



## **Staff Report**

For City Council Meeting - 10/1/2025

### ***Subject - Old Business - Flood Hazard Overlay Zone (FHOZ) Briefing***

**Synopsis:** Council unanimously approved attached Ordinance #947 - An Ordinance Amending the Text of the City of Gearhart Zoning Ordinance Section 3.10 Flood Hazard Overlay Zone (Option A), at the August City Council meeting, and it has since taken effect. Option A represented the Oregon Model Floodplain Ordinance, but did not include FEMA's ESA PICM Model Ordinance. City Planner Garrett Phillips will be leading the Planning Commission at their October meeting and public hearing next week regarding implementation of the PICM into our FHOZ. Therefore, Ordinance #947 will either be coming back to Council in the coming months with amendments, or repeal and as an entirely new ordinance. Discussion tonight serves as an update. There is nothing for the Council to do until the Planning Commission is prepared to offer recommendations.

**Recommended Motion:** N/A

**Legal Analysis:** N/A

**Financial Analysis:** N/A

Respectfully Submitted,

A handwritten signature in blue ink, consisting of a stylized 'C' followed by a series of loops and a final horizontal stroke.

Chad

# PICM Overview

# Pre-Implementation Compliance Measures (PICMs)

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- FEMA developed PICMs for participating NFIP communities to comply with Endangered Species Act (ESA) requirements in the interim period while the full implementation is being reviewed under NEPA.
- The PICM options are:

## Prohibit all new development

**Prohibit all new development in the floodplain.**

## Model Ordinance

**Incorporate the ESA into local floodplain ordinances.**

## Permit-by-Permit

**Require permit applicants to develop a Floodplain Habitat Assessment documenting that their proposed development in the Special Flood Hazard Area will achieve no net loss.**

# Model Ordinance Approach

# Section 6 – No Net Loss Standards, Overview, and Origins

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## Translating floodplain functions into measurable actions

- FEMA has translated mitigation of the floodplain functions into three specific actions that, when mitigated, provide value to the functions. These actions are commonly referred to as proxies.

Floodplain Function	Proxy (No net loss of...)	Mitigates Against
Floodplain storage	Undeveloped space	Developed space
Water quality	Pervious surfaces	Impervious surface
Vegetation	Trees	Trees removed

## Section 6 – Things to Know Before Mitigating for No Net Loss

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- **Timing:**
  - Mitigation for floodplain storage and water quality occurs before, or at the very least, concurrent with the loss of floodplain functions.
- **Mitigation location preferences (in hierarchical order)**
  1. The lot or parcel where floodplain functions were affected.
  2. The same reach of the waterbody where development is proposed.
  3. The SFHA within the same hydrologically connected area as the proposed development (i.e., same watershed). Mitigation occurring outside of this area will double the amount required to ensure no net loss.

## Section 6 – Floodplain Storage and Undeveloped Space

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- Definition: The volume of flood capacity and fish accessible/egress-able habitat **from the existing ground to the Base Flood Elevation** that is undeveloped.
- Two components are needed when assessing impact to and mitigating this function:
  - Flood storage volume
  - Fish accessibility/egress-ability
- Examples of development:
  - Addition of fill
  - Structures
  - Vaults or tanks

## Section 6 – Floodplain Storage and Undeveloped Space

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### How developed space is mitigated:

- Lost undeveloped space is replaced at a 1.5:1 ratio in the RBZ-fringe, 2:1 in the RBZ and Floodway.
- Mitigation applies only when there is a net increase of developed space to the project area's footprint
  - Example: If 1,000 cubic feet of existing developed space is removed, and 1,200 cubic feet of developed space is added, only 200 cubic feet of the developed space would have to be mitigated by the ratios.



## Section 6 – Floodplain Storage and Undeveloped Space

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### How developed space is mitigated (cont'd):

- Hydrologically connected to the flooding source.
- Designed to not increase flood velocity.
- Designed to fill and drain that minimizes fish stranding and entrapment to the greatest extent possible.

