

Habitat Restoration in the Floodway: FEMA's rescindment of the Fish (Habitat) Enhancement Structures Regional Policy... what now?

FEMA Region 10 & State of Oregon Department of Land Conservation and Development (DLCD)



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DLCD



Overview

- FEMA's National Flood Insurance Program (NFIP)
 - floodplain mapping,
 - Floodplain management (regulation),
 - Flood insurance
- Connection between the ESA and the NFIP
- FEMA Region 10 Fish Enhancement Structures Policy

An aerial photograph of a coastal town, likely in New England, featuring a large marina filled with sailboats, a church with a prominent steeple, and a dense forest of green trees. The entire image is overlaid with a semi-transparent blue filter. The text "National Flood Insurance Program" is centered in white, bold font.

National Flood Insurance Program



National Flood Insurance Program (NFIP)

- Federal program that provides flood insurance to participating communities
- To participate, local communities agree to enforce minimum NFIP standards
- Private insurers write the policies based on an agreement with the Federal Government



Purpose of the NFIP

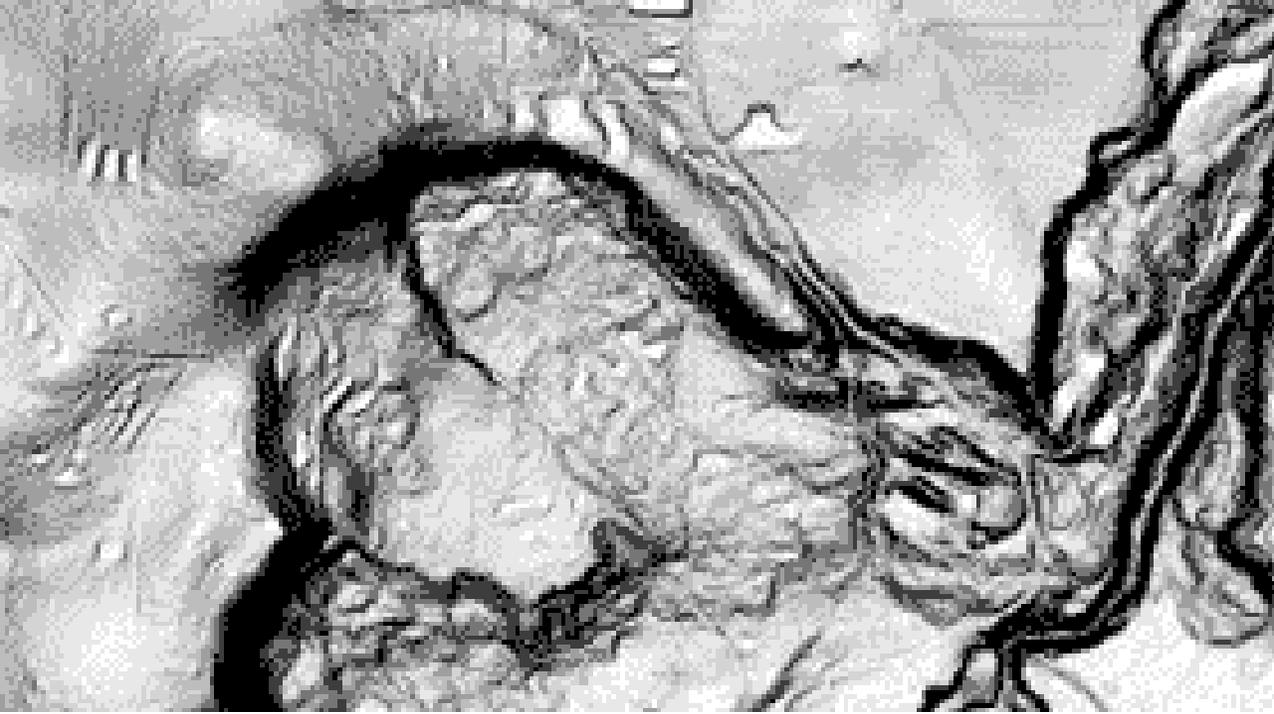
- Reduce emphasis on flood control; increase emphasis on floodplain management
- Reduce Federal disaster costs; shift burden from general taxpayers to floodplain occupants
- Provide insurance coverage not generally available on the private market



Photo: Floodplains by Design

Focus of Floodplain Management Regulations is the Built Environment

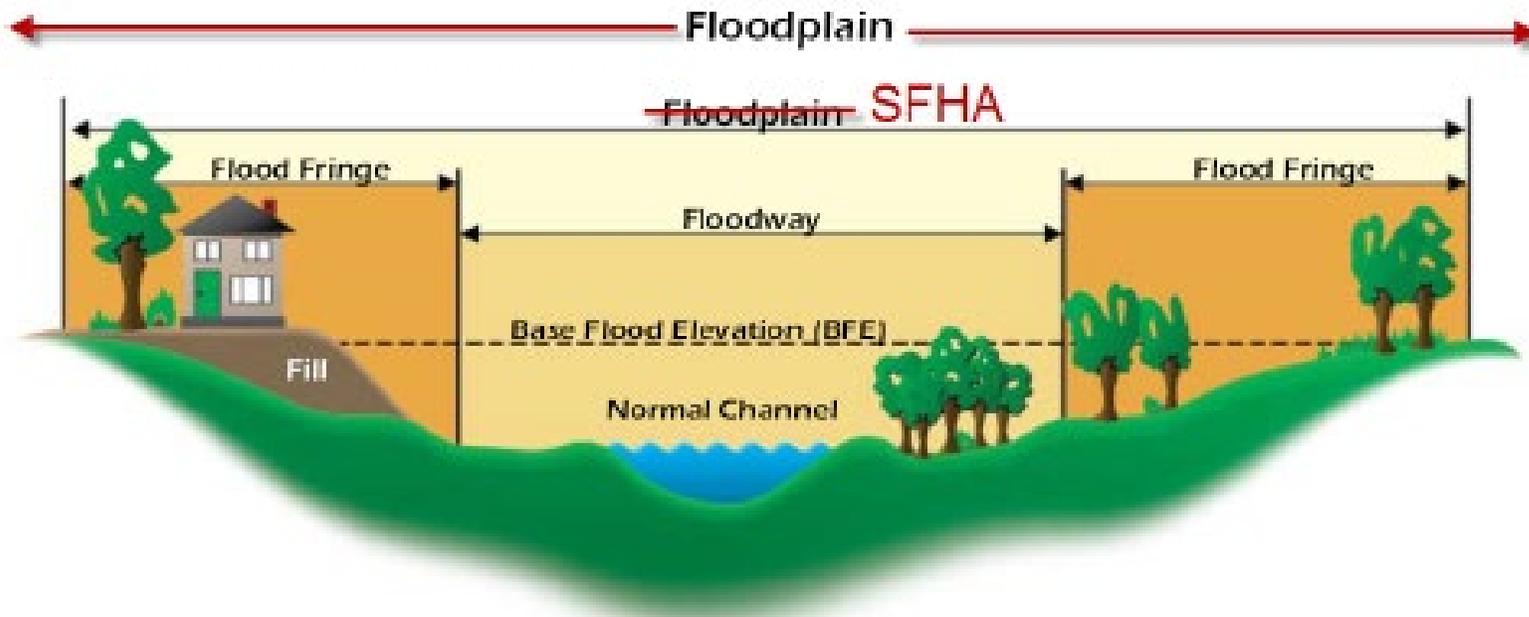
- Floodplain management regs focus on health & safety
- Standards focus on structures, fill, excavation, grading, and other development activities
- Insurance focused on structures
- Maps are static, slow to change



