

JEFFERSON COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA REQUEST

TO: Board of County Commissioners

FROM: Brent A. Butler, AICP, Chief Strategy Officer, Community Development
Phil Cecere, Floodplain Administrator, Chief Building Official and Fire Marshal

DATE: March 11, 2024

RE: Federal Emergency Management Agency (FEMA) Community Assistance Visit (CAV)
Follow up Tasks and Decision Points

STATEMENT OF ISSUE:

The Board of County Commissioners (“BoCC” or “Board”) is requested to consider whether revisions to Jefferson County Code (“JCC”) Chapter 15.15 should include required language for later enrollment in a voluntary program that rewards communities through lower flood insurance premiums. Known as the Community Rating System, CRS is a voluntary incentive program that recognizes and encourages community floodplain management practices that exceed the minimum requirements of the [National Flood Insurance Program \(NFIP\)](#). According to FEMA’s website, over 1,500 communities participate in the CRS program nationwide. In CRS communities, flood insurance premium rates are discounted to reflect the reduced flood risk resulting from the community’s efforts that address the three goals of the program:

1. Reduce and avoid flood damage to insurable property;
2. Strengthen and support the insurance aspects of the National Flood Insurance Program; and
3. Foster comprehensive floodplain management

Four areas discussed in this agenda request include: (1) recordkeeping requirements, (2) development standards, (3) multi-hazard Mitigation, and (4) fiscal impact related to level of effort.

Recordkeeping – Through established standard operating procedures governing recordkeeping as required by the CRS program, we may negate the need for the onerous document preparation and enforcement activities required by NFIP participating communities every five years. Requirements may also aid property owners whose homes were constructed prior to building codes or floodplain management regulations. Costs are estimated in the fiscal section of this agenda request and will be more fully summarized in the pros and cons section of the PowerPoint presentation. Arguably, many CRS reporting and recordkeeping activities should already be embedded within local permit review processes (see, Attachment 1 – standard operating procedure (SOP)).

Construction standards - Development standards that exceed the minimum requirements are already required by the Washington State Building Code. For example, the NFIP minimum standard requires new and substantially improved buildings to be constructed at or above the base flood elevation (BFE) which is

the height of floodwaters during the 100-year flood. The Jefferson County Code (JCC) already exceeds this requirement by requiring construction of new and substantially improved structures one foot above BFE, as required by the State Building Code. In many instances, compliance requirements may be insurmountable for low- and moderate-income homeowners whose homes are constructed at or below the one-foot BFE regulatory requirement. Achieving compliance after the fact for these noncompliant properties is perhaps impossible without a program in place, as other counties have adopted. For that reason, staff is considering revisions to the SOP that incorporates construction permits and final out permit as steps six and seven (see Attachment – Draft SOP).

Multi-hazard Mitigation Planning - The CRS relationship to multi-hazard mitigation planning is also noteworthy, as previous plans identified outreach to realtors, insurance agents, and SFHA property owners as one of the plan’s deliverables. Having occurred 24 times according to Table J-1 – Major Disaster Declarations for Washington 1956-2016, flooding is identified in the multi-hazard mitigation plan as one of the county’s most extensive and prevalent hazards. Numerous activities in the CRS program are designed to reduce the loss of life and damage to property associated with this multi-hazard risk. While none of these activities would be mandatory if the county were to enroll in CRS, many of them are common sense requirements that could be accomplished yearly prior to the start of the annual flood season (see Hazard Mitigation Plan, accessed online March 7, 2024
<https://www.co.jefferson.wa.us/DocumentCenter/View/3318/2016-Hazard-Mitigation-Plan?bidId=>)

Based on the recommendations in Table RR-1, the *Risk Report for Jefferson County* suggested the strategies in Table RR-2.³

Table RR-2 – Jefferson County Recommended Mitigation Strategies ⁵	
Problem Statement	Recommended Strategy
Jefferson County has 681 properties in the Special Flood Hazard Area (but only 162 flood insurance policies), representing \$4.9 million in losses after a 1-percent-annual-chance flood.	- Develop an outreach strategy to help homeowners, realtors, and insurance agents understand the value of flood insurance. - Use the Risk Report to conduct a Benefit-Cost Analysis and apply for FEMA funding to elevate or relocate structures out of the floodplain.
Jefferson County has 8 percent of its buildings located in the moderate-high liquefaction zone, with 2,139 of them built before modern building codes, increasing the risk of significant damage to an earthquake.	- Develop priority list for essential facility earthquake retrofit. - Develop an outreach strategy or mitigation program for homeowners or businesses to retrofit older buildings.
Jefferson County's building dollar losses are \$164 million for a Whidbey M7.4 earthquake. Essential facilities and infrastructure are of particular concern and are likely to lose function immediately after an event.	Develop priority list for essential facility earthquake retrofit.