## Section 6 – Water Quality and Impervious Surfaces

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When development actions add impervious surface to the SFHA, mitigation can occur in one of three ways:

1. A 1:1 replacement of area covered by impervious surface with pervious surface.
2. The use of low-impact development or green infrastructure practices that are certified or documented by a qualified professional.
  - Template for LID Stormwater Manual for Oregon
  - [Department of Environmental Quality : Template for LID Stormwater Manual for Western Oregon : Total Maximum Daily Loads : State of Oregon](#)
  - [Central Oregon Stormwater Manual](#): Appendix 11B Low-Impact Development
3. If the above methods are not feasible, require stormwater retention and management.

## Section 6 – Water Quality and Impervious Surfaces

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### Stormwater Management

- Used when ratios or LID/Green Infrastructure practices are infeasible.
- Includes pollution reduction treatment for post-construction stormwater runoff from net increases to impervious surfaces.
- Includes water quantity treatment (retention and detention facilities) unless the water is discharging into the ocean. Retention facilities must:
  - Limit discharge to match pre-development peak discharge rates for 10-year peak flows.
  - Treat stormwater to remove sediment and pollutants so that 80% of suspended solids are removed from stormwater prior to discharge.
  - Be designed to not entrap fish and drain to the source of flooding.
  - Be certified by a qualified professional.

## Section 6 – Water Quality and Impervious Surfaces

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### Stormwater Management (cont'd)

- Practices for multi-parcel facilities (including subdivisions) have enforceable operation and maintenance agreements to ensure that the system functions as designed. Agreement requirements include:
  - Access to the stormwater treatment facilities by the community.
  - A legally binding document identifying parties responsible for maintenance.
  - Operation and maintenance manuals that include the maintenance of stormwater controls that include vegetation and soil permeability.
  - Operational and maintenance manuals on site and made available to the community for inspection for a duration of five years.

## Section 6 – Vegetation and Trees

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- The size of a tree has an effect on the ecosystem and floodplain functions that they provide to ESA-listed species and essential fish habitat.
- Ratios to mitigate against trees removed vary based off tree size and location
  - $6'' < \text{dbh} \leq 20''$
  - $20'' < \text{dbh} \leq 39''$
  - $39'' < \text{dbh}$



## Section 6 – Vegetation and Trees

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- Replacement trees must be native species occurring naturally in the Level III ecoregion where the impact is occurring.
  - [Level III and IV Ecoregions of the Continental United States | US EPA](#)
  - Replacement trees are assumed to be saplings and sizes commonly found at nurseries, but can be bigger.
- Exceptions to tree mitigation:
  - Routine silviculture practices that do not meet the definition of development.
  - Removal of hazard trees.
    - Standard dead, dying, or diseased trees or ones with a structural defect that make it likely to fail in whole or in part and that presents a potential hazard to a structure or as defined by the community.
  - Pre-emptive removal of documented susceptible trees to manage the spread of invasive species.

## Section 6 – Activities Exempt from No Net Loss

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Yes! There are exceptions where mitigation is not needed to ensure no net loss on development.

### Examples of some exceptions listed in the model ordinance:

- Normal maintenance or development occurring within the existing footprint of a pre-existing structure.
- Normal street, sidewalk, and road maintenance that does not alter contours, use, or alter culverts and do not include expansion of paved areas.
- Routine maintenance of landscaping that does not involve grading, excavation, or filling.
- Routine agricultural practices that do not alter ditch configuration.
- Routine silviculture practices that does not meet the definition of development.

## Section 6 – Activities Exempt from No Net Loss

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### Exceptions (cont'd):

- Removal of noxious weed and hazard trees; replacement of non-native vegetation with native vegetation;
- Pre-emptive removal of documented susceptible trees to manage the spread of invasive species.
- Normal maintenance of above ground utilities and facilities provided there is no net change in footprint.
- Normal maintenance of a levee or other flood control facility prescribed in the operations and maintenance plan of the levee or flood control facility.
- Habitat restoration activities.



## Section 6 – Riparian Buffer Zone (RBZ)

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- An area of land bordering fresh and salt-water bodies that provide an outsized role in supporting floodplain functions.
- Riparian Buffer Zones benefits:
  - Provide ESA-listed species refuge from high velocity flows in flooding events.
  - Vegetation in the RBZ attracts insects and other food sources.
  - Filters sediments and pollutants from runoff.
  - Moderates water temperature through shade.
  - Helps stabilize eroding banks.