Floodplain Mapping:

What is a Floodplain Under the NFIP?

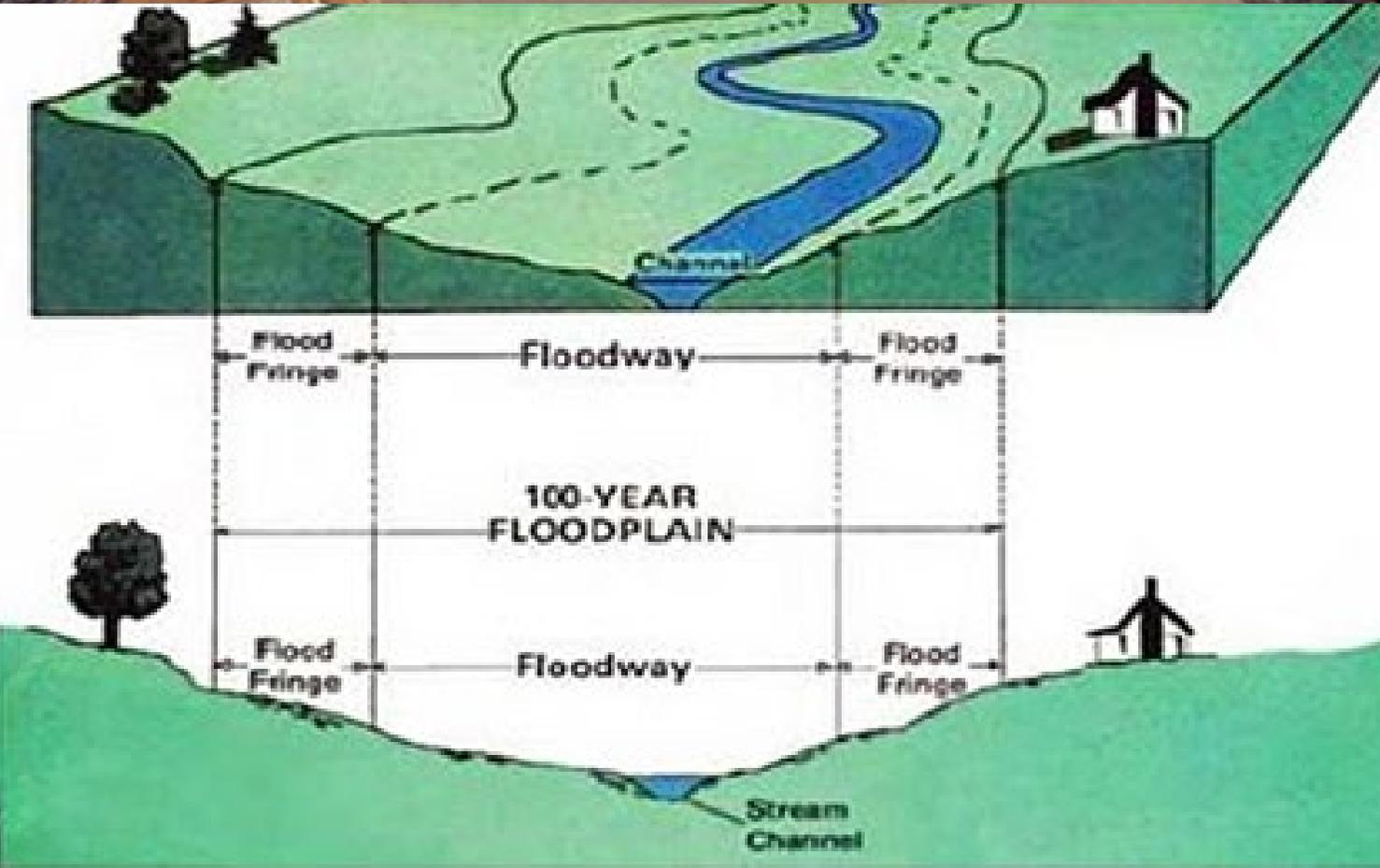
- Under the NFIP the floodplain area that is regulated is called the Special Flood Hazard Area (SFHA) and this includes the 1%-annual-chance floodplain (100 year floodplain) and the floodway.

