>Regional Guidance for Floodplain Habitat Assessment and Mitigation, FEMA Region 10, 2018</i>. The assessment shall determine if the project would adversely affect: <ol style="list-style-type: none"> a. Species that are federal, state, or local listed as threatened or endangered. b. The primary constituent elements for critical habitat, when designated, including but not limited to water quality, water quantity, flood volumes, flood velocities, spawning substrate, and/or floodplain refugia for listed salmonids. 		7.7		
---	--	-----	--	--

5. Essential Fish Habitat designated by the National Marine Fisheries Service.				
6. Fish and wildlife habitat conservation areas.				
Other protected areas and elements necessary for species conservation				