



FEMA

January 11, 2012

**FAQ: What does it mean to be in “Door 3”?**

Federal regulations and local community ordinances mandate that communities that participate in the National Flood Insurance Program (NFIP) must require project proponents to obtain a floodplain development permit from the local community for any ground disturbing project proposed to occur within the Special Flood Hazard Area (SFHA). Communities must also ensure that all other federal, state, and local permits have been received prior to issuing a floodplain development permit. Communities may choose to provide a programmatic guarantee that floodplain development is compliant with the Endangered Species Act (ESA) by either adopting the Model Ordinance issued by FEMA Region X (“Door 1”), or by providing a copy of their ordinances, policies, and regulations that meet the performance standards of the Biological Opinion. Region X has developed a checklist communities can use for this option (“Door 2”) to demonstrate that resources will be protected. There may be instances when a habitat assessment may be required for projects that are proposed in the SFHA that do not meet the performance standards of the NFIP Biological Opinion. These projects may still be permitted provided a habitat assessment is completed and the project is determined that it does not have an adverse effect. Section 7 of the FEMA Region X ESA Compliant Model Ordinance provides clarification on when a habitat assessment is required.

The RPA Element 3 and appendix 4 of the NFIP Biological Opinion requires that all projects within the floodplain demonstrate that there will be no adverse effects to functions (direct, indirect, and cumulative). Functions that may be affected include but are not limited to storm water, riparian vegetation, bank stability, channel migration, hyporheic zones, wetlands, and large woody debris. Absent a programmatic approach through Door 1 or Door 2, communities must ensure that development in the SFHA will not cause harm to threatened or endangered species, or that any harm from floodplain development is exempt from the take prohibition contained in Section 9 of the ESA. Any project that **may** have an adverse impact on threatened and endangered species must receive an incidental take permit under Section 10 of the ESA. Applicants for development projects in the SFHA must assess the impact of the proposed development on salmon habitat on a permit by permit basis (“Door3”).

In order to avoid allowing incremental, systemic loss of essential ecosystem features to occur, the compliance standard for Door 3 must be a high showing that individual projects seeking to develop in the floodplain will retain the full level of existing baseline function. The impact of a project on habitat may be difficult to evaluate because there is often little or no information on the baseline conditions of the site’s natural features and habitat functions. The scope, magnitude, and risks associated with possible impacts to populations or their habitats vary greatly by project. A habitat assessment is needed to identify those natural processes and habitat functions that currently exist (i.e. the environmental baseline) and determine how the proposed project will affect them. Communities may want to consider that you are already requiring similar assessment through other programs. Many communities require a habitat assessment for



FEMA

projects that are required to undergo a Washington State Environmental Policy Act (SEPA) review. Although SEPA thresholds are often limited to larger projects, a community may choose to lower the thresholds for which a project is required to submit for a SEPA review. Additionally, many communities require critical areas reports for projects occurring within designated critical areas and may request additional data for projects that are in a frequently flooded area. Communities that implement this approach may need to require additional data in order ensure the standards for conducting habitat assessments are met. The FEMA Region X Guidance for conducting Habitat Assessments is available at: <https://www.fema.gov/about/regions/regionx/nfipesa.shtm>.

If a permit applicant has prepared a Biological Evaluation or a Biological Assessment that includes an effects analysis of the proposed actions of the current project, and has received concurrence from United States Fish and Wildlife Service (USFWS) or National Marine Fisheries Service (NMFS) (the services), the project is deemed to comply with the ESA. As an example, projects requiring a federal permit under Section 404 of the Clean Water Act would likely follow a consultation process through the U.S. Army Corps of Engineers Regulatory Branch. The Section 404 permit process includes consultation with the U.S. Fish and Wildlife Service (USFWS), and/or the National Marine Fisheries Service (NMFS). Such consultations are required under Section 7 of the ESA. Applicants may also consult with NMFS through Section 10 of the ESA by providing a Habitat Conservation Plan (HCP) for their project; for example the [Storedahl Gravel](#) project, or by providing evidence that the project falls under an existing consultation conducted under Section 4(d) of the ESA. Many section 4(d) projects fall under the Regional Road Maintenance Program. A new habitat assessment will not be required for the project if it has already received concurrence from the services. Once it is determined that a habitat assessment is needed in order to describe baseline habitat conditions and have a basis to estimate possible impacts from proposed project actions, a step by step assessment process is recommended in the FEMA Region X guidance for conducting Habitat Assessments. Communities should use or direct applicants to sources of information that are readily available in order to provide detailed information that may be necessary to include in the habitat assessment. Some potential sources of information are the Shoreline Characterization Reports use for a community's Shoreline Master Program, Watershed Resource Inventory Area (WIRA) reports, and critical areas inventories. NMFS, USFWS, and the Corps use the following effects determination criteria and this language needs to be used for habitat assessments:

- No Effect (NE): the project has no effect whatsoever to the listed species or designated critical habitat.
- May Affect, Not Likely to Adversely Affect (NLAA): the effects to the listed species or designated critical habitat are insignificant and/or discountable. A determination of NLAA would be made for those activities that have only a beneficial effect with no short or long-term adverse effects.
- Likely to Adversely Affect (LAA): the effects of the project will result in short -or long-term adverse effects on the identified species or designated habitat area.



**FEMA**

If the effects determination is NLAA, the report should indicate what minimization and conservation measures would help eliminate or minimize the impact. For example, the permit applicant could time certain construction work to occur when the species are not present in the project area. If the assessment finds a project is LAA, then the floodplain development permit cannot be issued unless the project is redesigned to a point where the assessment is NLAA. If a project cannot be redesigned to meet the standard of NLAA, the project may only be permitted if the project has received concurrence from NMFS through a consultation under Section 7, 4(d), or 10 of the ESA.

It is recommended that applicants start with conceptual development plans and conduct a preliminary impact assessment before they invest in detailed project plans and specifications. Continued communication with community staff will also help identify problems and solutions before too much time and/or money is spent on a project that may require additional mitigation measures, if allowed. It may be necessary for some communities with limited staff to require assistance to evaluate the adequacy of habitat assessments. The FEMA Region X Habitat Assessment Guide does allow for flexibility in many aspects of the assessment. Review of assessments will require some familiarity with the information needed to adequately portray and interpret fisheries population and habitat survey data. FEMA Region X can provide assistance to communities preparing habitat assessments. Communities with low levels of floodplain development may receive one on one assistance for their occasional permit. Communities with moderate to high levels of development may receive training on how to conduct a habitat assessment. A permit applicant should weigh the cost of preparing the assessment and the mitigation plan, should one be needed, against the cost of locating the project outside the SFHA. It may cost less in time and money to simply avoid the SFHA.

For additional information please view the FEMA website at:

[www.fema.gov/about/regions/regionx/nfipesa.shtm](http://www.fema.gov/about/regions/regionx/nfipesa.shtm) or contact John Graves at [john.graves1@dhs.gov](mailto:john.graves1@dhs.gov) or 425-487-4737.