

CFAR PROVISIONAL PILOT POLICIES – RENTAL, DEMOLISH, AND REBUILD

Date: March 31, 2022
To: Chehalis Basin Board
From: Nat Kale, Office of Chehalis Basin; French Wetmore, French & Associates
cc: Andrea McNamara Doyle, Office of Chehalis Basin; Jerry Louthain, French & Associates; Jenn Tice and Lauren Dennis, Ross Strategic
Re: Policy Guidance for the CFAR Pilot

Background

The Community Flood Assistance and Resilience (CFAR) program has identified 14 properties in the Chehalis basin to retrofit, remove, or rebuild in 2022. These initial properties comprise the pilot for the CFAR program, and will both strengthen the basin's protection against flood damages, and provide valuable lessons for establishing a more complete CFAR program in the 2023-2025 biennium.

OCB staff and consultants have identified several policy considerations among these 14 projects. This memo is intended to inform the Board of the provisional approaches OCB staff plan to take with respect to these policies. Once the projects are complete, OCB staff will present the Board with the outcome of the CFAR pilot, including the effects of the policies in this memo.

At the February 3, 2022 Chehalis Basin Board meeting, Chrissy Bailey requested guidance from the Board for addressing situations where the interests of the landowner stand in tension or direct opposition to the informal, non-adopted interests of the local government or its representatives. This memo describes three additional provisional policies. Staff is presenting these for your awareness and comment, and is not requesting action or formal approval from the Board.

Policies

Policy #1 – Rental Properties

Should CFAR pay to elevate rental properties?

The CFAR program is a public, tax-funded program (like all OCB programs), and has an obligation to ensure that expenditures provide a public benefit. At the same time, the Chehalis Basin Strategy has identified environmental justice and equity as important considerations.

If CFAR pays to elevate income-generating rental properties, landlords could use the increased value of the property to increase rent or to sell the property at an elevated price, essentially profiting from public

expenditures. If CFAR does not include rental properties, the large percentage of floodplain residents who live in rental housing would be ineligible to benefit from the flood damage protections offered by the CFAR program. Residents of rental housing in the floodplain tend to be among the more socially- and economically disadvantaged members of the community, so excluding rental properties would reduce the benefit CFAR could provide to these vulnerable groups.

Provisional Policy:

- (1) Condition CFAR funding to prohibit the owner from selling the property within a certain number of years or for more than a set percentage above the Assessor's record of market value.
- (2) Condition CFAR funding to prohibit the owner from increasing the rent more than a set percentage above the current rent. An exception would be if the owner did other improvements concurrent with the flood protection work.
- (3) Include a provision where the owner could seek an exception from OCB due to special circumstances (e.g., the owner died and the heirs want to sell off the properties).

Two of the 14 pilot sites are rental properties. OCB staff will work with the Attorney General's office and local jurisdictions to craft agreements with landowners that incorporate the three elements above.

Policy #2 – Acquire and Clear

Can CFAR property protection funds be used to acquire and clear a floodprone structure?

To date, CFAR has been considered a program to support elevating, floodproofing, or otherwise retrofitting a structure to reduce its exposure to damage by a flood. Two of the 14 pilot sites are subject to repetitive and fast flowing floodwaters and where the access road has been cut off by flooding. CFAR plans to demolish the buildings and clear the properties because of the flood hazard and threat to life.

Provisional Policy:

- (1) Where there is high hazard flooding and/or other factor(s) that make a building unsafe to occupy during a flood (even if it were elevated or otherwise floodproofed/retrofitted), CFAR may purchase the structure and demolish it.
- (2) The purchase price will be the market value of the structure plus the acquired land or property right. CFAR may choose to purchase only the part of the property subject to unsafe flooding, either via subdivision of the parcel or easement purchase. The purchase price will be based on the land area and rights actually purchased.

- (3) The land purchased with CFAR funds may be sold or given to a government agency, organization, or private individual. A property restriction will be included in the transfer to ensure that no new habitable structures would be built in the high hazard area.
- (4) “High hazard” includes areas where:
 - a. The base (100-year) flood depth is greater than five feet
 - b. The base flood velocity is greater than five feet per second, and/or
 - c. The warning time of a flood that will block escape to high ground is less than one hour
- (5) The site does not have to be in a currently mapped Special Flood Hazard Area if past floods meet the above criteria or it is shown that the area is subject to the high hazard flooding criteria.

Two of the 14 pilot sites meet the above criteria. OCB staff will work with the Attorney General’s office and local jurisdictions to craft agreements with landowners that incorporate these elements.

Policy #3 – Demolish and Rebuild

Should CFAR pay to demolish a structure and construct a new one on the site?

This is called “demo-rebuild” or “mitigation reconstruction” and has become a standard approach used by FEMA after heavy flood damage has put a structure in an unstable or substandard condition. In short, the existing building is not worth the cost of the protection measure. The new building must meet all current building code criteria, including flood protection codes, earthquake protection, and energy conservation.

Provisional Policy:

- (1) CFAR may contribute funds toward the cost of demolishing a floodprone building and replacing it with a new building constructed to CFAR mitigation standards, when:
 - a. The local permit authority considers the building to be in an unsafe or unsanitary condition that renders it uninhabitable, or
 - b. The cost of a flood mitigation project is worth more than the market value of the building.
- (2) CFAR’s funds would be limited to the cost of elevating the structure to CFAR’s flood protection standards. Other sources of funds, including the owner, would pay for the balance of the cost of the demolition and new construction.

- (3) The CFAR program will refer to FEMA's policies on demolition reconstruction projects to inform decisions about this type of project.

None of the 14 pilot sites would qualify for demo-rebuild, but one property in consideration for the next phase of funding would qualify. The community has paused condemnation proceedings on that property pending a decision on CFAR funding a demo-rebuild project. There are likely other properties that would be interested in a new building if it is an eligible CFAR expense.

Variances and Adjustments

Even with all pilot sites identified in advance, unanticipated issues will arise during the pilot. In cases where there is no clear established policy, OCB staff will consult with the OCB Director for guidance. These cases will also inform criteria for the next phase of the more comprehensive CFAR program.

Next Steps

To complete the 14 CFAR pilot projects, OCB will work with RCO to distribute a Request for Qualifications (RFQ) to bring one or more companies with the necessary construction and engineering experience under contract. This memorandum advances that goal by establishing provisional policies for which activities (and therefore which properties) are eligible to participate in CFAR. OCB staff plan to draft and release the RFQ this spring, contract with the successful bidder or bidders and begin work this summer, with a goal of completing all 14 sites by summer 2023. An additional goal is to get far enough along with the pilot implementation to be able to inform CFAR funding recommendations for the 2023-2025 biennium.