Cottage Grove City Council
Work Session Minutes
June 27, 2016

## CALL TO ORDER

Mayor Thomas Munroe called the meeting to order at 6:00 pm in the Council Chambers at City Hall.

## ROLL CALL

**COUNCIL PRESENT:** Mayor Thomas Munroe, City Councilors Kenneth Michael Roberts, Jake Boone, Jeff Gowing, Garland Burback, Amy Slay and Mike Fleck

**ABSENT:** None

**STAFF PRESENT:** City Manager Richard Meyers, City Recorder Trudy Borrevik, Community Development Director Howard Schesser, City Planner Amanda Ferguson and Finance Director Roberta Likens

**MEDIA PRESENT:** None

Community Development Director, Howard Schesser and City Planner, Amanda Ferguson, briefed the Council on the Floodplain Mapping Project, the Biological Habitat Opinion and the Flood Damage Prevention Code Update. (See Exhibit "A" attached).

Howard said he and Amanda attended a meeting this afternoon regarding the biological opinion, part of which was mapping. He said it wasn't only re-mapping not only the flood areas, but channel migration, erosion zones and habitat. He said Cottage Grove's project was on-hold at this time.

Councilor Fleck asked about a comment Howard made regarding taking steps to not cause further harm and what was meant by "harm" and asked for an example.

Howard said building and bringing fill in along the river in order to build a subdivision or house, and filling an area that used to be part of a floodplain where fish habitat occurred.

Councilor Burback said his house was in the greenway and asked if he wanted to do upgrades, even though they weren't in the floodplain, would he have to go through all the steps as if his house were in the floodplain.

Howard said it was only applicable to houses in the floodplain. He said just because someone didn't have to have flood insurance didn't mean they weren't in the floodplain. He said if someone didn't have a federal mortgage they weren't legally required to have flood insurance.

Councilor Burback asked about trees on his property and if they had to report it if beavers were chewing down trees on his property. He also asked what had to be done if large fir trees on his property fell into the river.

Howard said the City had relocated some beavers that were nuisances with the help of a trapper and said there was a process to go through. He said as far as the trees falling into the river, Oregon Fish and Wildlife said to leave them in the river. He said it depended on the size and flow of the river.

Discussion was held on when permits were required and by which government agency.

Amanda said she and Howard had attended a class, taken the test and were now Certified Floodplain Managers. She said as part of that training they realized that the City's Code was out of date. She said staff was recommending that the City change the current Floodplain Development Code and replace it entirely with a new section entitled Flood Damage Prevention. She outlined the process that had been taken to date to change the Code.

There being no further business, Mayor Munroe adjourned the meeting at 6:52 pm.