BACKGROUND

Every five years, FEMA typically visits the National Flood Insurance Program (NFIP) participating communities. The purpose of the CAV is multifold and includes: (1) maintain periodic contact with NFIP participating communities; (2) assess needs for technical assistance; (3) assess effectiveness of the floodplain management program; (3) recommend best practices; (4) provide education and resources; (5) ensure regulations are followed and violations are mitigated. To accomplish this, the components of the

CAV include: (1) regulations review; (2) floodplain tour, (3) meeting with local officials; (4) floodplain permit file review; (5) report and (5) compliance follow-up. Jefferson County's floodplain regulations are codified in Chapter 15.15 of the Jefferson County Code, and according to FEMA these regulations must be formally adopted, legally enforceable and applied uniformly throughout the community.

In 2023, FEMA conducted the CAV through its partner agency, the Washington State Department of Ecology ("ECY"). As part of this review, FEMA's representative identified that Jefferson County's floodplain ordinance was adopted in May 2019, which is prior to the joint FEMA/ECY review and approval of the new December 2019 updated Washington State Model Floodplain Flood Damage Prevention Ordinance. As such, a review of our regulations identifies the need to consider several changes, including:

- (1) Mandatory changes to implement the provisions of the model ordinance,
- (2) Optional changes that enable enrollment in the Community Rating System, and
- (3) 'best practices' consistent with local community needs and customs.

The Jefferson County Ordinance, JCC Chapter 15.15 responds to an earlier lawsuit, as more fully set forth below.

FEMA NFIP Biological Opinion Compliance - A 2004 lawsuit held that FEMA had a responsibility to consult with the National Marine Fisheries Service (NMFS) about impacts of the NFIP on listed species under Section 7 of the Endangered Species Act (ESA). The plaintiffs (the National Wildlife Federation) believed that the operation of the NFIP resulted in impacts on several species listed under the ESA and their critical habitats within Puget Sound. A consultation is the mechanism used to review federal programs or permitting activities and determine what is needed to address any impacts. Consultations are handled either by the National Marine Fisheries Service (NMFS) or the United States Fish and Wildlife Service (USFWS). The result of that consultation was the issuance in September 2008 by NMFS of a [Biological Opinion](#) (BiOp) under the ESA. The BiOp prepared for the NFIP found that some elements "jeopardized" several ESA-listed species in the Puget Sound, including Chinook salmon and Orca whales. These elements included FEMA floodplain mapping, the community rating system and the minimum development standards. The BiOp includes "reasonable and prudent alternatives" (RPAs) that must be implemented by the federal agency.

The most critical element for purposes of local government administration of floodplain regulations is Element 3. This relates to FEMA's minimum development criteria, which local jurisdictions are required to adopt to participate in the NFIP. RPA Element 3 directs FEMA to significantly tighten the minimum development criteria that is used by local governments to regulate floodplain development. NMFS prepared a description in February 2011 of what is required by RPA Element 3 in the publication [Reasonable & Prudent Alternative Element 3: Floodplain Management Criteria](#) [Pdf].

Affected jurisdictions such as Jefferson County were given a deadline of September 23, 2011, to show compliance with the BiOp requirements. Jurisdictions could elect one of three "doors" to achieve compliance. See FEMA's description of compliance options [here](#).

Jefferson County's Response to Bi-Op Requirements

Jefferson County could have chosen to:

- (1) Adopt a model ordinance drafted by NMFS (Door 1),
- (2) Adopt a programmatic approach utilizing existing regulations and supplementing with new regulations and policies, as needed (Door 2), or
- (3) Undertake a project-by-project review to determine compliance with the BiOp (Door 3).

Jefferson County's attempt to comply with the Door 1 or 2 approach was unsuccessful. Consequently, Jefferson County is currently reviewing projects on a case-by-case basis (Door 3) for compliance with the BiOp, utilizing its regulations in JCC 15.15 and standard operating procedure which were recently revised in response to the CAV. A jurisdiction operates under Door 3 (permit-by-permit) until a Door 1 or Door 2 proposal has been approved by FEMA.

