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Ms. Science Kilner  
Regional Environmental Officer  
FEMA Region 10  
130 228<sup>th</sup> Street SW  
Bothell, WA 98021  
[FEMA-R10-ESAccomments@fema.dhs.gov](mailto:FEMA-R10-ESAccomments@fema.dhs.gov)

Re: Scoping Comment regarding FEMA Docket 2023-0007  
FEMA's EIS regarding FEMA's Plan for NFIP-ESA Integration in Oregon

Dear Ms. Kilner,

I am writing on behalf of the undersigned organizations to comment on the scope of FEMA's Environmental Impact Statement (EIS) for NFIP-ESA Integration in Oregon. Our organizations are concerned that FEMA's implementation of the Draft Implementation Plan ("the Plan") could have significant adverse effects on the quality of the human environment in communities across Action Area. A thorough and comprehensive analysis of impacts of the Plan on environmental, economic, social, and cultural values, based on sufficient Plan detail, is required under NEPA and to ensure an implementation plan that best mitigates unintended harms to the human environment. With this in mind, we provide the following comments:

**1. The Plan lacks sufficient detail to appropriately evaluate impacts on the human environment.**

The Plan provides four compliance pathways for Oregon communities and states that the "four paths" approach results from a recognition by FEMA and its partner agencies of the diverse needs, capacities, policy contexts, and geographic constraints faced by NFIP communities within the Oregon BiOp Action Area. We appreciate this recognition. However, until FEMA details the specific requirements for compliance with these proposed paths, meaningful evaluation of the impacts of the Plan on the human environment is not possible. The Model Ordinance (Path A) option is intended as the "default" option but to date no model ordinance has been developed. FEMA is entering the NEPA process, where it is required by law to evaluate the significant impacts on the human environment of the Plan and alternatives, without really knowing what the Plan is. FEMA does not know which path will be taken by any Oregon community nor the details of any path, including the "default" path. At the very least, meaningful analysis of the Plan would require:

- (a) A draft model ordinance, and

(b) Application of the draft model ordinance to a representative sample of Oregon communities across the Action Area.

## **2. FEMA should evaluate nationwide approaches to NFIP-ESA integration as alternatives to the Plan.**

FEMA is required under 40 CFR 1502 to “[u]se the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.”

Since the Oregon BiOp was issued in 2016, FEMA has explored national-level activity related to NFIP-ESA integration. On October 12, 2021, FEMA issued a “Request for Information the National Flood Insurance Program's Floodplain Management Standards for Land Management and Use, and an Assessment of the Program's Impact on Threatened and Endangered Species and Their Habitats.”<sup>1</sup> In particular, the RFI stated that “FEMA...plans to re-evaluate the implementation of the NFIP under the ESA at the national level to complete a revised Biological Evaluation re-examining how NFIP actions influence land development decisions; the potential for such actions to have adverse effects on T&E species and critical habitats; and to identify program changes that would prevent jeopardy to T&E species and/or destruction or adverse modification of designated critical habitats as well as to promote the survival and recovery of T&E species.” **It went on to state that FEMA is developing a national programmatic framework for nationwide compliance with the ESA** and is re-examining the extent to which NFIP actions may have adverse effects on T&E species and their habitats. It also asked a series of questions related to alternative floodplain management standards, the size and scope of SFHAs, and impacts/mitigation of impacts of the NFIP on endangered species. **Given that FEMA is contemplating addressing NFIP-ESA integration at the national level and is the keeper of the information gleaned from the 2021 RFI, it is incumbent upon FEMA to include in the EIS information, analysis and potential alternatives that have resulted from FEMA’s own efforts to evaluate revisions to the NFIP at the national level.**

## **3. FEMA should evaluate the implementation of the NFIP in Oregon—including the “no action” alternative—in light of changes that have already been implemented since the 2016 Oregon BiOp.**

The BiOp was issued in 2016 and its conclusions were based on the implementation of the NFIP in Oregon under then-existing rules. Since the BiOp was published, FEMA has made significant changes to the NFIP for the purpose of protecting threatened and endangered species. Page 9 of the Plan outlines some of those changes including:

- All Conditional Letters of Map Change (CLOMC) applications to FEMA must now include documentation from the applicant that no “take” has potential to occur to threatened or endangered species as a result of the project, and FEMA then determines whether this documentation is suitable for CLOMC issuance.
- Amendments to the national requirements for Letter of Map Revision Based on Fill (LOMRF) application packages to require communities to provide assurances that a development based on fill was determined to be ESA compliant when fill was placed. Demonstration of mitigation is now required for the adverse effects (e.g. loss of storage; impervious surfaces; stormwater infiltration) for any fill placed after the listing of the species.