Trudy Borrevik, City Recorder

Thomas C. Munroe, Mayor

# City Council Floodplain Worksession Agenda

1. **Overview**

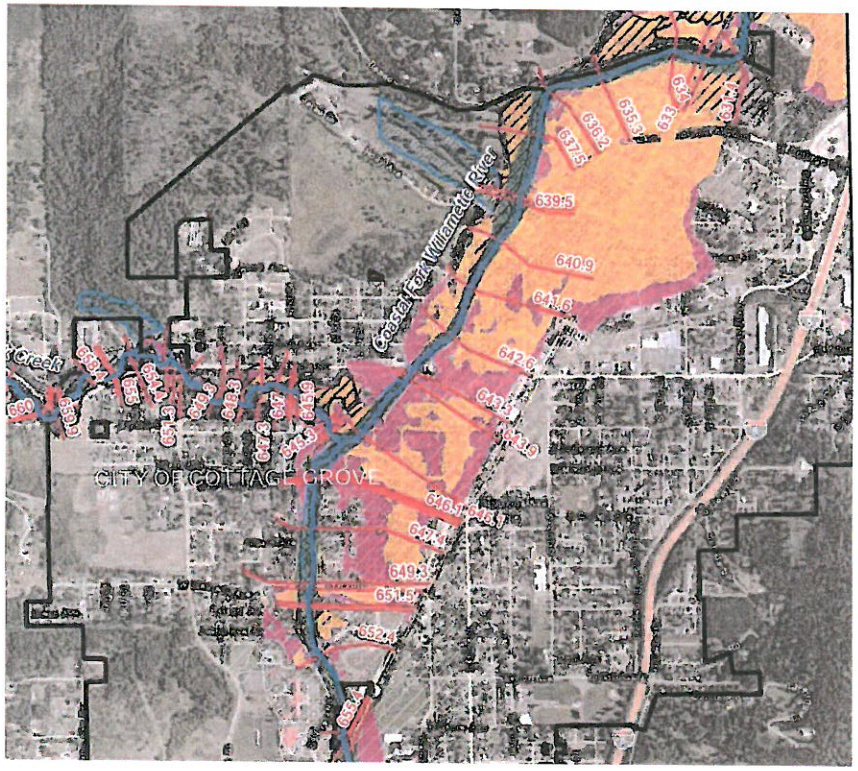
2. **Floodplain Mapping Project**

3. **National Flood Insurance Program Environmental Species Act Consultation Briefing – Oregon Critical Biological Habitat Opinion (BiOp)**
   - **1. How we got here**
   - **2. Reasonable and Prudent Alternative**
   - **3. Implementation – Future Actions**

4. **Step One - Flood Damage Prevention Code Update**

# Floodplain Mapping Project

**EXAMPLE ONLY – NOT FOR OFFICIAL USE**




Flood risk can, and does, change over time. Flood risks change for many reasons: new development, more accurate elevation information, and environmental changes, to name a few.

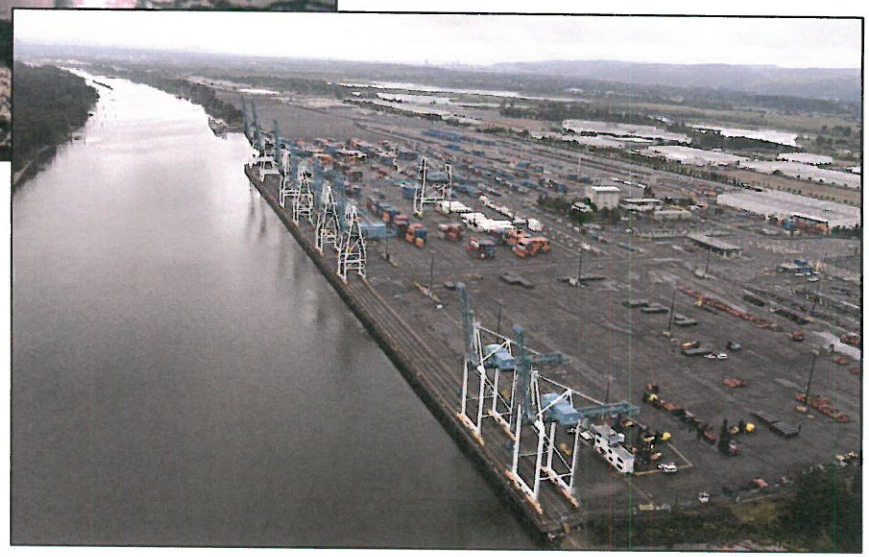
As a result FEMA is updating flood hazard maps across the country. These new flood maps, also known as Digital Flood Insurance Rate Maps (DFIRMs), show flood risk at a property-by-property level.

Cottage Grove's FIRMS have been in the pipeline for updating since before 2012.

In September 2014 staff was shown preliminary maps which changed the floodplain. Staff objected to the maps as LiDAR was not used. City and other partners flew LiDAR in late 2014. FEMA was requested to use our LiDAR..

Project for Cottage Grove is 'on-hold' at this time.

# National Flood Insurance Program ESA Consultation for



## OREGON

# Abbreviations to Know

**FEMA** Federal Emergency Management Agency

**NOAA Fisheries** National Oceanic & Atmospheric Administration Fisheries Service (Also known as National Marine fisheries service or **NMFS**)

**NFIP** National Flood Insurance Program

**ESA** Endangered Species Act

**BiOp** Biological Opinion

**RPA** Reasonable and Prudent Alternative

NATIONAL FLOOD INSURANCE PROGRAM

FEMA

The **NFIP** aims to reduce the impact of flooding on private and public structures by:

- Providing affordable insurance to property owners and
- Encouraging communities to adopt and enforce floodplain management regulations.

# Endangered Species Act

http://www.firstpeople.us

Enacted in 1973 **"to halt and reverse the trend toward species extinction, whatever the cost"**.

US Supreme Court -Tennessee Valley Authority v. Hill, 437 U.S. 153, 184 (1978)

## Section 7: Federal consultation to avoid "jeopardy"

To cause **Jeopardy** is to take an action that is reasonably expected to diminish a specie's numbers, reproduction, or distribution so that the likelihood of survival and recovery of the population in the wild is appreciably reduced.

