



# POLK COUNTY

POLK COUNTY COURTHOUSE • DALLAS, OREGON 97338  
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## COMMUNITY DEVELOPMENT

AUSTIN M'GUIGAN  
Director

January 29, 2025

To: All Interested Parties

Re: FEMA's Pre-Implementation Compliance Measures (PICM) for National Flood Insurance Program (NFIP) - Endangered Species Act (ESA) Integration

This letter serves as notification to you that the Federal Emergency Management Agency (FEMA) is requiring Pre-Implementation Compliance Measures (PICM) for development within the Special Flood Hazard Area (SFHA). Prior to developing within the SFHA, FEMA is requiring submission of a Habitat Assessment and Mitigation Plan to the Polk County Community Development for review. Additional information regarding Habitat Assessment and Mitigation Plans can be found on FEMA's website<sup>1</sup>. The document titled *Floodplain Mitigation Assessment Regional Guidance for Oregon* can also be provided by the Polk County Community Development Department upon request.

### **Background:**

A National Marine Fisheries Service 2016 Biological Opinion (BiOp) is now part of the National Flood Insurance Program (NFIP) in the State of Oregon. This Oregon BiOp, which was issued in response to a federal lawsuit, concludes that FEMA's 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 the NFIP.

In July of 2024, FEMA notified Oregon cities and counties about how they will implement the ESA within the NFIP. FEMA has been working on an environmental impact statement (EIS) for the NFIP implementation plan in response to the BiOp and concerns that the NFIP affects threatened species. Although the EIS has not been completed, FEMA announced new pre-implementation compliance measures (PICM) that will run in parallel with the EIS process.

FEMA has directed Polk County to require a Habitat Assessment and Mitigation Plan for development within the SFHA on a permit-by-permit basis, starting December 1, 2024. Development is defined by FEMA as 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 or storage of equipment or materials. The Oregon BiOp extends that definition to include subdivision of land, removal of vegetation, other alteration of natural site characteristics (including any remnant natural characteristics existing in a degraded site), substantial repairs and improvements, and the maintenance, repair, or remodel of existing buildings, facilities, and utilities when their existing footprint is expanded.

### **Exemptions:**

Sections 1.3 of the *Floodplain Mitigation Assessment Regional Guidance for Oregon* document provides information for when development does not require a Habitat Assessment and

<sup>1</sup> <https://www.fema.gov/about/organization/region-10/oregon/nfip-esa-integration>, accessed on January 23, 2025.

Mitigation Plan, such as routine maintenance of existing landscaping that does not involve grading, excavation, or filling.

**Implementation Challenges:**

In response to these new FEMA requirements, Polk County notified FEMA that existing State laws prevent Polk County from requiring a Habitat Assessment and Mitigation Plan without first going through a public process, including but not limited to, sending notices to affected property owners and conducting a public hearing(s), which Polk County is currently preparing for.

**What does this mean?**

At this time, Polk County is not able to require submission of a Habitat Assessment and Mitigation Plan for development within the SFHA. Although Polk County cannot currently require a Habitat Assessment and Mitigation Plan, FEMA has indicated that they are requiring submission of a Habitat Assessment and Mitigation Plan as the default PICM for jurisdictions that have not adopted FEMA's model ordinance or prohibited development in the SFHA. Property owners should seek their own legal advice on whether or not to submit a Habitat Assessment and Mitigation Plan to Polk County for review. Failure to submit a Habitat Assessment and Mitigation Plan could impact your ability to obtain or maintain flood insurance in the future.

The contents of this letter are subject to change and property owners should contact the Polk County Community Development Department prior to any development within the SFHA to determine what legal criteria is applicable to your project. Although Polk County is not requiring a Habitat Assessment and Mitigation Plan at this time, other development standards within the SFHA may still apply, such as submission of a Floodplain Development Permit and/or Land Use Application. If a Habitat Assessment and Mitigation Plan is submitted, Polk County will review it utilizing the document titled *Floodplain Mitigation Assessment Regional Guidance for Oregon*. Ultimately, it is the property owner's responsibility to ensure that any development within the SFHA is in compliance with the ESA.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Austin', with a stylized flourish extending to the right.

Austin McGuigan,  
Community Development Director