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<sup>1</sup> <https://www.federalregister.gov/documents/2021/10/12/2021-22152/request-for-information-on-the-national-flood-insurance-programs-floodplain-management-standards-for>

- Amendments to the LOMR requirements. As a condition of issuing Letters of Map Revision (LOMR) for floodway revisions, FEMA now requires documentation of ESA compliance and documentation showing that any adverse effects will be mitigated.

In the Notice of Intent to Prepare an Environmental Impact Statement for Oregon, FEMA states that in the EIS it will analyze a No-Action Alternative, under which FEMA will not implement any changes to the NFIP in Oregon and that this alternative, required by the NEPA Implementing Regulations, would not fulfill the purpose and need for the proposed action. However, it is unclear how FEMA can already draw this conclusion given the significant changes to the implementation of the NFIP that have occurred since the BiOp. The EIS should analyze whether the changes that have already been implemented by FEMA, as well as any changes that have already been implemented by local jurisdictions, are a reasonable alternative to implementing the Plan.

**4. In the EIS, FEMA should analyze how the Plan will disrupt existing land use plans and the attendant consequences on the human environment.**

Land use is an inherently state and local function and Oregon has made painstaking efforts to balance competing land uses, development and conservation through its statewide land use goals and local comprehensive plans.<sup>2</sup> FEMA's new standards will not be applied in a vacuum but rather in a land constrained environment where the balance between environmental preservation and the variety of human uses (housing, agriculture, employment, etc.) has already been carefully evaluated, crafted and approved based upon not only Oregon's land use laws but also the plethora of other state and federal environmental laws that are already in effect. In analyzing the likely effects of the Action on the quality of the human environment, FEMA must take into account the environmental, economic and social effects of disrupting existing land use plans.

**5. FEMA should analyze impacts to the human environment from shifted development patterns.**

Implementation of the Plan could significantly shift development patterns in Oregon communities. Those shifts will have other impacts on the human environment that could cause harm to other environmental, social, cultural or economic resources. For example, to accommodate reduced development capacity in the SFHA and/or increased size of the SFHA, in order to provide sufficient development capacity for housing, commercial and industrial uses, communities may be forced to pursue expansions in other areas. This may require timely and costly amendments to comprehensive plans and other controversial land use processes, forcing trade-offs between competing land uses and various economic, environmental and social values. Oregon is already bursting at the seams. Under existing laws and regulations, developable land is a significant constraint and its socio-economic impacts (higher land prices, lack of industrial land and associated jobs, fewer housing units, higher housing costs, increased homelessness, etc.) are at the core of many of Oregon's political, economic and social challenges. To the degree that the Plan will reduce the development capacity of otherwise developable land, FEMA needs to account in the EIS for the resultant environmental, economic and social effects of pushing development elsewhere.

**6. FEMA should analyze impacts to the human environment from forgone development and uses in communities that have limited ability to shift development outside the SFHA.** Some Oregon

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<sup>2</sup> See [ORS 197](#), [OAR 660](#) and [https://www.oregon.gov/lcd/Publications/compilation\\_of\\_statewide\\_planning\\_goals\\_July2019.pdf](https://www.oregon.gov/lcd/Publications/compilation_of_statewide_planning_goals_July2019.pdf)

communities have significant physical constraints that prevent the ability to shift development outside of the SFHA. For example, many of our coastal communities are bounded by the Pacific Ocean to the west and the Coast Range mountains to the east. In these communities, reduced development in the SFHA may simply mean reduced developed overall. The EIS must take this into account and analyze the resultant impacts.