## Section 9: Take Prohibitions

To harass, **harm**, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

**Harm** – Includes significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering

When impacts to salmon are not addressed, floodplain development can result in **harm/take/jeopardy**

In 2004 a US District Court in the State of Washington forced FEMA into consultation with NOAA Fisheries

Case 3:09-cv-00729-HA Document 20 Filed 07/09/10 Page 1 of 10 Page ID#: 86

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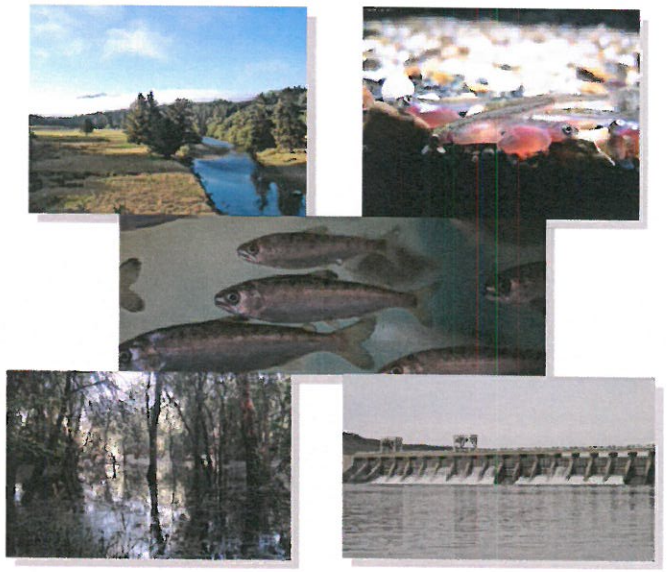
**UNITED STATES DISTRICT COURT**
**DISTRICT OF OREGON**

| | |
|---|---|
| **AUDUBON SOCIETY OF PORTLAND, NATIONAL WILDLIFE FEDERATION, NORTHWEST ENVIRONMENTAL DEFENSE CENTER, ASSOCIATION OF NORTHWEST STEELHEADERS,** **Plaintiffs,** v. **FEDERAL EMERGENCY MANAGEMENT AGENCY,** **Defendant.** | **CASE NO. 3:09-cv-729-HA** **SETTLEMENT AGREEMENT AND [PROPOSED] ORDER** |

Plaintiffs, Audubon Society of Portland, National Wildlife Federation, Northwest Environmental Defense Center, and Association of Northwest Steelheaders, and Defendant, the Federal Emergency Management Agency ("FEMA"), by and through their undersigned counsel, state as follows:

WHEREAS, FEMA is the federal agency charged with administering the National Flood Insurance Program ("NFIP"), a federal flood insurance program created by Congress in 1968,

