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FAQ: Does the RPA require jurisdictions to downzone all areas that are within the floodplain to 5 acre or larger parcels?

The intent of the Biological Opinion and the FEMA implementation plan is not to require downzoning in urban areas, but to protect those areas that already have a low density zoning from being upzoned to urban densities. Urbanized areas already zoned and developed for smaller than 5 acre parcels can retain the current density. Rural areas that already have a low density should strive to maintain that low density zoning. Pressure to upzone rural areas will inevitably come. The Biological Opinion performance standard is that these floodplain areas are not allowed to be upzoned any denser than 5 acre parcels.

If a floodplain area is within the Urban Growth Boundaries of a community, this standard may be hard to achieve, but the Growth Management Hearings Boards have upheld the ability of a community to limit the densities in critical areas --the frequently flooded area (minimally the 100 year floodplain) is a critical area under GMA. The Growth Management hearings board provides a method for determining if an area can maintain a low density zoning through the "[Litowitz Test](#)." The Litowitz test provides a measure for when low density land use designations, adopted as a means of protecting critical areas, would be consistent with a city's duty to comply with the Growth Management Act goals one and two, ensure compact urban development and reduce sprawl. The Litowitz test can be used when a critical area meets three criteria:

1. Large in Scope
2. Structure and functions of the critical area are complex
3. The rank order value is high

The Washington Department of Commerce, in a Growth Management Services Guidance Paper ([Urban Densities- Central Puget Sound Edition](#), September 2004) explains how this test might be administered:

To evaluate whether a low-density designation is appropriate, it is useful to consider how the low-density designation relates to the three criteria listed above. For example, an areawide collection of critical areas, such as a collection of associated wetlands, is larger in scope than isolated wetlands. Their functions and values as a collection may be greater than what could be protected by application of the critical areas ordinance itself. An area that contains overlapping and interrelated types of critical areas, such as geologically hazardous areas, wetlands, and riparian areas, will have a complex structure and function. Applying the critical areas ordinance with its overlapping buffers and mitigation requirements would be difficult, and lower densities may be justified.

Any jurisdiction using low densities to protect critical areas should provide a discussion of how these three factors apply. The analysis should show why a project-level regulatory approach using the critical areas ordinance, acting on its own, would not protect these functions and values. The record



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should document the scientific basis for these conclusions and should also show that the low-density designations are limited to those areas necessary to protect function and value.

Communities should apply the Litowitz test to their Urban Growth Areas that are in a floodplain in order to determine if there is a justification to require low density zoning to occur in the critical area. If the Litowitz test upholds the low density zoning then a minimum zoning of 5 acre parcels should be applied.