



Clatsop County

Board of Commissioners

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April 11, 2023

Federal Emergency Management Agency

RE: DOCKET ID # FEMA-2023-0007
FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)

Dear FEMA Staff:

Thank you for the opportunity to review and comment on the above-referenced item. Clatsop County has completed its review and has several significant concerns and questions regarding the proposed Environmental Impact Statement (EIS) for the implementation of the plan for National Flood Insurance Program (NFIP) – Endangered Species Act (ESA) Integration in Oregon:

- While it appears that the Department of Land Conservation and Development (DLCD) has hosted stakeholder meetings, it does not appear that local elected officials were specifically sought out for input. It is elected officials and not staff that are directly responsible to their constituents and this would appear to be a flaw in the outreach component of this scoping process.
- What steps are being taken to limit development in areas that are outside the Special Flood Hazard Area, but which are now experiencing flooding due to climate change, sea level rise or other causes? How will impacts to ESA-listed species and critical habitats be accounted for in the implementation plan?
- The four paths identified in the Implementation Plan have not been fully-developed, leaving local governments to provide comments on items they have not been produced, reviewed or vetted for potential implementation costs. Specifically:
 - A model ordinance has not yet been developed or provided for public comment and review. Without this opportunity, local governments are unable to fully know the potential impacts of the implementing the plan nor the costs associated with those implementation measures.
 - In order to implement paths 3 or 4 of the draft implementation plan, it appears that local jurisdictions would need to expend significant funds to obtain technical expertise to complete either a compliance plan or a habitat conservation plan. These unknown costs would likely force small and/or rural local governments into “choosing” either path 1 or path 2. This is not truly a choice.
- Under the current schedule, implementation may begin to be required as early as 2025. Implementation will also potentially coincide with implementation of the Oregon Housing Needs Analysis and requirements for communities to produce a specific number of housing units each year or face potential penalties. Some counties will also be facing revenue reductions to to implementation of the Oregon Department of Forestry’s Habitat Conservation Plan. No efforts have been taken to coordinate these three very significant state/federal actions or analysis done to determine the cumulative fiscal impacts on these local governments. This trifecta of regulation will have extremely significant negative potential impacts, particularly to small and/or rural local governments.

- The proposed reporting requirements for local communities will require additional staff time, constituting an unfunded mandate. The reporting requirements proposed in RPA Element 5 of the implementation plan would require local governments to either collect and analyze data that most staff members are not trained to do (ex: identify the amount of compensatory storage measured by volume and area; the change in timing, velocity or peak flows of stormwater runoff due to new impervious surfaces, etc.). Conversely, local governments could require applicants to provide this analysis, which will significantly increase development costs and times. Additionally, because the final reporting tool has not been developed or tested, it is unsure how long it will take local government staff to compile and input the required information, potentially diverting staff resources from other state-mandates such as housing.
- The implementation plan does not clearly identify what entity determines the quantity and quality of mitigation required.
- FEMA's current shift towards a single-phased full implementation approach, places smaller and rural communities at a disadvantage. Larger communities, which have access to more resources, will face fewer potential penalties during implementation. Smaller communities, which are often already understaffed, will now need to provide additional training and reallocate scarce resources. Phased implementation would provide smaller jurisdictions with additional time to prepare for implementation and to benefit from resolution of unforeseen issues that larger jurisdiction might encounter if the plan were phased.
- It is unclear from the implementation plan whether a community can repeal higher regulatory standards once they have been adopted. Does the implementation allow jurisdictions to eliminate higher standards and adopt only the minimum standards required?
- Implementation of the plan will likely result in "takings" claims by local property owners, as the proposed plan will severely restrict or completely prohibit development in the Special Flood Hazard Area. This will create additional legal costs for both local governments and property owners. To date, no state or federal funding or assistance has been proposed to assist local governments with those potential future lawsuits.
- The implementation plan exempts forest and agricultural practices, providing they do not involve "filling, grading, or construction of levees or structures." Agricultural activities in Clatsop County will almost always require some level of fill or grading in order to prepare fields for planting. The current implementation plan would significantly increase agricultural costs or prohibit agricultural activities.
- It is unclear whether the implementation plan requirements would take precedence over the requirements of Oregon's Forest Practices Act. Commercial timber activities are not regulated or permitted by local governments. However, some activities such as road construction would require grading or filling. Would those activities now be prohibited under the draft implementation plan?
- The list of exemptions is extremely vague. For example, what constitutes "gardening"? How is this activity different than "agriculture"? Is it simply the scale of the activity? If so, what is the threshold between "gardening" and "agriculture"? What is a homeowner wants to install a raised garden bed? Would that still be exempt or will local governments be required to issue permits for those types of activities?
- Will any sort of variance process or appeal process be developed to provide relief from property owners who may lose all ability to develop their properties when the plan is implemented? If local governments are required to process variance requests, this will also require additional staff resources and will also increase development costs.

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- Many of the proposed mitigation or implementation measures that are encouraged in the plan would also require local governments to expend significant monetary or staff resources to develop stormwater regulations, design manuals, etc. It is unclear from recent public meetings with technical or financial assistance would be made available to small and rural jurisdictions that do not have the capacity to develop such tools.
- The Buildout Analysis discussion in Appendix C of the implementation plan appears to exclude areas outside incorporated boundaries and urban growth boundaries. It is unclear whether counties are to perform their own analyses or whether an assumption has been made that no development would occur in areas outside UGBs.
- How are potential impacts from climate change and/or sea level rise being factored into FEMA's implementation plan?

Clatsop County has significant concerns regarding the Implementation Plan as currently drafted. It is likely to generate substantial financial expenditures and draw on already maximized staff capacities - costs that will primarily be borne by local governments with limited technical and financial assistance from state or federal agencies. The likelihood of increased litigation will impact jurisdictions' fiscal capacity and increase development costs for property owners. At a time when rural jurisdictions are being faced with potential revenue reductions due to ODF's Habitat Conservation Plan, while also being required to increase and facilitate construction of needed housing, the proposed Implementation Plan would appear to drastically limit new development, possibly putting local governments out of compliance with other state-mandated requirements. As currently drafted, Clatsop County is opposed to the above-referenced implementation plan.

Sincerely,



Mark Kujala, Board Chair
Clatsop County Board of Commissioners