SETTLEMENT AGREEMENT AND [PROPOSED] ORDER 3:09-cv-729-HA



**Program Level Biological Assessment**
*for the*
**National Floodplain Insurance Program**

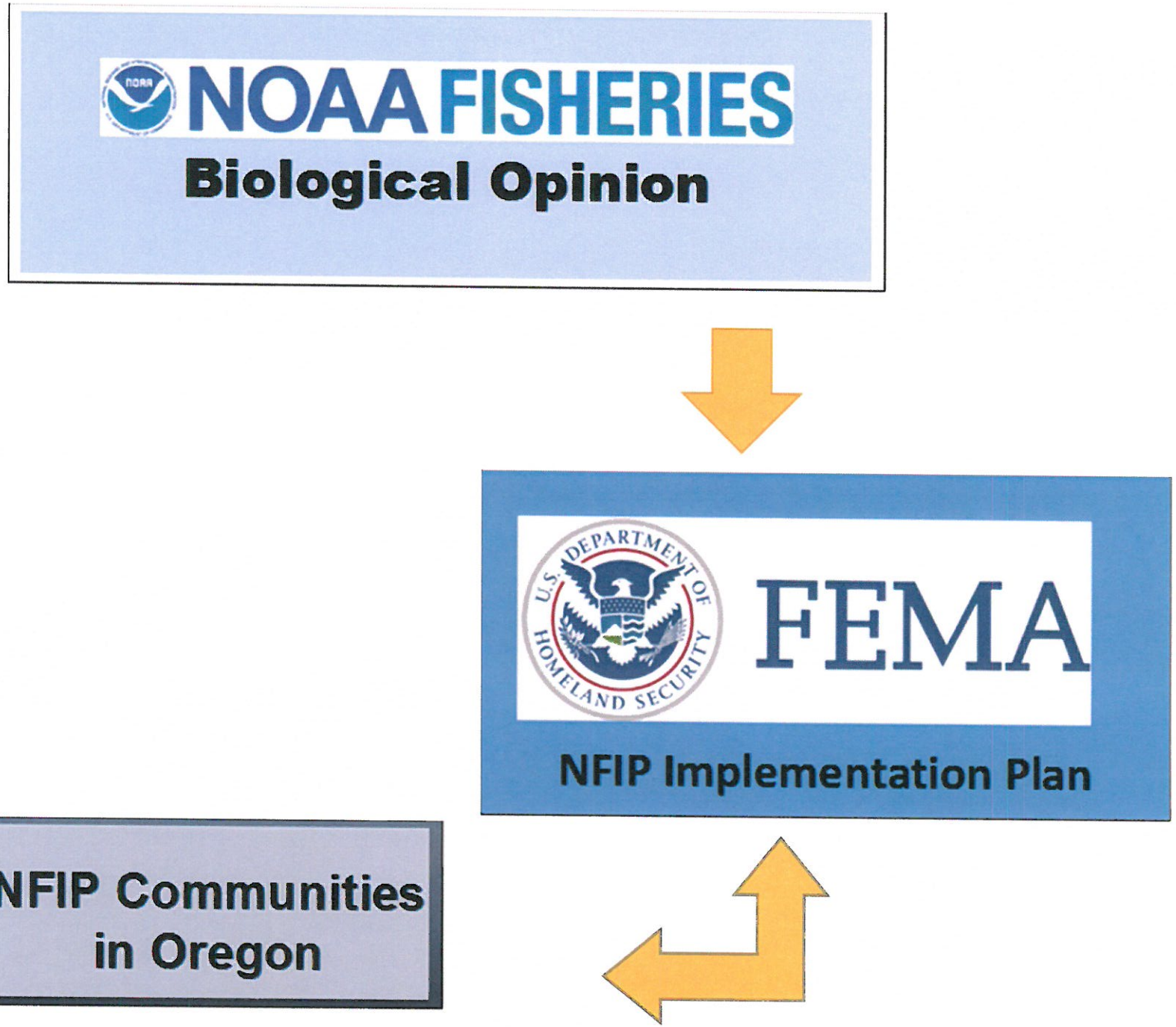
**Oregon State**

February 2013

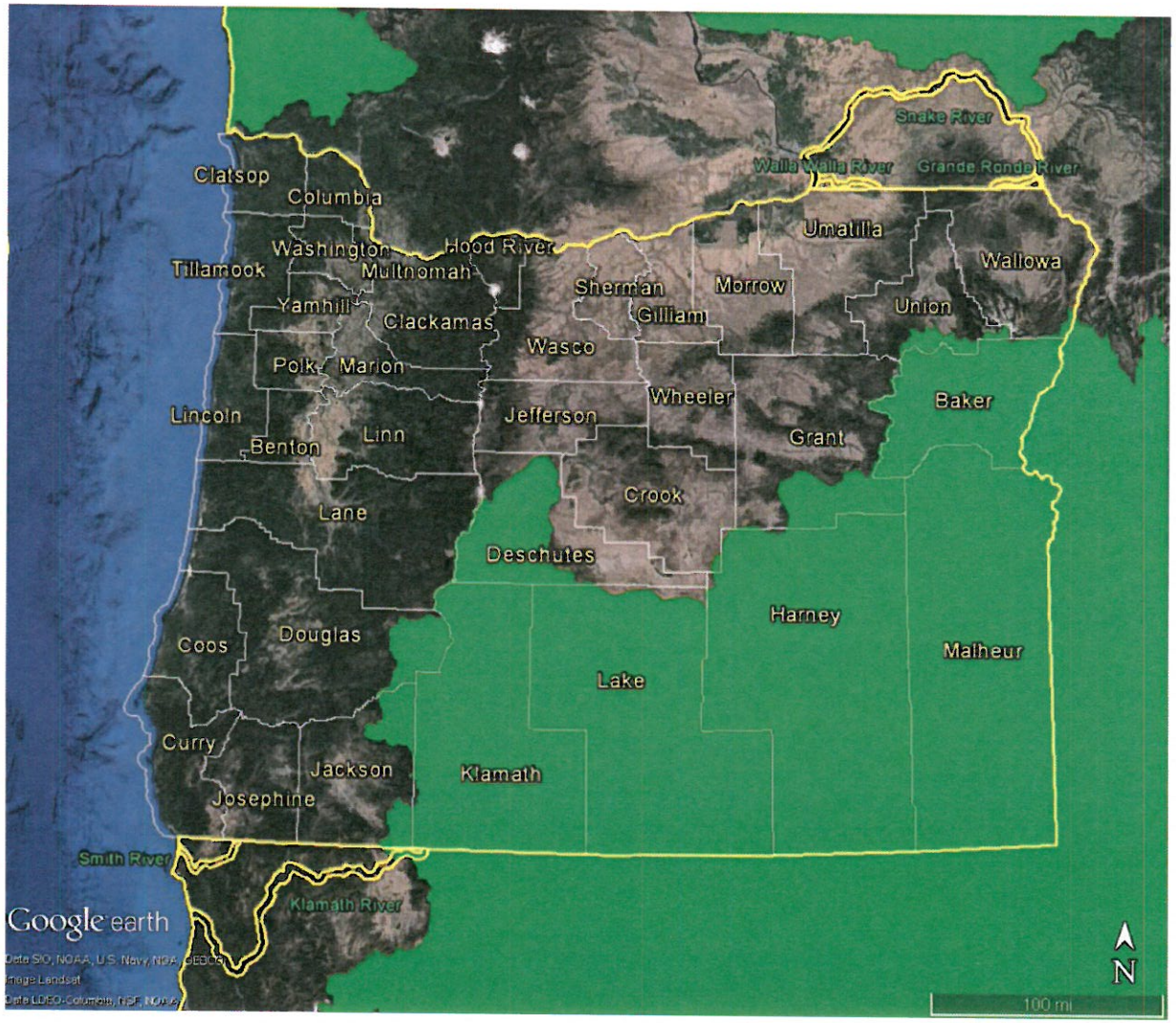
FEMA

U.S. Department of Homeland Security
FEMA Region X
130 228th Street SW
Bothell, WA 98021

Consultation begins in Oregon


NOAA FISHERIES
Biological Opinion
FEMA
NFIP Implementation Plan
NFIP Communities in Oregon

# Biological Opinion on the NFIP issued on April 14, 2016



# Summary of Biological Opinion on The NFIP in Oregon, Reasonable and Prudent Alternative (RPA)

- Element 1. **Notice, Education, and Outreach**
- Element 2. **Interim Measures**
