



State Perspective

On the implementation of
FEMA's PICM

- Why PICM?
- State's role
- What does a community need to do?
- Community concerns
- PICM Pathways 1-3
- What does staff need?

Why PICM?

Summary of Bi-Op:

- 2009 lawsuit to FEMA from environmental advocacy agencies.
- 2016 RPA issued to avoid jeopardy of species, namely salmon and Resident killer whale in Oregon.
- 2021 FEMA issued draft implementation plan post stakeholder involvement
- 2023 FEMA begun NEPA process focusing on long-term measures.
- Sept. 2023 environmental advocacy groups sue FEMA alleging taking too long to implement.
- July 2024 FEMA announces PICM or short-term measures.

Recommend local staff Review:

- 2016 Oregon BiOp (400+ pgs.)
- Draft Implementation Plan
- FEMA's PICM fact sheet
- FEMA's PICM Webinar slide deck
- DLCDC FAQ (when published)

State's (DLCD) Role

- Technical Assist – long-time NFIP grant
- Continued coordination with FEMA
- Share information with Oregon local floodplain staff
- DLCD is a cooperating agency (advisory committee) along with other local Oregon staff providing feedback on FEMA's long-term implementation (NEPA process). The state did not have an opportunity to play similar role while FEMA developed and implemented PICM short-term implementation.
- PICM was significant surprise – what does it mean for cities and counties?
- DLCD Bi-Op FAQ – **COMING SOON!** Needs additional internal review.

State Grant Activities:

- Assists FEMA and states to implement the NFIP.
- Provide technical assistance.
- Community Outreach, share information, education, and perform audits.
- Coordinate with other state agencies.
- Prevent and resolve FP management issues.

What Can a Community Do Now?

Review the FEMA Docs

- Revised FEMA model floodplain Ordinance.
- FEMA Habitat Assessment guidance document
- PICM fact sheet
- FEMA webinar slide deck.
- DLCDC FAQ coming soon.

Begin to discuss with other local staff and your attorneys

- Create a PICM team or staff person locally
- Email PICM inbox or State NFIP Coordinator questions.
- Explore implications for your community.
- Ask your attorney questions.

Collect data at local level to inform local decision making.

- How much SFHA in your community?
- How many vacant lots/parcels.
- What's the zoning in the SFHA?

Schedule informational work-sessions or consent calendar cover memorandum

- Use the FAQ to glean from or attach to cover memo.
- Explain situation.
- Summarize options.
- Convey NFIP non-participation implications.

Keep FEMA informed of your progress at their FEMA PICM inbox

- If you conduct a work-session document it.
- If you have a question along the way email FEMA or the State.

Short-term Implementation Concerns

What am I hearing from city/county staff:

- Two paths at once is very confusing
- How meet needed housing in Oregon
- Model code is complex ~ technical
- Staff scrambling with other dedicated duties
- Minimal staff & \$ resources to implement
- Will there be a delay to Dec. 1, 2024, PICM deadline?
- Notice requirements for substantive code changes in Oregon
- Clear & Objective versus *flexible* code text ???
- Code change state notification implications ???
- Is this a taking (property rights or ESA taking) ???

What are other agencies doing?

- League of Oregon Communities and Association of Oregon Counties have info pages
- DLCDC is closely tracking
- PLSO announcement
- Oregon Congressional Delegate letter (Aug. 2024)

PICM Pathway 1 – FEMA Model Floodplain Ordinance Adoption

- Most questions in last FEMA webinar focused on Model Code technical questions – answers will come later.
- PICM inbox slow to respond to inform technical inquiries.
- Hearing we need **educational outreach** to gain understanding of added section 6.0 on “no net loss” functions.
- Likely triggers state required notifications for **substantiative** local code changes.
 - ORS 215.503 & ORS 227.186 - Measure-56 notice necessary for “rezoning” that includes broad definition when rezoning includes any change that, “***limits or prohibits land uses previously allowed***” in Oregon (ask your local attorney).

State Challenges:

- Sudden announcement – not sufficient time to implement.
- 90% Oregon communities in the Bi-Op area.
- LOMC or RiskMap update
- Burden on community to implement new technical code provisions.
- Two model FP Ordinances: 2020 and 2024 PICM Versions.
- Capacity / Capability at local level limited for some jurisdictions.

PICM Pathway 2 – Habitat Assessment with Mitigation

Cities & Counties should carefully review requirements for Habitat Assessment (HA) Mitigation Plan.

- HA contained in RPA 2 – Interim Measures.
- “Default” option expected by FEMA on **Dec. 1, 2024**.
- Implemented in a permit-by-permit basis.
- Includes mitigation ratios.
- HA – prepared by “qualified individual or company.”
- In Oregon, burden is on the applicant to satisfy criteria or standards.
- HA not explicitly in Ordinances or codes. Adding a HA could be considered to be a substantive change necessitating a local code amendment and state notifications (ask your local attorney).
- HA is not in the long-term implementation plan.
- If condition mitigation plan, local must have way to review the plan (consistent with the HA, as-builts, etc.).

FEMA provided guidance (August 2024) at:

https://www.fema.gov/sites/default/files/documents/fema_r10_oreg_on-habitat-assessment-guide_082024.pdf

- The guide has a 6 step HA process.
- Some circumstances where no HA required.
- Are Oregon communities taking this route? Is local liability a concern?

PICM Pathway 3 – Prohibit All New Development in the SFHA

- Likely requires a local Moratorium.
- Moratoria are rare and limited duration in Oregon.
- Legally complicated.
- Moratoria found in ORS 197.505 – 197.540.
- Cities & Counties should consult with your local attorney.
- Other potential issues with this option:
 - Communities should consider *not* prohibit all development, rather some development. Consider carve outs for:
 - Post-disaster substantial development replacement dwellings,
 - Explicit exceptions in section 6.3 of revised model code to include: street or bridge repairs, routine agricultural practices, habitat restoration activities, and maintenance of utility facilities where these activities are not subject to the new no net loss standards.
 - Mitigation Grant project viability. If you **prohibit**, how do you **mitigate**?
 - Projects that span two jurisdictions with opposite chosen PICM pathways (e.g., a replacement bridge).

Are any communities interested in this Option?

If so, we recommended:

- Gather local data and base decision off of local analysis.
- Consider implications or opportunities locally.
- Involve your local attorney, property owners, and other interested people.

What does staff need?

- Tools and resources
- FEMA to understand Oregon processes/law
- Oregon places premium on public process
- Biologists & engineers are not usually on staff
- More technical support
- Slow in permitting process (120/150 days)
- Additional support from state agency staff
- What about the long-term implementation paths?

What if nothing changes?

Then what?

The point of bi-op is focus on fish species and habitat improvements in SFHA.

The Oregon Statewide Planning Program is a balance of “conservation and development”



DLCD

Department of
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Questions?

Thank you!