#### **7. FEMA should consider the financial burden of Plan implementation on local governments.**

To implement the Plan, each community that wants to maintain participation in the NFIP will need to update its comprehensive plan, zoning, land division and other land use ordinances. Under Oregon law, this process requires significant public engagement. Oregon's local jurisdictions are already dealing with an onslaught of state laws and regulations that have passed in recent years to deal with issues such as housing production and climate change. Additional bills are pending before the 2023 Oregon Legislature. Substantial resources and expertise will be required to harmonize these statewide policies with new FEMA development standards that result from the BiOp implementation, and in many cases, harmonization may not be possible.

In 2022, Oregon's state economist estimated that local governments across Oregon would need to hire about 450 additional FTEs to appropriately staff planning and permitting departments simply to meet the housing production needs in Oregon, not taking into account the planning staff required to implement the policies described above.<sup>3</sup> Local governments are unable to meet this need due to both budgetary and labor market constraints.

In the EIS, FEMA should take into account the impact on local staffing needs and budgets when considering the impact of the Plan and alternatives.

#### **8. FEMA should evaluate impacts of the Plan on property values.**

It is likely that the implementation of RPA Element 3 (Mapping Special Hazard Area to Fully Identify Floodplain Resources) would require properties with federally backed mortgages to purchase flood insurance when they had not been previously required to do so due to the mapping of "area(s) of future conditions flood hazard." A study conducted by researchers affiliated with Georgetown University analyzed the impacts of FEMA flood insurance rate map revisions in Ada County, Idaho and found that there exist several negative community-level socioeconomic externalities associated with flood map revisions<sup>4</sup>. According to the study, requiring a property to have flood insurance significantly decreases its market valuation because of the additional monthly flood insurance premiums (which increase the total monthly cost of property ownership) and the negative risk perception suddenly associated with the property. Such circumstances significantly decrease a property's ease of sale, making it more likely that these properties sit on the market long past the typical market period. Properties that remain 'for sale' for extended periods often experience multiple list price reductions which contribute to local real estate market stalls. These can result in increased foreclosure risks, which only further devalue the surrounding neighborhoods.

The Plan also restricts redevelopment, modification, or improvement of properties within the SFHA (see "Required Actions" in Appendix A). This is particularly troublesome for properties with teardown

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<sup>3</sup> <https://oregoneconomicanalysis.com/2022/09/20/addressing-oregons-housing-shortage-workforce-needs/>

<sup>4</sup> Frazier, T., Boyden, E.E. & Wood, E. (2020). Socioeconomic implications of national flood insurance policy reform and flood insurance rate map revisions. *Natural Hazards*. 1-18. <https://repository.library.georgetown.edu/handle/10822/1059399>

structures that would be profitable should a newer structure be developed. Unless the construction process of the new structure was determined to meet the “no net loss” standard and be built within the “existing footprint” of the previous structure, the construction may not be permissible under the Plan. There are also instances where property owners wish to improve their property values by making substantial value-adding improvements to their homes (ie. Construction of supplementary structures such as sheds, workshops, ADUs; additions to the existing structure; and substantial landscape architecture improvements) but such improvements would likely no longer be allowed. This effectively creates a relative value ceiling for landowners whose property falls within the SFHA. Land ownership is one of the primary means for Americans to build wealth for themselves and future generations. By enforcing requirements that limit property value growth, the benefit of property ownership is significantly diminished.

The above externalities affect both residential and commercial properties. Any Oregon business that owns or rents a building or building space within the defined implementation area may be impacted by the implementation plan. The potential increases in monthly operating costs would be most detrimental to small businesses, as they are less likely to be able to afford such cost increases than larger businesses. Additionally, increased costs on the producer side often lead to increased costs of goods and services for consumers. All of these impacts should be analyzed as part of the EIS.