- Element 3. **Mapping Flood and Flood-Related Hazard Areas**
- Element 4. **Floodplain Management Criteria**
- Element 5. **Data Collection and Reporting**
- Element 6. **Compliance and Enforcement**

**FEMA** **FEMA + NFIP Communities**

## Element 1. **Notice, Education, and Outreach**

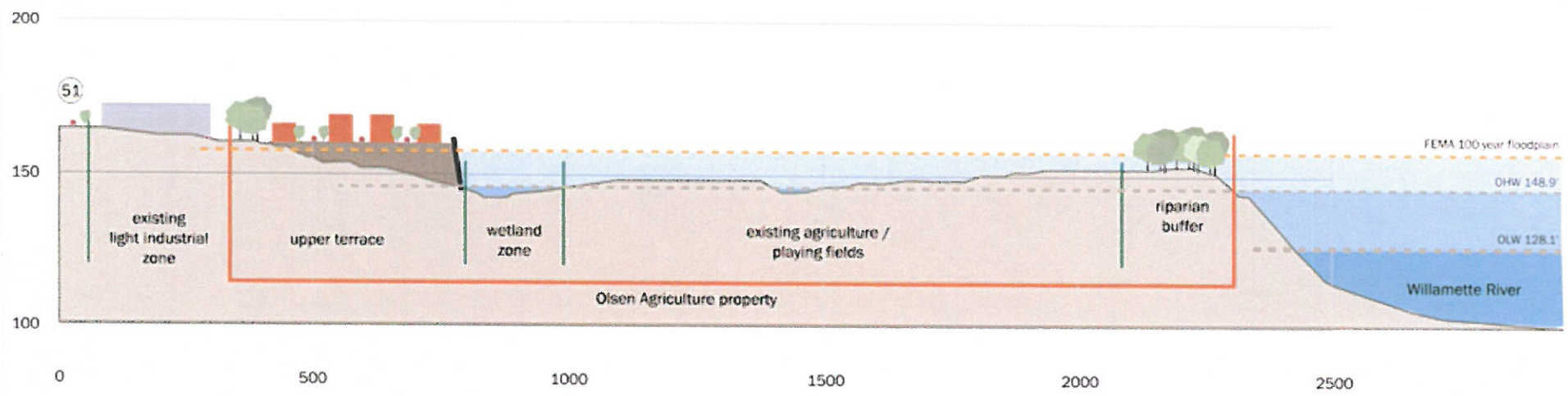
- FEMA to develop education and outreach strategy
- FEMA to send notice to affected counties and cities within 60 days of the Biological Opinion informing them of the results of the consultation and its objectives. The letter to the Mayor has been received.
- FEMA, with DLCD assistance, will hold regional workshops shortly after the letter is sent. This is underway. Staff attended a meeting in Albany today.