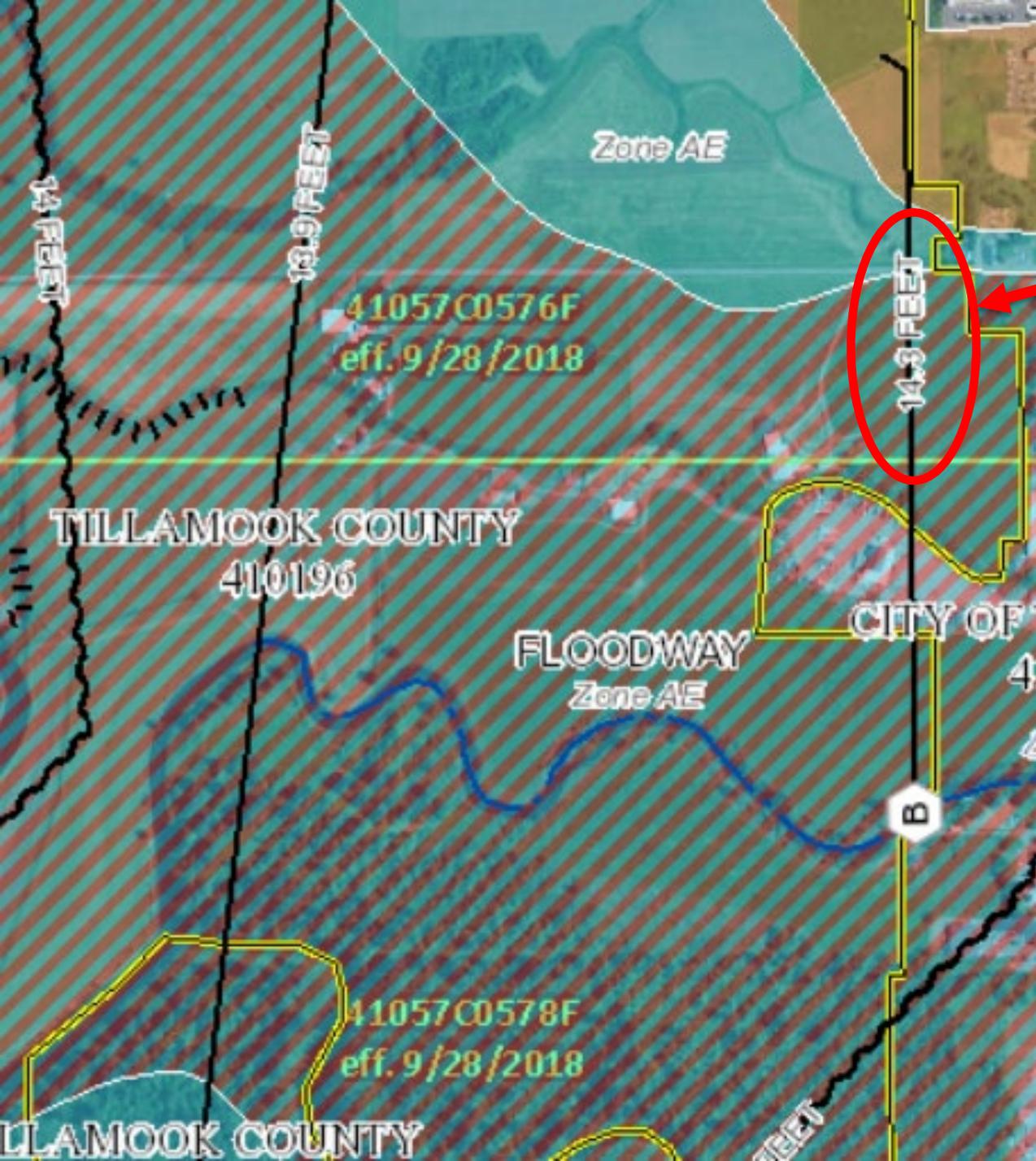




What is a Floodway Under the NFIP?

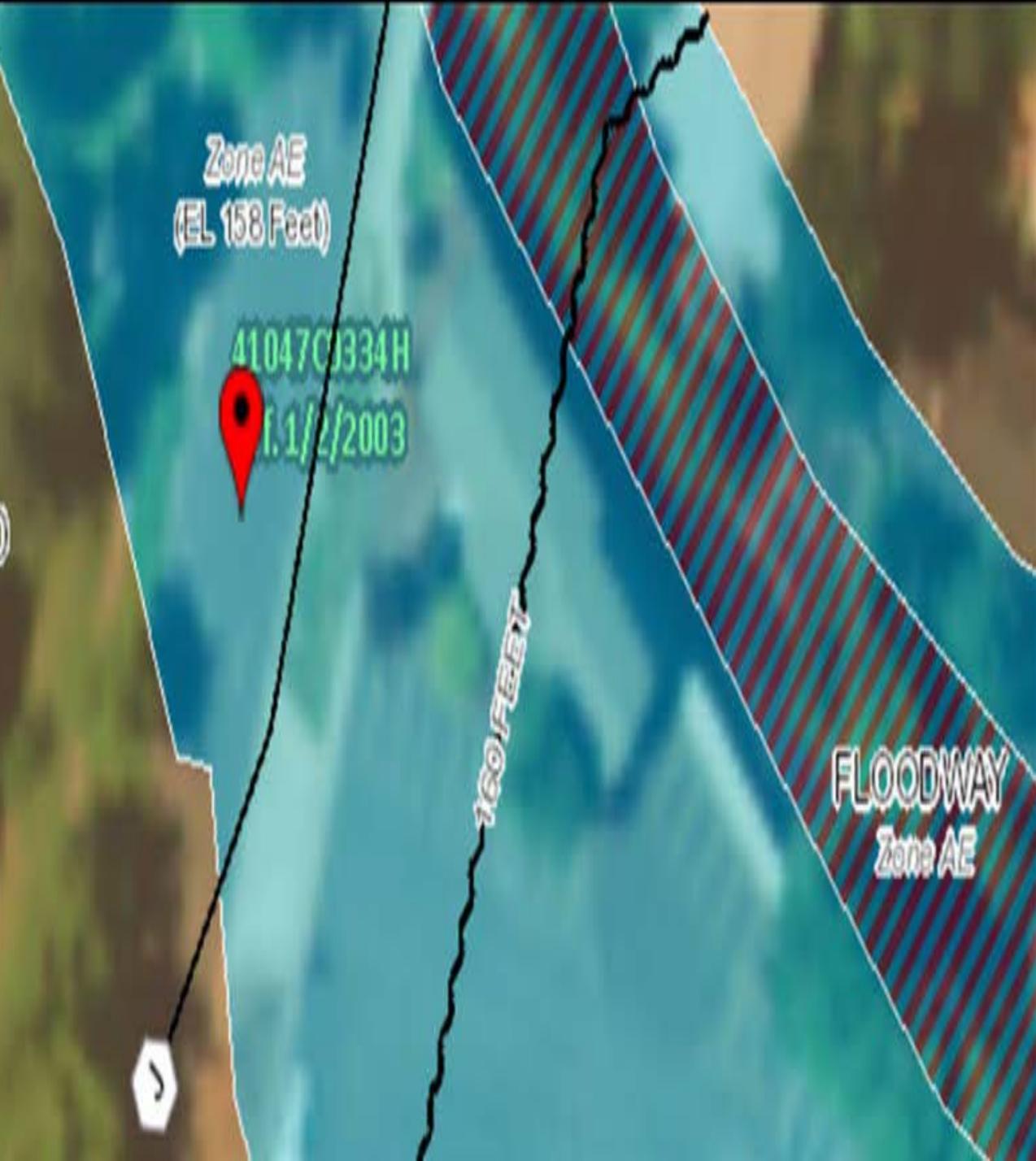
- Channel of the river and portion of the floodplain reserved to convey the 1% annual flood
- Velocities are the greatest
- Regulations strive to keep floodways open





