



A place where families and businesses thrive.

PLANNING COMMISSION REPORT

TO: *Planning Commission*

FROM: *Bryan W. Pohl, CFM, Community Development Director*

PROJECT TEAM: *Daniel Riordan, Senior Planner
Byran W. Pohl, CFM, Community Development Director
Gregory Robertson, P.E., AICP, CFM, Public and Engineering Director*

DATE: *April 21, 2025*

SUBJECT: *Public Hearing on Proposed Amendments to Development Code Articles 8 and 12 to Revise the City's Floodplain Management Regulations and Related Definitions Necessary to Adopt the FEMA Model Floodplain Management Ordinance; File Number 311-25-00005-PLNG*

ACTION REQUESTED:

Ordinance	Order	Resolution	X	Motion	Informational
-----------	-------	------------	---	--------	---------------

ISSUE STATEMENT: In 2009, several non-profit environmental groups filed a lawsuit against the Federal Emergency Management Agency (FEMA) arguing that FEMA violated the Endangered Species Act by not consulting with the National Marine Fisheries Services (NMFS) about how the National Flood Insurance Program (NFIP) could jeopardize threatened species. FEMA resolved the lawsuit by formally consulting with NMFS to review the impact of the NFIP. In April 2016, NMFS issued a Biological Opinion (BiOp) that concludes that the NFIP in Oregon jeopardizes the survival of several threatened species. The BiOp contained a reasonable and prudent alternative (RPA) with recommendations from NMFS to FEMA on how to reduce the negative impacts of the NFIP on threatened species.

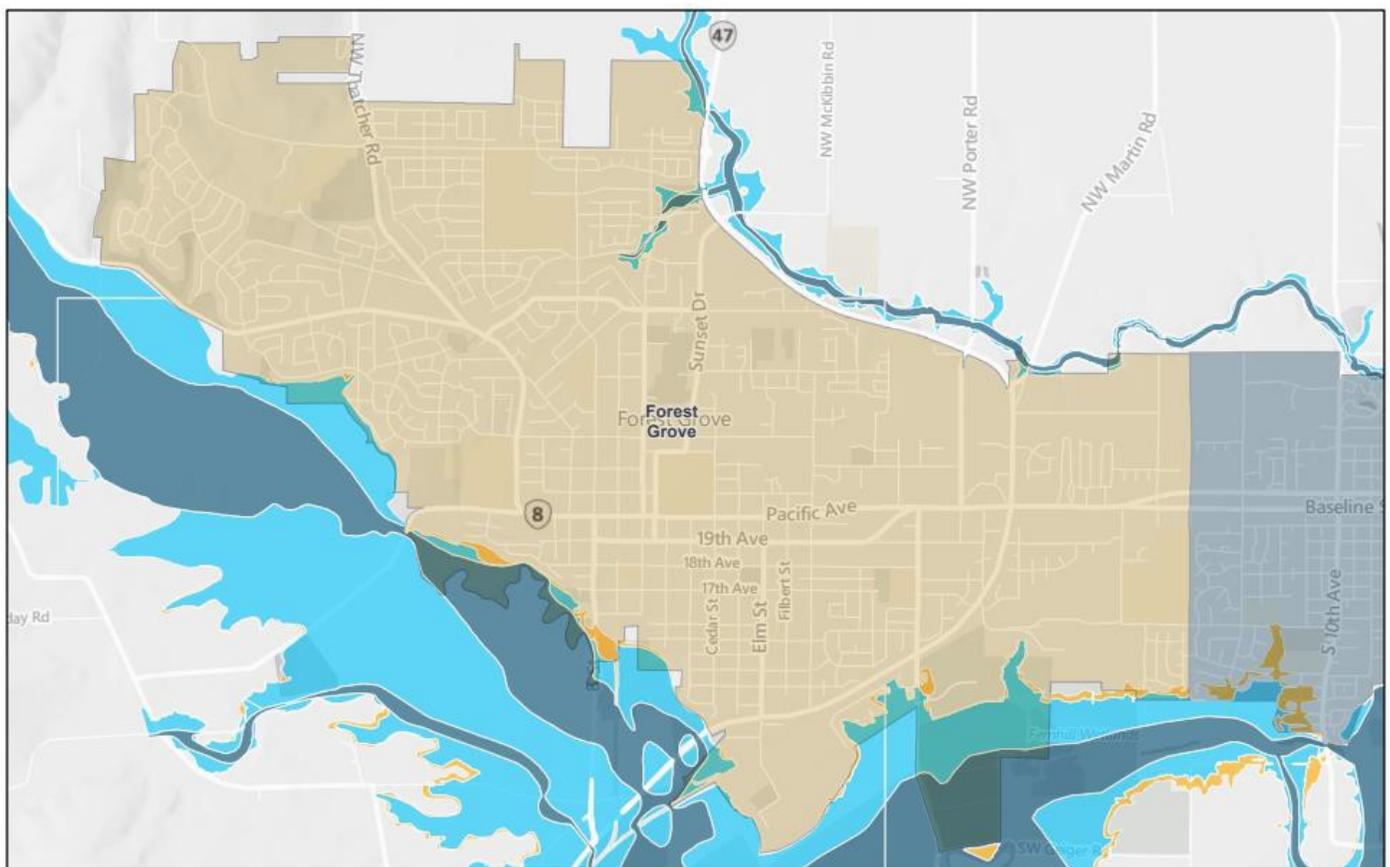
In 2023, FEMA initiated the draft implementation plan using a National Environmental Policy Act (NEPA) process which is still underway. In September 2023, environmental organizations filed a lawsuit alleging that FEMA has been too slow to implement the BiOp. As result FEMA announced a new program of pre-implementation compliance measures (PICMs) for the BiOp. Communities participating in the NFIP must are required to select one of three PICM options to demonstrate that floodplain development is compliant with the Endangered Species Act in Special Flood Hazard Areas (SFHAs). The PICM options are described in detail further in this report.

