

Three Flood Impact Scenarios

For some time the real estate community has discussed pending changes to FEMA’s floodplain maps and the pending changes to the floodplain development regulations based on the NOAA-Fisheries’ Biologic Opinion (“BiOp”). The combination of these events would severely tighten development and redevelopment standards—possibly making development or redevelopment economically unfeasible – within the floodplain. How might new standards affect you? What follows are three scenarios that exemplify what new flood maps combined with the new regulations would mean to you.

Scenario 1: Rebuild following a Flood Event

FEMA recently issued new floodplain maps for your County, which show your property within the 100-year floodplain. According to those new maps, your property is 2 feet below the based flood elevation (the estimated water surface level in a 100-yr flood). You experience a flood that damages the building on your property. The estimated cost of repairing the building exceeds 50% of the assessed value of the structure. WHAT CAN YOU DO?

Under the existing regulations:

- You can rebuild your structure so long as you flood proof or otherwise elevate the structure to at least the base flood elevation. There is no limitation on the importation of fill to meet the elevation requirements.

Under the new BiOp-based floodplain development regulations:

- You will be required to prepare a habitat assessment identifying any features of your property that could affect endangered species or their habitat. If the jurisdiction determines your property has any impact on endangered species or their habitat, you will be required to provide and implement a habitat mitigation plan that includes avoiding, minimizing and mitigating for any impacts to endangered species or their habitat.
- As under existing regulations, you will be required either to flood proof or elevate the ENTIRE STRUCTURE to at least the base flood elevation. If you want to use fill to accomplish this, you will be required to provide offsetting compensatory storage – for every foot of fill you import, you will need to find a location on your property where you can remove a foot of dirt. You cannot dig a “big hole” to provide compensatory storage because the compensatory storage area has to be at the same elevation as the fill. Also, the newly created flood storage areas must be graded and vegetated to allow fish access during flood events without creating fish stranding sites.
- You will be required to upgrade your stormwater system so that the volume and rate of runoff from the property does not exceed pre-development rates. This means significantly larger stormwater ponds and/or other stormwater management systems (e.g., stormwater infiltration, rain gardens, grass swales, permeable pavement, vegetated roofs, etc).

Scenario 2: Develop or Redevelop Property along a River or Shoreline

You own vacant property that is mapped within the floodplain and located within 250 feet of a shoreline of the state or 200 feet from a fish bearing stream wider than 5 feet. You would like to develop the property in the future for commercial use. WHAT CAN YOU DO?

Under the existing regulations:

- You may develop the property so long as you flood proof or elevate any new structures to at least the base flood elevation. There is no limitation on the importation of fill to meet the elevation requirements.

Under the new BiOp-based floodplain development regulations:

- You will be required to prepare a habitat assessment identifying any features of your property that could affect endangered species or their habitat. You will be required to demonstrate that your proposed development does not adversely affect water quality, water quantity, the amount or velocity of flood waters in a flood event, or any habitat areas for endangered species. If your project does affect any of these features, you will be required to modify your project until you reach “no affects.”
- You will be prohibited from removing any existing native vegetation on your property.
- You will be limited to 10% new effective impervious surface on your property.
- If you want to use fill to elevate your new building above the base flood elevation, you will be required to provide corresponding compensatory storage – for every foot of fill you import, you will need to find a location on your property where you can remove a foot of dirt. You cannot dig a “big hole” to provide compensatory storage because the compensatory storage area has to be at the same elevation as the fill. Also, the newly created flood storage areas must be graded and vegetated to allow fish access during flood events without creating fish stranding sites.
- If your property is partially in the floodplain and partially out of the floodplain, and there is a buildable area outside the floodplain, you will likely be limited to developing just the non-floodplain portion of the site. The balance of the property may not be developable – unless you can demonstrate that it has no habitat value for endangered species.
- You will be required to manage your stormwater so that the amount and rate of run off does not exceed pre-development rates. *See Scenario 1 above.*

Scenario 3: Property Newly Mapped within the Floodway

Your property, which is located near a river, is fully developed, but the buildings are reaching the end of their useable lives. You want to redevelop, but learn that the property has recently been remapped within the floodway. WHAT CAN YOU DO?

Under the existing regulations:

- Demonstrate through a “no rise” certificate that your proposed re-development will not result in any increase in flood levels anywhere else in the floodplain during a 100-year flood event.
- You will be required to elevate or otherwise flood proof any new development to at least the base flood elevation.

Under the new BiOp-based floodplain development regulations:

- NO DEVELOPMENT (for commercial use) IS PERMISSIBLE – unless you can demonstrate that your proposed development will have NO AFFECT on endangered species or their habitat. No affect means no affect; it does not provide for you to offset impacts through mitigation. You will be required to modify your project until it has no affect on endangered species.
- If you can overcome the “no affect” hurdle, all of the other requirements from Scenarios 1 and 2 above will also apply.