In 2023, FEMA's audit of Jefferson County's compliance with the NFIP through, among other things, its implementation of JCC Chapter 15.15 entitled *Flood Damage Prevention*. FEMA reviewed Chapter 15.15 to ensure the Floodplain Management regulations meet or exceed the minimum criteria outlined in 44 Code of Federal Regulations (CFR) Part 60.3 entitled *Flood plain management criteria for flood-prone areas*. Jefferson County's last CAV occurred more than twelve years ago. Although last year's CAV should have occurred perhaps seven years earlier, the 2019 update of the county's flood insurance rate maps (FIRM) and the county's prior enrollment in the CRS program, 2007 to 2009, likely led to higher levels of compliance. However, the county's participation likely ended because of the reduction in staffing arising out of the great recession.

ANALYSIS:

Jefferson County has currently between 650 and 700 improved properties in the regulatory floodplain, which are areas of special flood hazards. Referred to as the special flood hazard area (SFHA), areas subject to the one percent chance flood or the 100-year flood, SFHA delineates locations where there's a one percent chance of flooding in any given year. FEMA regulates new construction and substantial improvements to land through the mortgage markets and its existing regulations require insurance for any federally guaranteed loan (mortgage). Property and casualty insurance policies would not cover losses arising out of flooding, so property owners typically purchase a separate flood policy. For these reasons, FEMA offers subsidized flood insurance if community provisions to reduce flood hazards are in place.

Of the Jefferson County properties in the SFHA, roughly 20% purchase flood insurance totaling \$80,000 annually, providing insurance covering approximately \$38,000,000. The other properties would have to self-insure and would not be eligible for disaster relief in the event of a flood loss. The above data suggests that 80% of SFHA properties in Jefferson County have no mortgage or loan which could be significant in some areas with especially high-risks such as floodways or V-zones (high velocity waves). Floodways located within SFHAs are extremely hazardous due to the velocity of floodwaters that can carry debris and increase erosion potential. Brinnon's downtown core is in the floodway and the SFHA.

As mentioned previously, Jefferson County's flood damage prevention regulations are codified in Chapter 15.15 and meet the general requirement, so FEMA authorized subsidized flood insurance in Jefferson

County. Amendments, as proposed, that will be considered by the Planning Commission later this month will ensure that JCC Chapter 15.15 continues to meet the minimum regulatory standard. While the National Flood Insurance Act of 1968, which established the National Flood Insurance Program (NFIP), did not formally mandate individual participation, it did, however, as previously stated deny disaster relief to persons who could have purchased flood insurance, but did not do so.

FISCAL IMPACT:

For the existing CAV, we have identified the following level of effort. To prepare permit files (100 hours), complete updates to regulations and procedures (80 hours), process changes to Chapter 15.15 (30 hours), initiate compliance (10 hours), DCD will expend perhaps 300 hours collectively. The review, public hearing and amendment process is currently underway, and the Planning Commission is scheduled to consider the amendments to Chapter 15.15 at their 20 March 2023 meeting.

Outreach to other CRS-participating communities is ongoing. At the Board's regular meeting, staff will provide an overview of the level of effort that CRS-participating communities shared for their recordkeeping and reporting efforts if completed annually and submitted to FEMA to maintain the minimum CRS requirements. If this information is not available by the time staff presents, we would request the Board to consider what level of effort is justifiable for enrollment in the CRS program.

RECOMMENDATION:

DCD requests BoCC identify next steps, which could include: (1) waiting for the planning commission's recommendation as to whether we should enroll in the CRS program, (2) considering the level of effort maximum that should be expended annually for enrollment, or (3) making an immediate determination that CRS enrollment should occur and reach the level of participation necessary to ensure outreach to reduce risk and loss within the areas of special flood hazard.