**9. FEMA should consider the impacts of the Plan on racial and economic segregation and disparities.**

Within the BiOp Action Area, the RPA would restrict the development of previously undeveloped land within the SFHA. According to a 2019 article published by the D.C. Policy Center, restrictive land use regulations slow socioeconomic development, increase economic and racial segregation, and expand wealth disparities<sup>5</sup>. Many Oregon cities that fall within the ESA Integration area are experiencing rapid population growth that requires the simultaneous increase of residential, commercial, and agricultural infrastructure to meet community needs. Some of these communities (particularly in the coastal region) are already struggling to identify the space to develop such infrastructure and accommodate their existing populations. Further, decreasing developable space would worsen conditions for these cities and their inhabitants. Low-income groups are the most vulnerable to high demand/low supply housing markets as they are unable to compete with wealthier individuals in the real estate market, and therefore become priced out of their preferred community. Further, these individuals would be subject to an increasingly competitive rental market that may force them to move out of the area entirely. This would worsen the current affordable housing crisis plaguing Oregon and further contribute to citizen displacement and the rising rate of homelessness. There is also high correlation that exists between wealth and racial characteristics at the household level that provides reason to assume that the individuals forced to relocate to more affordable areas are more likely to be those belonging to racial minority communities. Communities that are composed of individuals with ranging wealth, race, and labor skills are often better positioned to provide markets with more engagement opportunities that subsequently provide more profit opportunities. Therefore, by increasing economic, labor, and racial segregation within Oregon communities, economic development will likely occur at a slower pace. All of these potential impacts should be analyzed as part of the EIS.

**10. FEMA should consider the impact on the human environment of reduced participation in the NFIP.**

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<sup>5</sup> Sayin, Yesim. (2019). The economic costs of land use regulations. Published by the D.C. Policy Center. <https://www.dcpolicycenter.org/publications/economic-cost-land-use/>

The Plan could have negative impacts on continued community participation in the NFIP. As noted in Section II of the Plan, 233 of Oregon's 261 NFIP participating communities are within the Action Area. While offering several pathways to compliance may help mitigate declines in community participation in the NFIP, it is likely that some communities will be unable to balance their requirements under state law, the needs of their communities, and the new FEMA NFIP requirements. As a result, some communities may decline to continue participating in the NFIP.

The risk of a community opting not to continue with NFIP participation is especially prevalent along the Oregon coast, as many of these communities have developed large portions of their SFHAs. Often, such SFHA developments are the location of downtowns and local businesses, including tourism-based businesses, which are an important economic driver of Oregon's coastal communities. As such, coastal communities are more likely than non-coastal communities to forego participation in favor of protecting their local businesses and economy.

If NFIP participation is foregone in these communities, they risk unimaginable financial losses that may result from flood damage. Property owners may lose their home or their business because the cost to repair or replace them after a flood is too high. Others may lose their property due to foreclosure on their loans due to a lack of flood insurance. In either case, there is a substantial risk of economic decline and increasing poverty and homelessness.

Relatedly, should communities no longer participate in the NFIP, it is likely that the properties within the SFHA will be subject to increased neglect, as the values of those properties decline based upon the lack of insurance and decreased access to federal disaster assistance. Neglect is not only likely to cause economic and social decline but could also result in negative environmental impacts, including adverse effects to the threatened and endangered species the Plan is designed to protect.

As part of the EIS, FEMA should evaluate the likelihood of some communities declining to participate in the NFIP and analyze the impacts on the human environment—including environmental, economic and social effects—of reduced participation in the NFIP.

**11. FEMA should consider the impacts of the Plan on roads and public infrastructure.**

The Plan sets a standard of "no net loss" for three natural floodplain functions in the SFHA including as it relates to 1. Flood storage (as impacted by development in the SFHA that involves fill), 2. Water quality (as impacted by addition of impervious surface in the SFHA), and 3. Riparian vegetation. As a result, the Plan is likely to have a significant impact on the ability to develop streets, roads, highways and other public infrastructure in the SFHA, as well as the time and cost associated with this development. Impacts could also occur with respect to the maintenance and improvement of existing infrastructure. The EIS should analyze the likely effect of the Plan on the ability to develop, maintain and improve transportation infrastructure and the resultant effects on the quality of the human environment, including safety and the ability transport goods and services.

**12. FEMA should consider the impacts of the Plan on agriculture.**

The EIS should include an analysis of the likely impacts of the Plan on agricultural operations and food production. The Plan states that it will not apply to "[g]eneral agriculture and silviculture practices carried out in compliance with applicable permits and regulations, including removal of vegetation and normal soil disturbances associated with these practices." It also says that mitigation is not required for forest and agricultural practices that do not involve filling, grading, or construction of levees or structures. However, there is some confusion about how these standards will be applied in practice and

where the lines are drawn between “normal soil disturbances” and “filling” and “grading”. As part of the EIS, FEMA should do an evaluation of the likely effect of the Plan on agriculture and forestry activities and resultant environmental and economic effects.