What is a Base Flood Elevation?

- Height of the flood water in a 1%-annual-chance flood event (“100 year” flood event).
- Often referred to as the “100 year” flood elevation.
- The expected elevation of the crest of the base flood “100 year flood”



Floodplain Mapping Information

Available online:

- FEMA Map Service Center:
<https://msc.fema.gov/portal/search>
- National Flood Hazard Layer:
<https://www.fema.gov/national-flood-hazard-layer>
 - Some communities only have paper maps (digital information is not available)
 - Paper maps are available online as PDFs



Floodplain Management:

Floodplain Regulations

- Local communities have regulatory authority.
- Communities must regulate development activity within the FEMA mapped Special Flood Hazard Areas (SFHA) (100 year floodplain and floodway) to remain in compliance with the NFIP.
- Communities are required to adopt the minimum standards of the NFIP (44 CFR 60.3)
- Local communities can also adopt higher standards (additional limitations), so floodplain regulations may vary by community.



Permitting Requirements

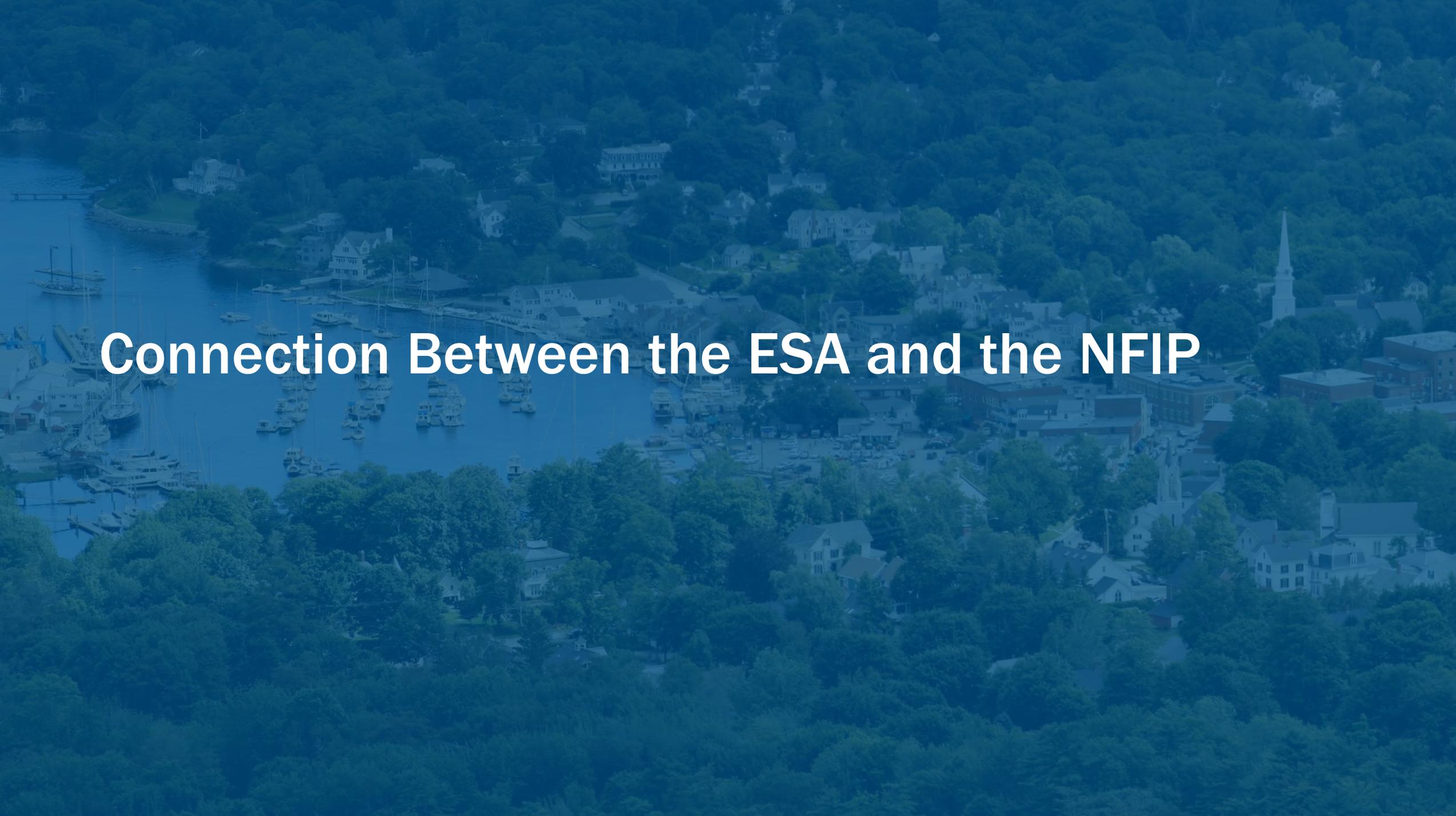
- Under the NFIP local communities must require permits for development within the SFHA (regulatory floodplain/floodway).
- In some flood zones additional engineering analysis is required.
 - If development will occur within the floodway then an engineering analysis is required to determine if there will be a rise in BFE due to the project (no-rise analysis).