If adopted by City Council, the attached ordinance would amend the Forest Grove Development Code to implement the model floodplain ordinance. Adoption of the model

ordinance would ensure continued local compliance with the standards for participation in the National Flood Insurance Program (NFIP) and will enable Forest Grove to avoid suspension from the NFIP, FEMA is requiring that the code revisions be in effect by July 1, 2025. Suspension from the NFIP means that no property owner or renter will be able to purchase a flood insurance policy and existing flood insurance policies will not be renewed.

BACKGROUND: The City's Development Code has been amended several times to address evolving FEMA regulations for floodplain management and to ensure ongoing compliance with NFIP requirements. The most recent amendments occurred in 2016 and 2018. The 2016 amendments were based on a model code developed by the Oregon Department of Land Conservation and Development. The 2018 amendments were made in response to FEMA comments after review of the 2016 amendments.

The map below shows areas within Forest Grove subject to floodplain management requirements.



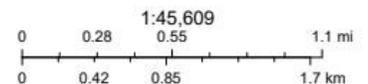
2/11/2025

FEMA Flood Hazard Areas

1% Annual Chance Flood Hazard

Regulatory Floodway

0.2% Annual Chance Flood Hazard



Although there is little developable land within the limits that are within the floodplain the City must still select a PICM option to maintain NFIP eligibility. Under PICM, there are three options available for implementation:

1. Adopt the PICM model floodplain management ordinance that consider impacts to fish habitat and requires mitigation to a no net loss standard defined in the model ordinance;
2. Review individual development proposals and require permit-by-permit habitat mitigation to achieve no net loss; or
3. Prohibit all new development in the floodplain.

Option 1: Option 1 is the staff recommended approach since it ensures compliance with the ESA and ensures continued participation by the City in the National Flood Insurance Program. Under Option 1, communities do not need to go through a separate process to ensure ESA compliance. In addition, Option 1 provides specific development standards for development review in advance of land use applications consistent with land use laws.