# RPA Elements that Involve NFIP Communities

- Element 2. **Interim Measures**
- Element 5. **Data Collection and Reporting**

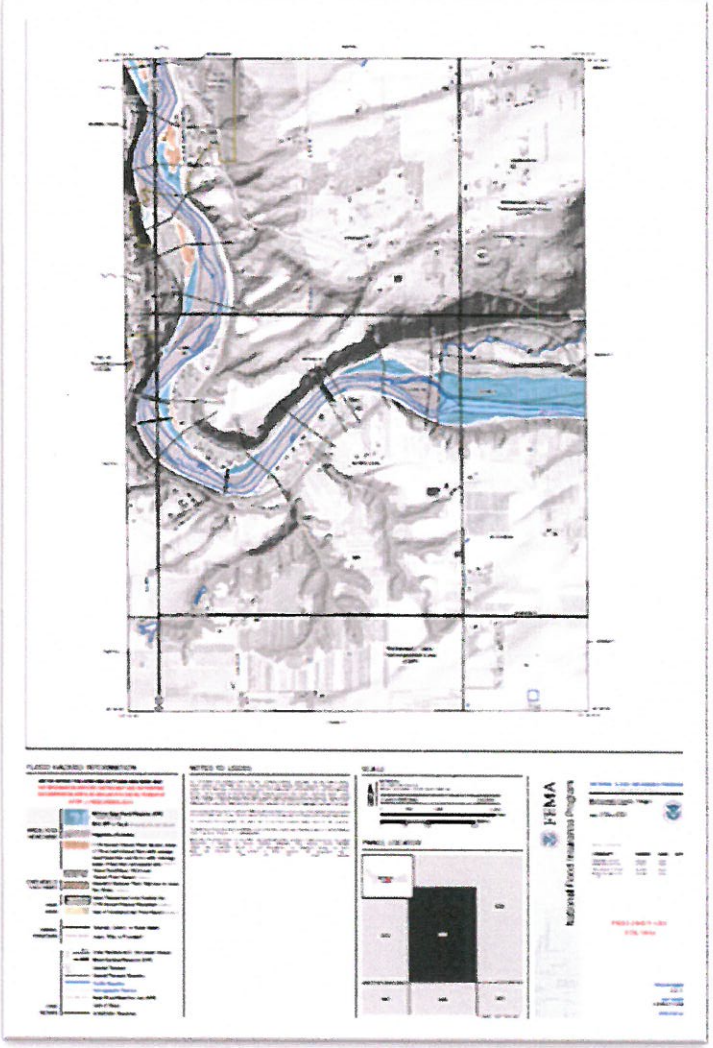
And after significant work by FEMA,

- Element 4. **Floodplain Management Criteria**



# Significant FEMA Actions Required before Implementation

- Element 1. **Notice, Education, and Outreach**
- Element 3. **Mapping Flood and Flood-Related Hazard Areas**
- Element 4. **Floodplain Management Criteria**
- Element 6. **Compliance and Enforcement**



# Assistance for NFIP Communities

- Model code
- Guidance documents
- Grants for local code adoption
- Individual technical assistance

# Path to Implementation

## Local Permitting Standards

- Determine regulatory changes needed to comply with ESA
- Provide sufficient time for communities to implement new NFIP requirements
- Provide training and guidance
- Offer technical assistance
- Compliance and enforcement

CITY OF COTTAGE GROVE

# Flood Damage Prevention Code Update

# Basic Terms

- **Base Flood:** 1% annual chance of flood
- **Base Flood Elevation (BFE):** the calculated level flood waters will reach during a base flood
- **Special Flood Hazard Area (SFHA):** area inundated by the 1% annual chance flood
- **Regulatory Floodway:** channel of river that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

# What are we doing?

The Community Development Department is recommending changes to our current

Floodplain Development Code

(Development Code Chapter 14, Section 3.7.200).