Is NFIP Participation Mandatory?

No, however, there are ramifications of non-participation:

- Federal flood insurance not available
- Loans from federally-backed institutions may not be made on structures in SFHA
 - Federally backed institutions are required to ensure there is flood insurance coverage for any structures in the regulatory floodplain.
- Federal grants to repair insurable buildings in SFHA not available

An aerial photograph of a coastal town, likely in New England, featuring a large marina filled with numerous sailboats and yachts. The town is built on a hillside, with a mix of residential houses and larger commercial buildings. A prominent church with a tall steeple is visible on the right side. The surrounding area is densely forested with green trees. The entire image is overlaid with a semi-transparent blue filter.

Connection Between the ESA and the NFIP



Endangered Species Act (ESA)

Purpose:

To protect and recover imperiled species and the ecosystems on which they depend



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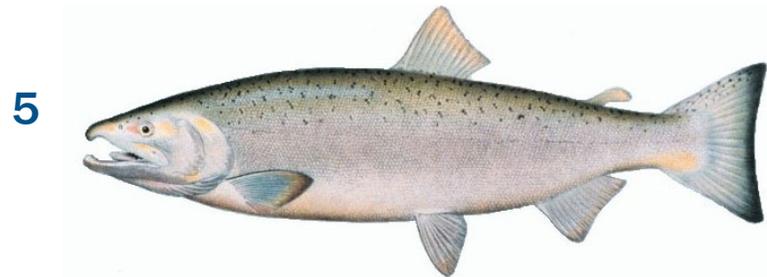
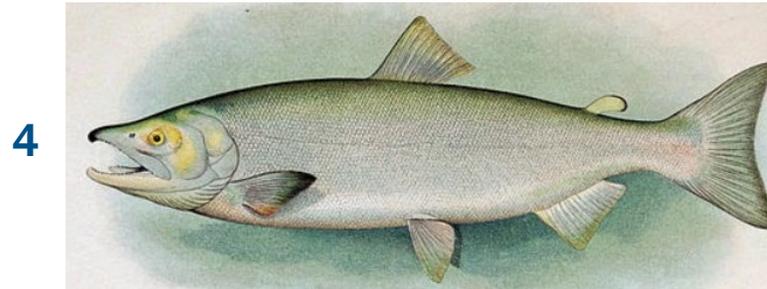
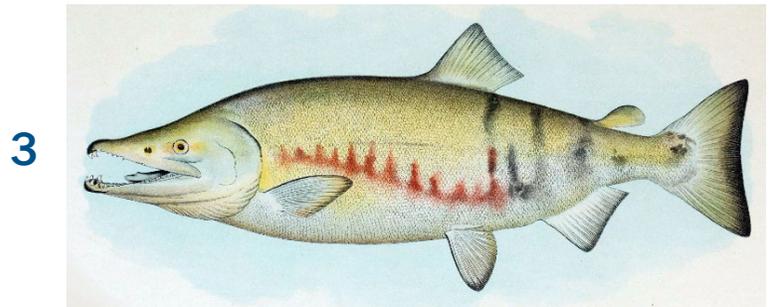
ESA Section 7

- Applies to federal agencies
- The National Flood Insurance Program (NFIP) is a voluntary program, but participation requires that communities meet standards



44 CFR § 60.3(a)2 –
floodplain permits must be
obtained & comply with ESA

Threatened & Endangered Species – Oregon Biological Opinion



1. Chinook
2. Steelhead
3. Columbia River Chum
4. Snake River Sockeye
5. Coho
6. Southern Eulachon
7. Southern Resident Orca



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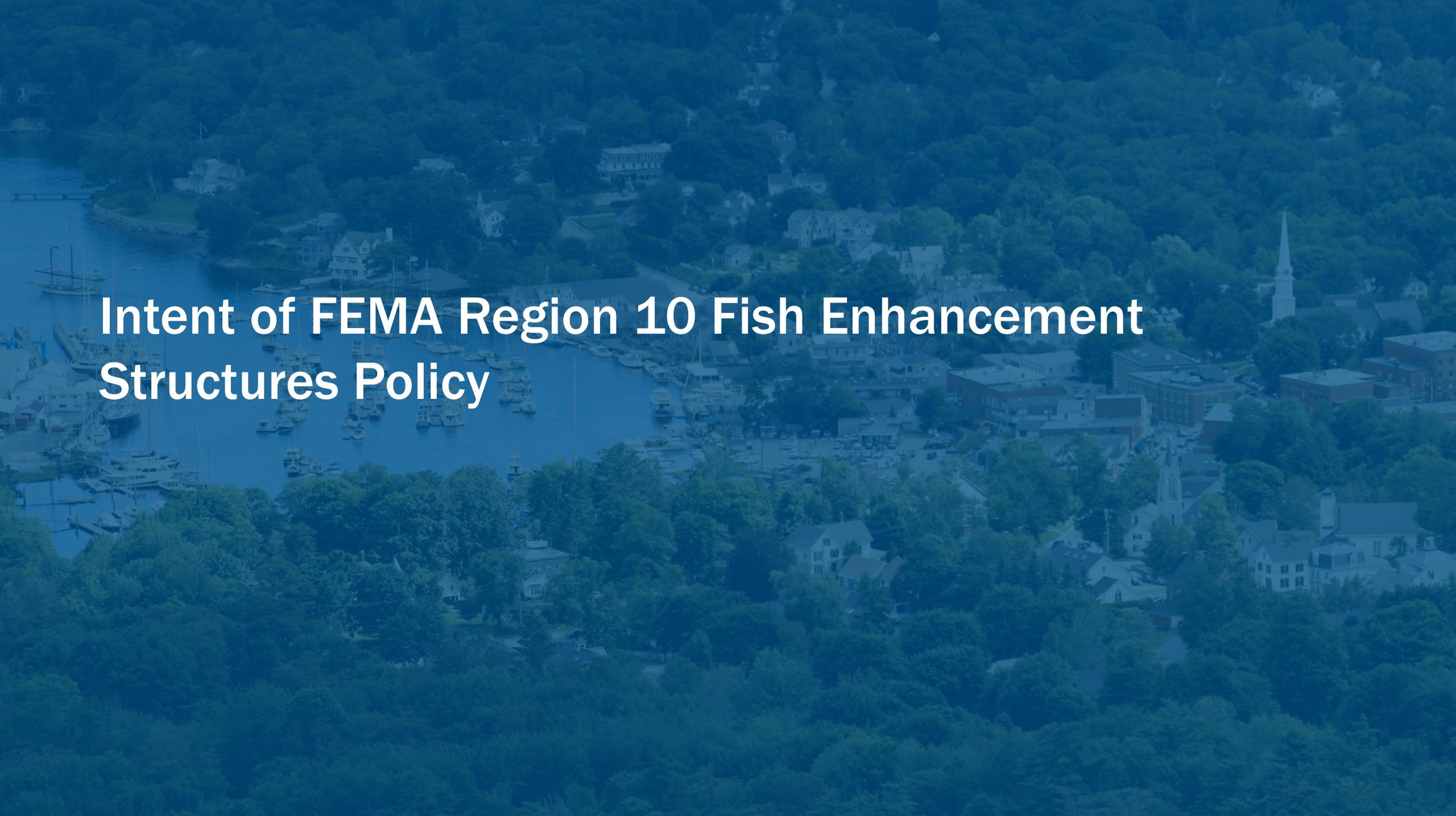
Ongoing Stakeholder Engagement & Implementation Planning