REVIEWED BY:

 3/6/24
Mark McCauley, County Administrator Date

**ATTACHMENT 1 –
DRAFT STANDARD OPERATING PROCEDURE – FLOODPLAIN MANAGEMENT**



**JEFFERSON COUNTY COMMUNITY DEVELOPMENT
FLOODPLAIN DEVELOPMENT PERMIT REVIEW**

Department: Jefferson County DCD		Division(s): Building & Development Review	Code Section: Flood Damage Prevention
Title: Floodplain Development Permit (FDP) Review Guidelines			SOP #24-01
Subject: Procedures for receiving and processing projects proposed in Special Flood Hazard Areas (SFHAs)			
Effective (date): 1/1/2024	Replaces (date): N/A	Renewal due (date): N/A	Page: 1 of 2
Originated by: Phil Cecere, Building Official / Fire Marshal Brent Butler, AICP, Chief Strategy Officer			Approved by: Josh D. Peters, AICP, Director

ITION

Chapter 15.15 of Jefferson County Code (JCC) requires that a floodplain development permit (FDP) shall be obtained before construction or development begins within any special flood hazard area (SFHA) as determined by the Federal Emergency Management Agency (FEMA). Jefferson County Department of Community Development (DCD) issues floodplain development permits to ensure proposed development is reasonably safe from flooding and for local compliance with the National Flood Insurance Program (NFIP) standards found in chapter 15.5 JCC, otherwise known as the flood damage prevention ordinance.

Jefferson County's Floodplain Development Permit (FDP) process may either precede or run concurrent with the review process for a building permit or other development permit. If a proposal is considered exempt from all other local permitting for any reason, such as if qualifies as a Fish Habitat Enhancement Project (FHEP) or through the Habitat Recovery Pilot Program (HRPP, expiration 6/30/2025)—the county's FDP would be a stand-alone local permit.

APPLICATION PROCESS

Step 1: Identify Proposed Development within SFHA – The first step of the process is to ascertain whether development is proposed within a Special Flood Hazard Area (SFHA). Per the county's Unified Development Code (UDC), Site Development Review (SDR) is a prerequisite to applying for development permits, such as road approach, septic, or building. SDR typically includes staff production of a Development Envelope map. If development were proposed within an SFHA or an SFHA were identified on the subject property, the SDR product (or alternate form of communication, as needed) would include information relative to applicable regulations in chapter 15.15 JCC. If the proposed development is clearly outside the SFHA, the floodplain development permitting process is concluded and the project file is notated accordingly. A FIRMette from the FEMA Map Service Center showing the floodplain mapping for the proposed development is attached to the project file.

Step 2: Floodplain Development Permit (FDP) Required – Once it is established that development is proposed within an SFHA—whether through an SDR, Customer Assistance Meeting (CAM), Pre-Application Conference, or other means—prospective applicants will be informed that a Floodplain Development Permit (FDP) application is required, whether in association with a development permit application or as a stand-alone application, and that an FDP is only approved if all criteria and conditions are able to be met and satisfied.

FDP Application Intake – DCD Permit Technician or Planning Technician receives application, which is reviewed for completeness.

- Application signed by Property Owner. May also include an authorized representative.
- DCD staff confirms all documents are present per application submittal checklist.
- The FDP application includes the required substantial improvement/ substantial damage worksheet for projects remodeling, altering, or repairing damage to structures within the SFHA. Project valuation in excess of 50% of the insured value must meet the adopted Flood Damage Prevention provisions in chapter 15.15 JCC. The basis for the valuation of the structure is to be provided in the form of an *insurance document*, usually a declarations page, listing insured value prior to improvement, alteration, or damage.
- SPECIAL INSPECTION NOTE: Up to three (3) flood elevation certificates could be required. The first elevation certificate is required to establish Base Flood Elevation (BFE) prior to alteration or construction. A confirmation at the height of the finished first floor will need to confirm freeboard above BFE either by elevation certificate or a clear marking transferred onto the structure. Prior to issuance of a Certificate of Occupancy, a post-construction elevation certificate is required.

Submittal Checklist Documents:

- Floodplain Development Permit (FDP) application form
- Elevation certificate (pre-construction or equivalent) approved by Floodplain Administrator
 - Note: Elevation Certificate must use current edition of FEMA form
- Substantial improvement/damage worksheet
- Insurance declarations page confirming insured value prior to improvement or damage
- Site plan showing development envelope or building plans
- Additional studies like a no-rise report, generation of flood elevation data for subdivisions; habitat assessment, etc, may also be required in order to ensure a complete application.

Step 3: Routing – Permit Tech or Planning Tech routes application and supporting documents to relevant reviewers.

Step 4: Review – Staff reviews and provides comments to recommend project approval, conditional approval, additional information request, or denial pending modification. Review tools include Plan Review Checklists for Zone A and Zone AE AO AH, as provided by the Department of Ecology.

Step 5: Final Decision / Permit Issuance – Staff responds to comments as to approval of projects along with any relevant conditions or notations. FDP and associated development permits issued or denied as a result of final decision.