We accepted comments on the current draft from January 5 - February 19, 2016.

Public Hearings will run through May and June.

# Why are we updating the code?

- Compliance with current NFIP requirements
- Compliance with new state and federal regulations, Executive Orders, and insurance requirements
- Introduce elements into code to increase our Community Rating System (CRS) rating

# National Flood Insurance Program

- Created in 1968 to reduce flood-related disaster costs to the US Government
  - Managed by FEMA
  - Flood insurance available in exchange for local floodplain management
  - Purchase of flood insurance mandatory when building is located in the Special Flood Hazard Area (1973 inform)
  - Initially, FEMA subsidized premiums for older properties (Pre-Firm, built before first flood insurance rate maps issued to a jurisdiction) to encourage purchase of flood insurance

# Local Requirements under NFIP

- Require permits for all floodplain 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 located within the area of special flood hazard*).
- New construction and substantial improvements must use specific measures (e.g., elevation, anchoring, floodproofing, installation of flood vents, breakaway walls, etc.) to avoid or reduce flood damage.
- Elevation and Floodproofing Certifications for new development and substantial improvements to existing development.

# Local requirements (cont'):

- Prohibit encroachments in floodway if there would be any increase in flood levels.
- Ensure applicant obtains required state and federal permits (CLOMR, wetland fill permits, permits for work in navigable waterways, etc.).
- Maintain permit records and related materials and ensure that these documents are available for public, state, and FEMA inspection.
- Educate local citizens about local flood hazards and local floodplain regulations.

# Community Rating System:

- Adoption and enforcement of ordinances that exceed minimum NFIP standards may be credited by the NFIP's Community Rating System (CRS). Community participation in the CRS program can save individual property owners between 10-30% on their flood insurance.

# Current Circumstances:

- Under 200 properties within SFHA in Cottage Grove
- Only @60 current policies in Cottage Grove
- Community Development Director is our Floodplain Manager.
- Both Community Development Director and City Planner are Certified Floodplain Managers.
- City's code last updated in 2005
- Cottage Grove does not currently participate in the CRS.
- New BiOp triggers requirements by Sept. 2016.

# New Flood Damage Prevention Code

- Uses Oregon 2012 Model Flood Damage Prevention Code.
- Brings City into compliance with current version of Executive Order 11988.
- Applicable to development within Special Flood Hazard Areas <u>only.</u>

# New elements of code from 2012 Model:

- Expanded definition section.
- Compliance with Oregon Specialty Codes.
- Clarified floodplain development permit process:
  - addition of Type II process for Floodplain Delineation
  - Type III variance procedure
  - permits for accessory structures
- Requirement of CLOMR if using more than 50 cubic yards of fill, alteration of watercourse, or modification of BFE/floodway proposed (FEMA requirement).
- Requirements for Enclosed Areas below the Lowest Floor, Below Grade Crawlspaces, Tanks, and Fences (building code requirements).

# Where our code diverges from the Oregon 2012 Model Code:

- **Additional explanation of Substantial Improvement projects.**
- **Enhanced protection of regulatory Floodway**, including:
  - Limits on creation of new lots within floodway and entirely within SFHA
  - No new encroachments in regulatory Floodway unless temporary for capital improvement projects, for stream habitat restoration, or for water-dependent uses.
  - No new essential facilities in regulatory Floodway (based on revised Executive Order 11988).
- **Two (2) foot Free Board** *(distance lowest floor elevation must be elevated above Base Flood Elevation or BFE)* rather than one (1) foot Free Board, to bring City into compliance with revised Executive Order 11988 (and BiOp).
- **CLOMR required for fill** (BiOp requirement).

# Steps to Adoption:

- Public Comment period, January 4-February 19th
- State/Federal Review of final draft, March 2016
- First Planning Commission Public Hearing, May 18, 2016
- City Council Worksession, June 27, 2016
- City Council Public Hearing, July 25, 2016
- Community Rating System application, fall, 2016