Visit oregonnfip.org for:

- Webinar recordings
- Stakeholder feedback summaries
- Background resources
- Feedback opportunities



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Intent of FEMA Region 10 Fish Enhancement Structures Policy



What the policy intended to do

- Serve as FEMA's recognition of the proposed listing of Pacific Northwest salmonids (issued in 1999)
- Ensure that FEMA was not a hindrance to the completion of habitat restoration / fish habitat enhancement projects
- Support communities by allowing a rise in the floodway for fish habitat restoration / enhancement projects



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What the policy didn't do

- Waive federal regulations outlined in the Code of Federal Regulations
 - 44 CFR 60.3(d)(3) and (d)(4)
- Waive requirement for a hydrologic and hydraulic (H & H) analysis to determine a project effect on the BFE
- Change the requirements for completing a CLOMR prior to project approval and permitting

Regional offices do not have the authority to waive federal regulations

FEMA HQ requested that Region 10 rescind the policy, effective immediately (August 14, 2020)



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Can Habitat Restoration / Enhancement Projects Still Occur in the Floodplain?

- Yes, the following steps need to be followed and the project must comply with local floodplain regulations:
 - A floodplain permit is needed.
 - If the project is *in a mapped floodway*, then a hydraulic analysis is required to determine whether the project will result in an increase to the BFE.
 - If the project will cause the BFE to increase in the floodway, then a Conditional Letter of Map Revision (CLOMR) will be required.