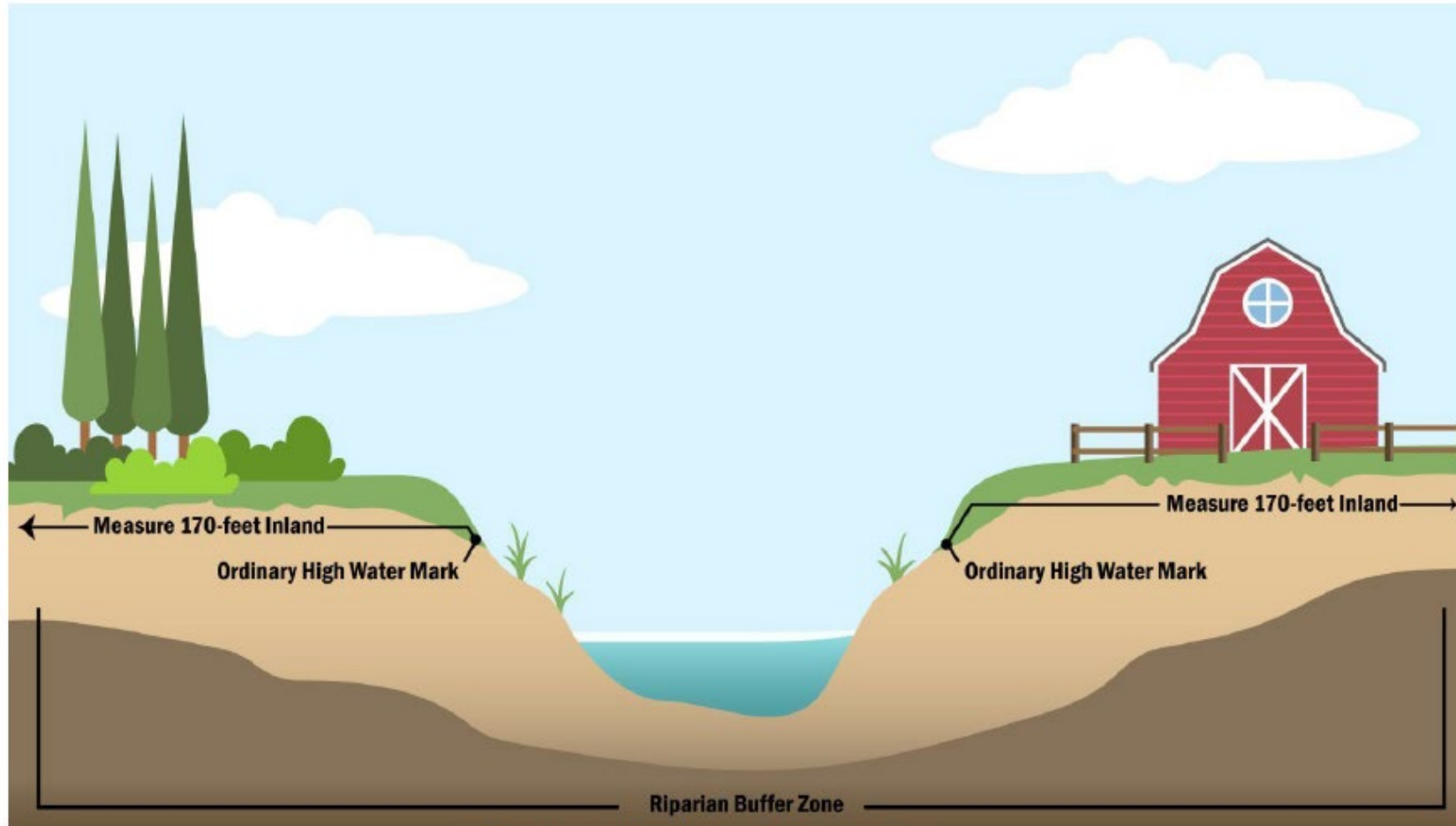
## Section 6 – Riparian Buffer Zone (RBZ)

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FEMA's RBZ for PICM is set at 170 feet.