Option 2: Option 2 is an ad-hoc approach that does not meet requirements for clear and objective development standards applicable to residential development. This creates potential for appeals of development decisions issued by the City. The City Attorney advised City staff that this option is not advisable.

Option 3: Option 3 is the most stringent approach. Under Option 3, all development is prohibited with limited exceptions. Permitted exceptions include habitat restoration projects and activities identified as exempt from no net loss. Exempt activities must be specified at time of implementation. Option 3 presents risk of taking property for a public purpose depending on how much property is impacted by the floodplain.

Based on initial evaluation of the three PICM options City staff, after consultation with the City Attorney, notified FEMA on November 25, 2024, that the City decided to proceed with implementation of Option 2, adoption of the model code with an effective date of no later than July 1, 2025. The City further notified FEMA on January 16, 2025, that the City will implement the FEMA model floodplain ordinance, and the City is taking the steps necessary to do so. Until the model ordinance is effective the City will review each application for a floodplain permit in manner consistent with City Code and State of Oregon law.

The draft ordinance includes the proposed amendments to Development Code Article 8 for floodplain management that are necessary to implement the FEMA Model Code. The Article 12 amendments remove floodplain related definitions related to floodplain management. Several definitions are proposed for modification for consistency with the Model Code.

The proposed changes to the Development Code needed to include the FEMA model ordinance are shown in Attachments A and B. The proposed Development Code amendments affect Development Code Article 8 (General Development Standards) and the flood related definitions in Development Code Article 12 (Definitions). The flood related definitions will be

removed from Article 12 and will be added to Article 8 with the flood management development standards.

Attachment C includes the adoption findings addressing the criteria for text amendments in Development Code §17.2.630. The review criteria include:

- A. The text amendment is consistent with relevant goals and policies of the Forest Grove Comprehensive Plan; and
- B. The text amendment is consistent with the relevant statewide and regional planning goals, programs and rules.

Attachment D includes the draft wording for City Council ordinance that is required to amend the Development Code to include the FEMA model ordinance. The ordinance includes the proposed code amendments and the adoption findings for Planning Commission approval.

FEMA Model Floodplain Management Model Ordinance Overview

The FEMA Model Floodplain Management Ordinance (Attachment E) is intended to protect life and health, minimize expenditures of public money for costly flood control projects, preserve natural and beneficial floodplain functions, minimize the need for rescue and relief efforts associated with flooding and ensures eligibility for flood insurance and disaster relief. The model ordinance includes development standards for reducing flood losses including restricting or prohibiting development which is dangerous to health, safety and property. The model ordinance also requires that development vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction. In addition, the model ordinance includes standards to control the alteration of natural floodplains and stream channels which handle flood waters.

The model ordinance establishes development controls to achieve a “no net loss” of natural floodplain functions. To achieve no net loss adverse development impacts must be avoided or offset through compliance with certain requirements so there is not net change in the function from the existing conditions when a development application submitted. Floodplain functions include floodwater storage, water quality, and vegetation.

In addition to standards affecting new development, the model ordinance includes provisions for floodplain management administration and compliance. This includes requirements for designating a floodplain administrator responsible for permit review, processing variances, and reporting to FEMA.

STAFF RECOMMENDATION: Staff recommends that the Planning Commission recommend City Council approval of the ordinance to amend Forest Grove Development Code Articles 8 and 12 to revise the Hazards and Resources (flood damage prevention) regulations and related definitions to include the FEMA model floodplain management ordinance. Staff further recommends that the Planning Commission adopt the findings and decision attached as Attachment C.

ATTACHMENTS:

- A. Proposed Development Code Article 8 (General Development Standards) Amendments
- B. Proposed Development Code Article 12 (Definitions) Amendments
- C. Draft Planning Commission Adoption Findings
- D. Draft City Council Ordinance
- E. FEMA Floodplain Management Mode Ordinance Guidance Document