**13. FEMA should consider the impacts of the Plan on housing.**

Oregon’s [Regional Housing Needs Analysis](#) identified a current shortage of 140,00 housing units across Oregon and also the need to produce 580,000 housing units over the next 20 years in order to fill the backlog and meet projected need. The result of this shortage is increased poverty as the cost of housing outstrips the available means of many Oregonians, reduced quality of life as people who work in a community must drive hours to find available or affordable housing, and increased homelessness.

Oregon’s housing shortage is due in part to lack of available land for residential development and to development restrictions that make it too difficult or costly to build housing at affordable prices.

Several elements contemplated by Plan will likely reduce residential development capacity (See “required measures” contemplated in Appendix A including but not limited to 1. Prohibition of new land divisions that create lots or parcels without buildable area outside of the SFHA and 2. Avoidance measure(s) to steer new development away from part or all of the SFHA). As a result, the EIS should evaluate the expected effects of the Plan on the human environment as it relates to housing including but not limited to:

- (i) The development of new housing in terms of quantity, cost and time to build
- (ii) The ability of existing homeowners to remodel or create additions to their homes
- (iii) The effect of the Plan on the ability of communities to comply with recent state housing policy mandates and goals, including but not limited to [Executive Order 23-04](#) establishing a statewide housing production goal of 36,000 units per year, [HB 2001](#) (2019), [HB 2003](#) (2019), [HB 2001](#) (2023) as well as additional housing legislation that passes in the 2023 legislative session.

**14. FEMA must take into account legislation that passes during the 2023 legislative session in evaluating the effects of the Plan.**

Significant legislation related to land use is pending in the Oregon Legislature and is likely to pass. If passed, this legislation will be in effect during the implementation of the Plan, and therefore should be considered as part of the EIS in setting the baseline of existing law against which the Plan is being evaluated.

**15. To the degree not already addressed above, FEMA should consider the following concerns:**

- The types and availability of mitigation for floodplain development impacts. It is important that FEMA not assume that mitigation is available and must evaluate the availability of mitigation for specific projects and in specific communities.
- The degree of benefit to ESA listed species, their habitats, and their habitat functions from implementation of the proposed new restrictions in various floodplain areas – e.g., in urban areas, in rural areas, in recreational areas, on forests and farms, in riverine and coastal floodplains, and in floodplain areas nearer and further from riparian areas.
- The socioeconomic impacts of implementation of FEMA’s implementation plan. This should include:

- Impacts to floodplain property owners
  - Impacts to value and prices of property inside and outside the floodplain
  - Impacts to local jurisdiction's tax revenue and the corresponding effects on local government spending
  - Other direct and indirect socioeconomic impacts from implementation of FEMA's NFIP-ESA integration
- The consistency or inconsistency of FEMA's implementation plan with existing Oregon laws and policies, including Measure 49.
  - The consistency or inconsistency of FEMA's implementation plan with each NFIP-participating jurisdiction's existing land use plans and policies, including existing zoning, comprehensive plans, housing goals, hazard management plans, and others.
  - The cumulative impacts to development of compliance with other existing federal, state and local requirements that also apply and how FEMA intends to avoid duplicative or overlapping requirements.
  - How existing and potential future habitat benefit projects will be considered as part of implementation of FEMA's plan.
  - The immediate and secondary consequences for local communities that choose not to participate in the NFIP once FEMA begins enforcing its final implementation plan.

Please add my name to the list of commenters and ensure that I receive notice of all future actions related to FEMA's preparation of this EIS and related to any efforts by FEMA related to NFIP-ESA integration in Oregon. Thank you for the opportunity to comment.

Sincerely,



Jeremy Rogers, Director of Legal Affairs and Public Policy  
 Oregon REALTORS®  
[jrogers@oregonrealtors.org](mailto:jrogers@oregonrealtors.org)

**On behalf of:**

Oregon Bankers Association  
 Oregon Business and Industry  
 Oregon Concrete and Aggregate Producers Association  
 Oregon Farm Bureau  
 Oregon Forest Industries Council  
 Oregon Home Builders Association  
 Oregon Manufacturers and Commerce  
 Oregon Property Owners Association  
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