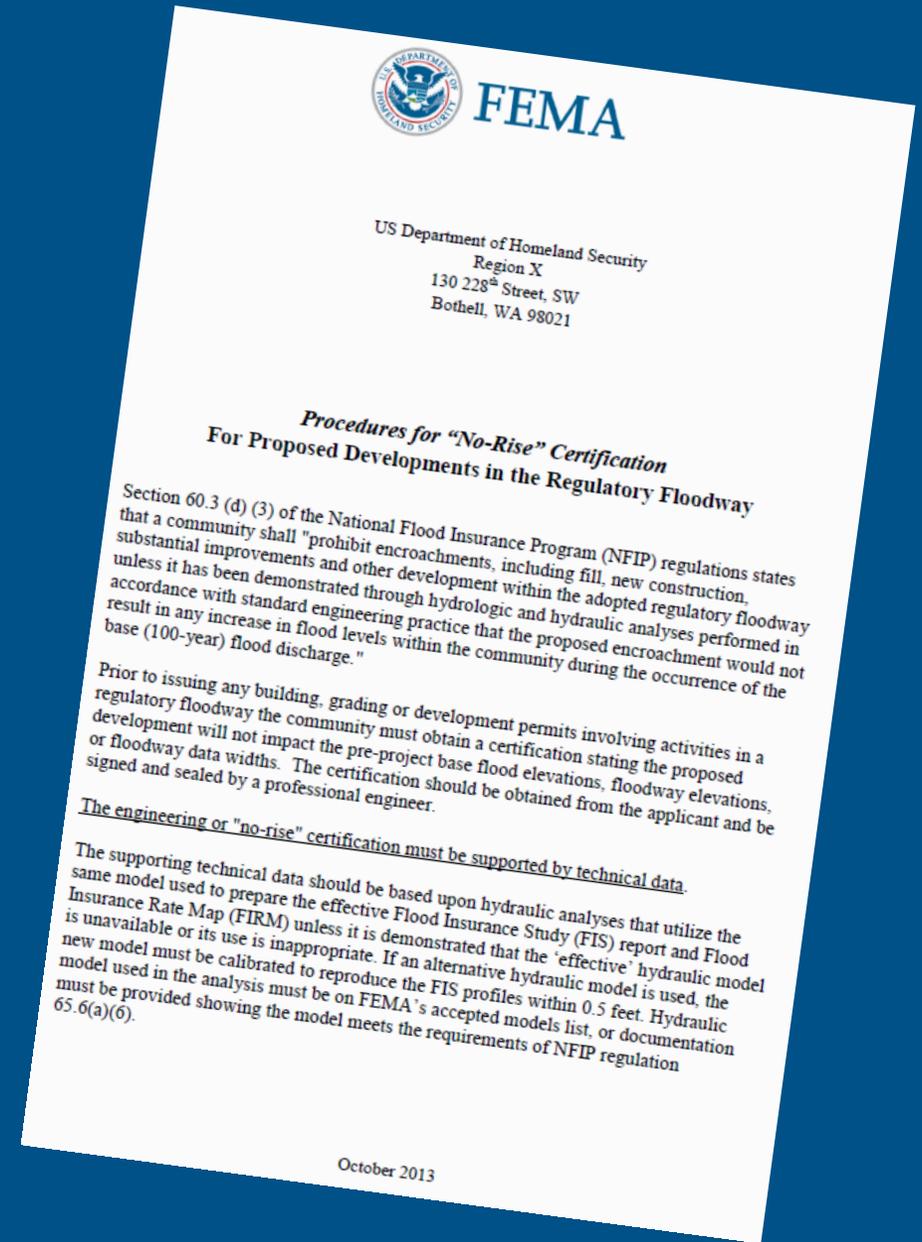


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Floodway Encroachment Analysis ("no-rise" analysis)

- Under 44 CFR 60.3(d)(3) a floodway encroachment analysis is required for any development within the floodway
- FEMA Region 10 has specific guidance for how to conduct a hydraulic analysis to determine whether a project will cause a rise to the BFE.
- Must be conducted by a licensed engineer
- Requires hydraulic modelling.



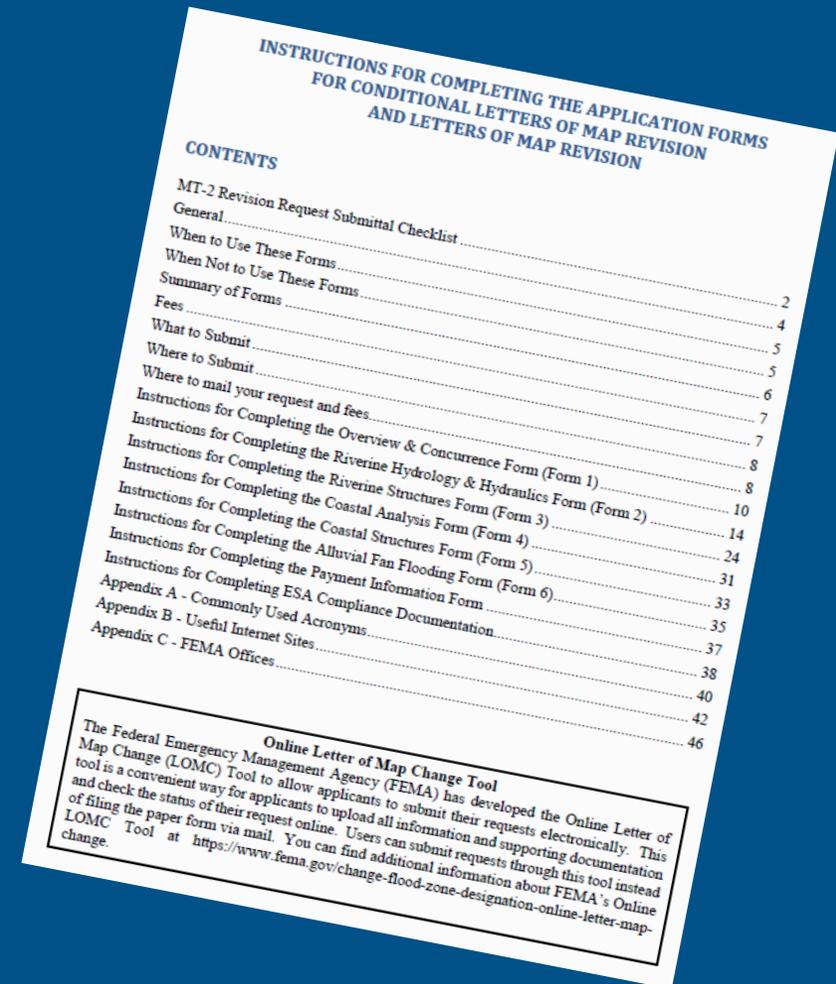
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Conditional Letter of Map Revision (CLOMR) Process

- Required if there is an increase in the BFE within a floodway
- MT-2 form
- Submit hydraulic models for review
- Property owner notifications of rise to BFE
- Up to 90 days for review upon submittal, further review if additional data needed

<https://www.fema.gov/flood-maps/change-your-flood-zone/paper-application-forms/mt-2>



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Habitat Restoration

- CLOMR application fees waived for projects meeting definition of “habitat restoration” under the Homeowner Flood Insurance Affordability Act (HFIAA) of 2014
 - Must be partially funded by federal or state funds
- Still other costs associated with completing CLOMR

as defined in the Partners for Fish and Wildlife Act, 16 USC § 3772 (5):