- This is measured from an OHWM or MHHW.
  - The RBZ does not extend beyond the SFHA.
  - Buffer cannot be shortened during PICM.
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- [USGS Guide for identifying OHWM](#)

## Section 6 – Riparian Buffer Zone (RBZ)



*Measuring the Riparian Buffer Zone*



**FEMA**

## Section 6 – Riparian Buffer Zone (RBZ)

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- FEMA is not banning development in the RBZ
  - Mitigation ratios are higher
  - Beneficial gain standard is required
- Beneficial gain
  - A standard that applies only in the RBZ
  - Applies in addition to no net loss
  - Standard is meant to provide additional benefits to this environmentally important area that include no negative components to ESA-listed species and essential fish habitats.
  - “An area within the same reach of the project and equivalent to 5% of the total project area within the RBZ shall be planted with native herbaceous, shrub, and tree vegetation.”

## Section 6 – Riparian Buffer Zone (RBZ)

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### Exceptions to the Beneficial Gain Standard

- Activities considered exempt from no net loss.
- Functionally Dependent Uses, which includes:
  - Docking and port facilities that are necessary for the loading and unloading of cargo or passengers; and,
  - Ship building and ship repair facilities.
  - Functionally dependent uses **do not** include:
    - Long-term storage
    - Related manufacturing facilities
    - Ancillary features such as restrooms or lounge areas



**ORDINANCE NO. 947**

**AN ORDINANCE AMENDING TEXT OF THE CITY OF GEARHART ZONING ORDINANCE SECTION 3.10 FLOOD HAZARD OVERLAY ZONE**

**WHEREAS**, the City of Gearhart is a participant in the National Flood Insurance Program (NFIP), which provides property owners access to federally-backed flood insurance and eligibility for certain federal disaster relief programs; and

**WHEREAS**, FEMA and DLCD's 2023 CAV findings concluded that the City's Flood Hazard Overlay (FHO) provisions in the Gearhart Zoning Ordinance (GZO) are not fully consistent with the minimum floodplain management standards required under 44 CFR Part 60 of the NFIP regulations; and

**WHEREAS**, to address the CAV findings and maintain the City's good standing in the NFIP, FEMA and DLCD recommended adoption of the Oregon Model Floodplain Management Ordinance, with modifications tailored to local conditions (hereafter referred to as the Oregon Model Ordinance with Gearhart Revisions or Option A); and

**WHEREAS**, adoption of the Oregon Model Ordinance with Gearhart Revisions (Option A) is consistent with the City's Comprehensive Plan goals related to public safety, environmental protection, and land use compliance with federal and state law; and

**WHEREAS**, the Planning Commission conducted a duly noticed public hearing on this ordinance on April 10, 2025, and recommended adoption to the City Council and the City Council held a public hearing on June 4, 2025 and July 2, 2025, and fully considered the recommendation of the Planning Commission, public testimony, and staff analysis;

**NOW, THEREFORE**, the City of Gearhart ordains the text of the Zoning Ordinance Section 3.10 Flood Hazard Overlay Zone is replaced in its entirety by the **Oregon Model Floodplain Management Ordinance with Gearhart Revisions** (Option A), attached hereto as **Exhibit A excluding highlighted text**, and amends the Gearhart Zoning Ordinance accordingly

Passed by the City Council of Gearhart this 6<sup>th</sup> day of August, 2025.

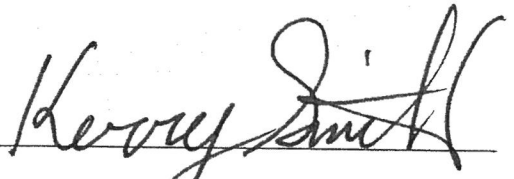
Yeas: 5

Nays: 0

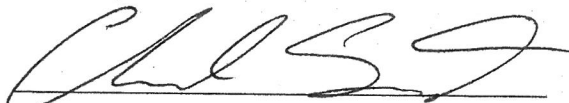
Absent: 0

Abstain: 0

Approved and signed by the Mayor of Gearhart this 6<sup>th</sup> day of August, 2025.

  
Mayor Kerry Smith

ATTEST:

  
City Administrator, Chad Sweet