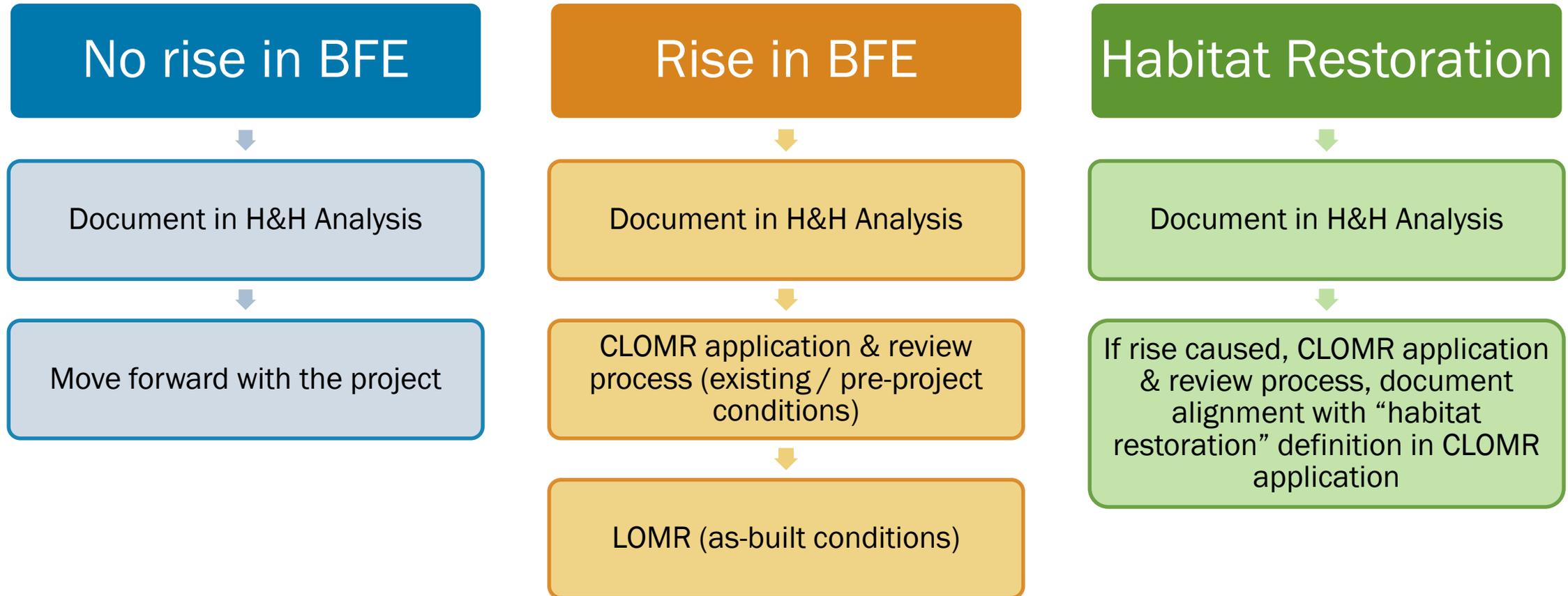
“...the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning the majority of natural functions to the lost or degraded native habitat.”



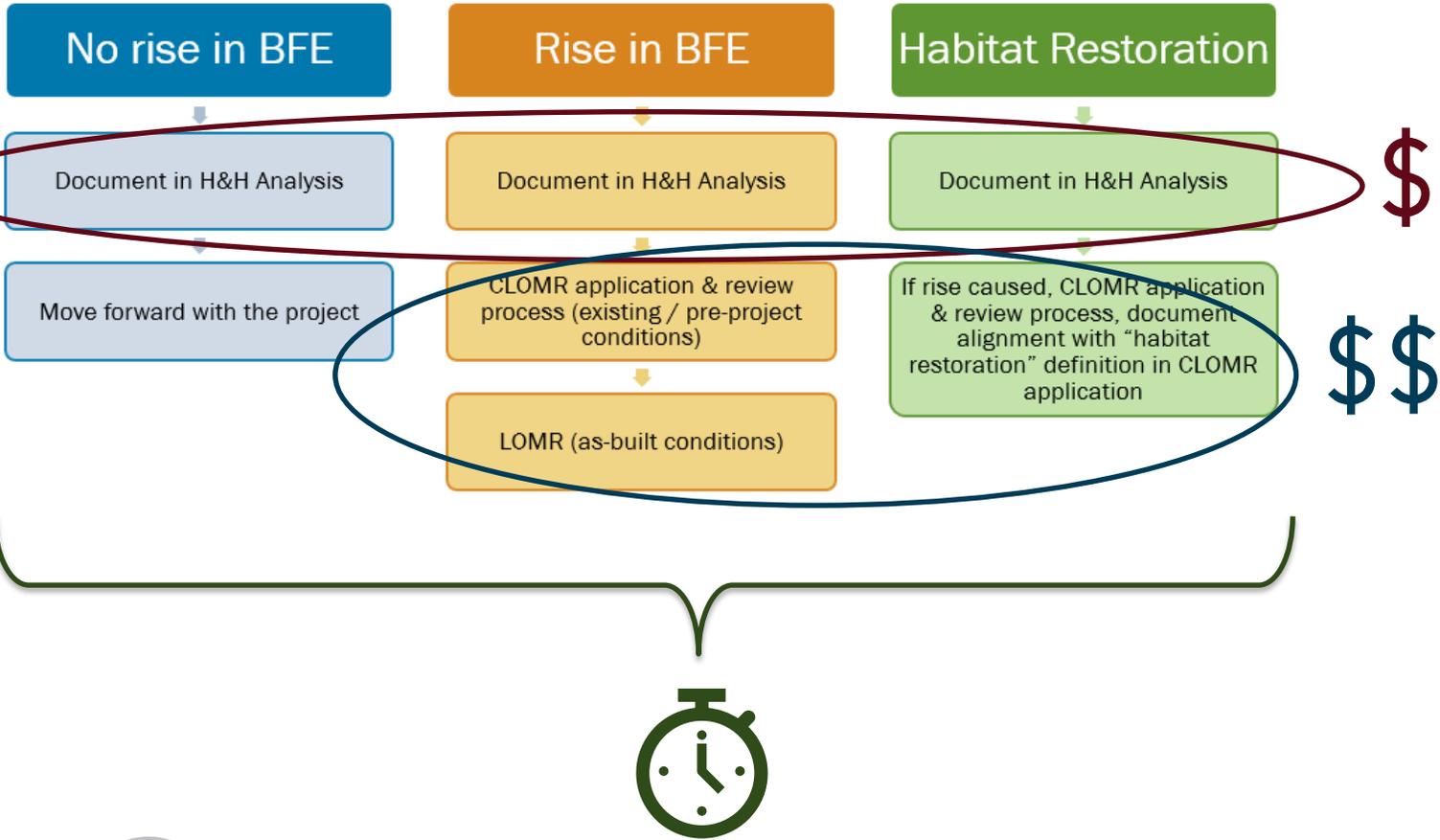
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Rise / No Rise for Projects in the Floodway



Plan Accordingly!



Even if you are eligible for a fee waiver, plan for:

- Costs for completing an H&H analysis for any project in a regulatory floodway
- Costs for CLOMR steps (other data/models, property owner notification, ESA compliance, etc.)
- Time for all of the above, including project scoping, possible redesign, etc.

Get in Touch with FEMA Region 10 & DLCD

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